LAWS

of the

STATE OF UTAH

passed at the

1993 GENERAL SESSION

and

1993 FIRST SPECIAL SESSION

Published by Authority

AUTHENTICATION

Office of the Lieutenant Governor)
) ss.
State of Utah)

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 1993 General Session of the Fiftieth Legislature of the State of Utah, as they appear of record in the Office of the Lieutenant Governor;

That the 1993 General Session of the Fiftieth Legislature of the State of Utah convened at the Capitol in the city of Salt Lake, January 18, 1993 and adjourned on the 3rd day of March, 1993.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Lieutenant Governor, and affixed the Great Seal of the State of Utah, at Salt Lake City, this 1st day of June, 1993.

Olene S. Walker

OLENE S. WALKER
Lieutenant Governor

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CHAPTER 1
H. B. No. 63
Passed January 22, 1993
Approved January 28, 1993
Effective January 28, 1993

ELECTION LAW
RECODIFICATION PHASE I

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AN ACT RELATING TO ELECTION LAW; RECODIFYING CERTAIN CHAPTERS AND SECTIONS OF TITLE 20; REPEALING CERTAIN SECTIONS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20-7-20, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992
78-5-132, AS ENACTED BY CHAPTER 157, LAWS OF UTAH 1989
78-5-134, AS LAST AMENDED BY CHAPTER 244, LAWS OF UTAH 1991

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20A-1-202, UTAH CODE ANNOTATED 1953
20A-1-203, UTAH CODE ANNOTATED 1953
20A-1-301, UTAH CODE ANNOTATED 1953
20A-1-302, UTAH CODE ANNOTATED 1953
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20A-1-304, UTAH CODE ANNOTATED 1953
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20A-1-402, UTAH CODE ANNOTATED 1953
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20A-1-501, UTAH CODE ANNOTATED 1953
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20A-2-202, UTAH CODE ANNOTATED 1953
20A-2-203, UTAH CODE ANNOTATED 1953
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20A-3-405, UTAH CODE ANNOTATED 1953
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20A-5-602, UTAH CODE ANNOTATED 1953
20A-5-603, UTAH CODE ANNOTATED 1953
20A-5-604, UTAH CODE ANNOTATED 1953
20A-5-605, UTAH CODE ANNOTATED 1953
20A-5-606, UTAH CODE ANNOTATED 1953
20A-5-701, UTAH CODE ANNOTATED 1953
20A-5-702, UTAH CODE ANNOTATED 1953
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20A-5-704, UTAH CODE ANNOTATED 1953
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20-14-29, UTAH CODE ANNOTATED 1953
20-14-30, UTAH CODE ANNOTATED 1953
20-14-31, UTAH CODE ANNOTATED 1953
20-14-33, UTAH CODE ANNOTATED 1953
20-14-39, UTAH CODE ANNOTATED 1953
20-14-40, UTAH CODE ANNOTATED 1953
20-14-41, UTAH CODE ANNOTATED 1953
20-14-42, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1984
20-14-43, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1984
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20-15-3, AS LAST AMENDED BY CHAPTER 34, LAWS OF UTAH 1987
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20-17-1, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992
20-17-2, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1981
20-17-3, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1981
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20-17-9, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992
20-17-9.5, AS ENACTED BY CHAPTER 62, LAWS OF UTAH 1987
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20-20-7.5, AS ENACTED BY CHAPTER 57, LAWS OF UTAH 1987
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20-20-9, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1971
20-20-10, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1971
78-5-131, AS ENACTED BY CHAPTER 157, LAWS OF UTAH 1989
78-5-133, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

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

Section 1. Section Repealed and Reenacted.

Section 10-3-302, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1988, is repealed and reenacted to read:

10-3-302. Mayoral or council vacancy of a municipality.

Mayoral or council vacancies shall be filled as provided in Section 20A-1-510.

Section 2. Section Repealed and Reenacted.

Section 10-3-1218, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1979, is repealed and reenacted to read:

10-3-1218. Vacancy in council.

Council vacancies shall be filled as provided in Section 20A-1-510.

Section 3. Section Repealed and Reenacted.

Section 17-5-4, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1979, is repealed and reenacted to read:

17-5-4. Vacancies on the County Commission.

Commission vacancies shall be filled as provided in Section 20A-1-508.

Section 4. Section Repealed and Reenacted.

Section 17-5-21, Utah Code Annotated 1953, as last amended by Chapter 120, Laws of Utah 1990, is repealed and reenacted to read:

17-5-21. Vacancies in county offices — Vacancies in the office of County Attorney.

(1) Vacancies in county offices shall be filled as provided in Section 20A-1-508.

(2) Vacancies in the office of county attorney shall be filled as provided in Section 20A-1-509.

Section 5. Section Repealed and Reenacted.

Section 17A-1-302, Utah Code Annotated 1953, as enacted by Chapter 273, Laws of Utah 1991, is repealed and reenacted to read:

17A-1-302. Vacancies on special district boards.

Vacancies on special district boards shall be filled as provided in Section 20A-1-512.

Section 6. Section Amended.

Section 20-7-20, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992, is amended to read:

20-7-20. Manner of becoming valid write-in candidate.

[~~(1)(a) Any voter desiring to vote for all the candidates upon any ticket may:~~]

[~~(i) mark in the circle above that ticket;~~]

[~~(ii) mark in the squares opposite the names of all candidates on the ticket; or~~]

[~~(iii) make both markings.~~]

[~~(b) To vote for candidates on two or more tickets, the voter may mark in the squares opposite the names of the candidates for whom the voter wishes to vote without marking in any circle, or the voter may indicate the choice by marking in the circle above one ticket and marking in the squares opposite the names of desired candidates.~~]

[~~(c)(i) The voter may also insert the name of a valid write-in candidate in writing or by means of a sticker with the office and write-in name printed on it.~~]

[~~(ii) Write-in votes shall be listed in the blank write-in part of the ballot, and the voter shall be considered to have voted for that person, whether a crossmark is made or is not made opposite that name.~~]

[~~(d) The unnecessary marking of a cross in a square on the ticket below the marked circle does not affect the validity of the vote.~~]

[~~(e) When a question is submitted to the vote of the people, the voter shall mark a cross (X) in the voting square of his choice.~~]

[~~(2)(a)~~] (1) To become a valid write-in candidate, a person shall file a declaration of candidacy with the appropriate filing officer not later than [~~5:00~~] 5 p.m.

on the Wednesday before the November election in which the person intends to be a write-in candidate.

[~~(b)(i)~~] (2) (a) The filing officer shall read to the candidate the constitutional and statutory requirements for candidacy, and the candidate shall state whether or not the requirements of the candidacy are met.

[~~(ii)~~] (b) If the candidate indicates that they are not met, the person is not a valid write-in candidate.

[~~(c)(i)~~] (3) (a) Votes for a valid write-in candidate shall be read and tallied by the election judges.

[~~(ii)~~] (b) Votes for other nonvalid write-in candidates, fictitious persons, nonpersons, or persons clearly not eligible may not be tallied or recorded.

[~~(d)~~] (4) This [~~Subsection (2)~~] section does not apply to municipal elections except in cities of the first class.

Section 7. Section Enacted.

Section 20A-1-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 1. GENERAL PROVISIONS

Part 1. Title and Definitions

20A-1-101. Title.

This title is known as the "Election Code."

Section 8. Section Enacted.

Section 20A-1-102, Utah Code Annotated 1953, is enacted to read:

20A-1-102. Definitions.

As used in this chapter:

(1) "Automatic tabulating equipment" mean apparatus that automatically examines and counts votes recorded on paper ballots or ballot cards and tabulates the results.

(2) "Ballot" means the cardboard, paper, or other material upon which a voter records his votes and includes ballot cards, paper ballots, and secrecy envelopes.

(3) "Ballot card" mean a ballot that can be counted using automatic tabulating equipment.

(4) "Ballot label" mean the cards, papers, booklet, pages, or other materials that contain the names of offices and candidates and statements of ballot propositions to be voted on and which are used in conjunction with ballot cards.

(5) "Ballot proposition" means constitutional amendments, initiatives, referenda, judicial retention questions, opinion questions, or other questions submitted to the voters for their approval or rejection.

(6) "Board of canvassers" means the entities established to canvass election returns by Sections 20A-4-301 and 20A-4-306.

(7) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(8) "Bond election" means an election held for the sole purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(10) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(11) "Canvassing judge" means an election judge designated to assist in counting ballots at the canvass.

(12) "Convention" means the political party convention at which party officers and delegates are selected.

(13) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(14) "Counting judge" means a judge designated to count the ballots during election day.

(15) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(16) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the counting judges to count ballots during election day.

(17) "County executive" means:

(a) the county commission, in the traditional management arrangement established by Section 17-4-2 and Title 17, Chapter 5;

(b) the county executive, in the county executive and chief administrative officer-council optional form of management arrangement authorized by Section 17-35a-13;

(c) the county executive, in the county executive-council optional form of management arrangement authorized by Section 17-35a-14;

(d) the county council, in the council-manager optional form of management arrangement authorized by Section 17-35a-15; and

(e) the county council, in the council-county administrative officer optional form of management arrangement authorized by Section 17-35a-15.5.

(18) "County legislative body" means:

(a) the county commission, in the traditional management arrangement established by Section 17-4-2 and Title 17, Chapter 5;

(b) the county council, in the county executive and chief administrative officer-council optional form of management arrangement authorized by Section 17-35a-13;

(c) the county council, in the county executive-council optional form of management arrangement authorized by Section 17-35a-14;

(d) the county council, in the council-manager optional form of management arrangement authorized by Section 17-35a-15; and

(e) the county council, in the council-county administrative officer optional form of management arrangement authorized by Section 17-35a-15.5.

(19) "County officers" means those county officers that are required by law to be elected.

(20) "Election" means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, a special district election, and any bond election.

(21) "Election cycle" means the period beginning on the first day persons are eligible to file declarations of candidacy and ending when the canvass is completed.

(22) "Election judge" means each canvassing judge, counting judge, and receiving judge.

(23) "Election officer" means:

(a) the lieutenant governor, for all statewide ballots;

(b) the county clerk or clerks for all county ballots;

(c) the municipal clerk for all municipal ballots; and

(d) the special district clerk or chief executive officer for all special district ballots that are not part of a statewide, county, or municipal ballot.

(24) "Election official" means any election officer, election judge, or registration agent.

(25) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all defective ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

(26) "Electronic voting system" means a system in which a voting device is used in conjunction with ballots so that votes recorded by the voter are counted and tabulated by automatic tabulating equipment.

(27) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

(28) "Irregular ballots" means ballots containing any write-in votes.

(29) "Judicial office" means the office filled by any judicial officer.

(30) "Judicial officer" means any justice of the Supreme Court, any Court of Appeals judge, any juvenile court judge, any judge of the district court, any judge of a circuit court, and any justice court judge.

(31) "Local election" means a regular municipal election, a local special election, a special district election, and a bond election.

(32) "Local political subdivision" means a county, a municipality, a special district, or a local school district.

(33) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

(34) "Municipal executive" means:

(a) the city commission, city council, or town council, in the traditional management arrangement established by Title 10, Chapter 3, Part 1;

(b) the mayor, in the council-mayor optional form of government defined in Section 10-3-1209; and

(c) the manager, in the council-manager optional form of government defined in Section 10-3-1209.

(35) "Municipal general election" means the election held in municipalities and special districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

(36) "Municipal legislative body" means:

(a) the city commission, city council, or town council, in the traditional management arrangement established by Title 10, Chapter 3, Part 1;

(b) the municipal council, in the council-mayor optional form of government defined in Section 10-3-1209; and

(c) the municipal council, in the council-manager optional form of government defined in Section 10-3-1209.

(37) "Municipal officers" means those municipal officers that are required by law to be elected.

(38) "Municipal primary election" means an election held to nominate candidates for municipal office.

(39) "Official ballot" means the ballots distributed by the election officer to the election judges to be given to voters to record their votes.

(40) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) the facsimile signature of the election officer; and

(b) the information on the ballot stub that identifies:

(i) the election judge's initials; and

(ii) the ballot number.

(41) "Official register" means the book furnished election officials by the election officer that contains the information required by Section 20A-5-401.

(42) "Paper ballot" means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record his vote for each office and for or against each ballot proposition.

(43) "Political party" means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Subsection 20-3-2.5 (1) or (2).

(44) "Polling place" means the place where residents of a voting precinct vote.

(45) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks his choice.

(46) "Posting list" means a list of registered voters within a voting precinct.

(47) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

(48) "Protective counter" means a separate counter, which cannot be reset, that is built into a voting machine and records the total number of movements of the operating lever.

(49) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

(50) "Receiving judge" means the election judge that provides the voter with a ballot, check the voter's name in the pollbook, and removes the ballot stub from the ballot after the voter has voted.

(51) "Registration agent" means a person appointed under Section 20A-5-201 to register voters and perform other duties.

(52) "Registration days" means the days designated in Section 20A-2-203 when a voter may register to vote with a registration agent.

(53) "Registration form" means a book voter registration form and a by-mail voter registration form.

(54) "Regular general election" means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

(55) "Regular primary election" means the election on the second Tuesday of September of each even-numbered year, at which candidates of all political parties and nonpolitical groups are voted for nomination.

(56) "Resident" means a person who resides within a specific voting precinct in Utah.

(57) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

(58) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

(59) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after he has voted it in order to preserve the secrecy of the voter's vote.

(60) "Special election" means an election held on any Tuesday other than the first Tuesday after the first Monday in November of any year.

(61) "Special district" means those local government entities created under the authority of Title 17A.

(62) "Special district officers" means those special district officers that are required by law to be elected.

(63) "Spoiled ballot" means each ballot:

(a) spoiled by the voter;

(b) unable to be voted because it was spoiled by the printer or the election judge; and

(c) that lacks the official endorsement.

(64) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

(65) "Stub" means the detachable part of each ballot.

(66) "Substitute ballots" means replacement ballots provided by an election officer to the election judges when the official ballots are lost or stolen.

(67) "Ticket" means each list of candidates for each political party or for each group of petitioners.

(68) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

(69) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

(70) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

(71) "Voter" means a person who meets the requirements of election registration and is registered and is listed in the official register book.

(72) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

(73) "Voting booth" means the space or compartment within a polling place that is provided for the preparation of ballots and includes the voting machine enclosure or curtain.

(74) "Voting device" means:

(a) an apparatus in which ballot cards are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance; or

(c) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

(75) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

(76) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

(77) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

(78) "Watcher" means a voting poll watcher, a counting poll watcher, and an inspecting poll watcher.

(79) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 9. Section Enacted.

Section 20A-1-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Elections: General and Special Elections

20A-1-201. Date and purpose of regular general elections.

(1) A regular general election shall be held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year.

(2) At the regular general election, the voters shall:

(a) choose persons to serve the terms established by law for the following offices:

(i) electors of President and Vice-President of the United States;

(ii) United States Senators;

(iii) Representatives to the United States Congress;

(iv) governor, lieutenant governor, attorney general, state treasurer, and state auditor;

(v) senators and representatives to the Utah Legislature;

(vi) county officers;

(vii) state school board members;

(viii) local school board members; and

(ix) any elected judicial officers; and

(b) approve or reject:

(i) any proposed amendments to the Utah Constitution that have qualified for the ballot as provided by law;

(ii) any proposed initiatives or referenda that have qualified for the ballot as provided by law; and

(iii) any other ballot propositions submitted to the voters as provided by law.

Section 10. Section Enacted.

Section 20A-1-202, Utah Code Annotated 1953, is enacted to read:

20A-1-202. Date and purpose of local elections.

(1) A municipal general election shall be held in municipalities and special districts on the first Tuesday after the first Monday in November of each odd-numbered year.

(2) At the municipal general election, the voters shall:

(a) choose persons to serve as municipal and special district officers; and

(b) approve or reject:

(i) any proposed initiatives or referenda that have qualified for the ballot as provided by law; and

(ii) any other ballot propositions submitted to the voters as provided by law.

Section 11. Section Enacted.

Section 20A-1-203, Utah Code Annotated 1953, is enacted to read:

20A-1-203. Calling and purpose of special elections.

(1) Statewide and local special elections may be held for any purpose authorized by law.

(2) (a) Statewide special elections shall be conducted using the procedure for regular general elections.

(b) Except as otherwise provided in this title, local special elections shall be conducted using the procedures for regular municipal elections.

Section 12. Section Enacted.

Section 20A-1-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Elections: General Requirements

20A-1-301. Designating offices to be filled — Publishing or posting of notice.

(1) On or before March 1 in each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the regular general election;

(b) identifies the dates for filing a declaration of candidacy for those offices; and

(c) contains a general description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) Each county clerk shall publish the parts of the notice applicable to the clerk's county at least once in a newspaper published in the county before March 15 of that year.

(b) If no newspaper is published in the county, the clerk shall:

(i) post a copy of the notice in each county voting precinct in a conspicuous place that is most likely to give notice of the election to the voters; and

(ii) make an affidavit of the posting, showing a copy of the notice and the places where the notice was posted.

Section 13. Section Enacted.

Section 20A-1-302, Utah Code Annotated 1953, is enacted to read:

20A-1-302. Opening and closing of polls.

(1) Polls at all elections open at 7 a.m. and shall remain open until 8 p.m. of the same day.

(2) (a) Upon the opening of the polls, one of the judges shall verbally proclaim that the polls are open.

(b) Thirty minutes before the closing of the polls, one of the judges shall verbally proclaim that the polls will close in 30 minutes.

(c) The election judges shall allow every voter who arrives at the polls by 8 p.m. to vote.

Section 14. Section Enacted.

Section 20A-1-303, Utah Code Annotated 1953, is enacted to read:

20A-1-303. Determining results.

(1) (a) When one person is to be elected or nominated, the person receiving the highest number of votes at any:

(i) election for any office to be filled at that election is elected to that office; and

(ii) primary for nomination for any office is nominated for that office.

(b) When more than one person is to be elected or nominated, the persons receiving the highest number of votes at any:

(i) election for any office to filled at that election are elected to that office; and

(ii) primary for nomination for any office are nominated for that office.

(2) Any ballot proposition submitted to voters for their approval or rejection:

(a) passes if the number of "yes" votes is greater than the number of "no" votes; and

(b) fails if:

(i) the number of "yes" votes equal the number of "no" votes; or

(ii) the number of "no" votes is greater than the number of "yes" votes.

Section 15. Section Enacted.

Section 20A-1-304, Utah Code Annotated 1953, is enacted to read:

20A-1-304. Tie votes.

If two or more candidates for a position have an equal and the highest number of votes for any office, the election officer shall determine by lot which candidate is selected in a public meeting in the presence of each person subject to the tie within 30 days of the canvass or within 30 days of the recount if one is requested or held.

Section 16. Section Enacted.

Section 20A-1-305, Utah Code Annotated 1953, is enacted to read:

20A-1-305. Publication and distribution of election laws.

(1) The lieutenant governor shall:

(a) publish a sufficient number of copies of Title 20A, Election Code, and any other provisions of law that govern elections; and

(b) transmit copies to each county clerk.

(2) Each county clerk shall:

(a) inform the lieutenant governor of the number of copies needed; and

(b) furnish each election officer in the county with one copy.

Section 17. Section Enacted.

Section 20A-1-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Election Law Controversies

20A-1-401. Election laws — Liberally construed.

(1) Courts and election officers shall construe the provisions of Title 20A, Election Code, liberally to carry out the intent of this title.

(2) Sunday shall be included in all computations of time made under the provisions of Title 20A, Election Code.

Section 18. Section Enacted.

Section 20A-1-402, Utah Code Annotated 1953, is enacted to read:

20A-1-402. Election officer to render interpretations and make decisions.

The election officer shall render all interpretations and make all initial decisions about controversies or other matters arising under this chapter.

Section 19. Section Enacted.

Section 20A-1-403, Utah Code Annotated 1953, is enacted to read:

20A-1-403. Errors or omissions in ballots.

(1) The election officer shall, without delay, correct any errors in paper ballots or ballot labels that he discovers, or that are brought to his attention, if those errors can be corrected without interfering with the timely distribution of the paper ballots or ballot labels.

(2)(a)(i) If an error or omission has occurred in the publication of the names or description of the candi-

dates nominated for office, or in the printing of sample or official ballots, a candidate or his agent may file, without paying any fee, a petition for ballot correction with the district court.

(ii) If a petition is filed, the petitioner shall serve a copy of the petition on the respondents on the same day that the petition is filed with the court.

(b) The petition shall contain:

(i) an affidavit signed by the candidate or his agent identifying the error or omission; and

(ii) a request that the court issue an order to the election officer responsible for the ballot error or omission to correct the ballot error or omission.

(3)(a) After reviewing the petition, the court shall:

(i) issue an order commanding the respondent named in the petition to appear before the court to answer, under oath, to the petition;

(ii) summarily hear and dispose of any issues raised by the petition to obtain substantial compliance with the provisions of this title by the parties to the controversy; and

(iii) make and enter orders and judgments, and issue the process of the court to enforce all of those orders and judgments.

(b) The court may assess costs, including a reasonable attorney's fee, against either party.

Section 20. Section Enacted.

Section 20A-1-404, Utah Code Annotated 1953, is enacted to read:

20A-1-404. Election controversies.

(1) (a) (i) Whenever any controversy occurs between any election officer or other person or entity charged with any duty or function under this title and any candidate, or the officers or representatives of any political party, or persons who have made nominations, either party to the controversy may file a verified petition with the district court.

(ii) If a petition is filed, the petitioner shall serve a copy of the petition on the respondents on the same day that the petition is filed with the court.

(b) The verified petition shall identify concisely the nature of the controversy and the relief sought.

(2) After reviewing the petition, the court shall:

(a) issue an order commanding the respondent named in the petition to appear before the court to answer, under oath, to the petition;

(b) summarily hear and dispose of any issues raised by the petition to obtain substantial compliance with the provisions of this title by the parties to the controversy; and

(c) make and enter orders and judgments, and issue the process of the court to enforce all of those orders and judgments.

Section 21. Section Enacted.

Section 20A-1-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Candidate Vacancies and Vacancies in Elected Offices

20A-1-501. Candidate vacancies — Procedure for filling.

(1) The state central committee of a political party, for candidates for U.S. senator, U.S. representative, governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for legislative candidates whose legislative districts encompass more than one county, and the county central committee of a political party, for all other party candidates seeking an office elected at a regular general election, may certify the name of another candidate to the appropriate election officer if:

(a) after the close of the period for filing declarations of candidacy but before the primary:

(i) only one or two candidates from that party have filed a declaration of candidacy for that office; and

(ii) one or both:

(A) dies;

(B) resigns because of becoming physically or mentally disabled as certified by a physician; or

(C) is disqualified by an election officer for improper filing or nominating procedures; or

(b) after the primary election but before the general election the party's candidate:

(i) dies;

(ii) resigns because of becoming physically or mentally disabled as certified by a physician; or

(iii) is disqualified by an election officer for improper filing or nominating procedures.

(2) If no more than two candidates from a political party have filed a declaration of candidacy for an office elected at a regular general election and one resigns to become the party candidate for another position, the state central committee of that political party, for candidates for governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for legislative candidates whose legislative districts encompass more than one county, and the county central committee of that political party, for all other party candidates, may certify the name of another candidate to the appropriate election officer.

(3) Each replacement candidate shall file a declaration of candidacy as required by Section 20-4-9.

Section 22. Section Enacted.

Section 20A-1-502, Utah Code Annotated 1953, is enacted to read:

20A-1-502. Midterm vacancies in office of United States representative or senator.

(1) When a vacancy occurs for any reason in the office of a representative in Congress, the governor

shall issue a proclamation calling an election to fill the vacancy.

(2)(a) When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election.

(b) The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder.

Section 23. Section Enacted.

Section 20A-1-503, Utah Code Annotated 1953, is enacted to read:

20A-1-503. Midterm vacancies in the Legislature.

(1) As used in this section, central committee means:

(a) the state central committee, when the legislative district encompasses more than one county; and

(b) the county central committee, when the legislative district is entirely within one county.

(2) When a vacancy occurs for any reason in the office of representative in the Legislature, the governor shall fill the vacancy by appointing a person who meets the qualifications for the office from three persons nominated by the central committee of the same political party as the prior officeholder.

(3)(a) When a vacancy occurs for any reason in the office of senator in the Legislature, it shall be filled for the unexpired term at the next regular general election.

(b) The governor shall fill the vacancy until the next regular general election by appointing a person who meets the qualifications for the office from three persons nominated by the central committee of the same political party as the prior officeholder.

Section 24. Section Enacted.

Section 20A-1-504, Utah Code Annotated 1953, is enacted to read:

20A-1-504. Midterm vacancies in the offices of attorney general, state treasurer, and state auditor.

(1)(a) When a vacancy occurs for any reason in the offices of attorney general, state treasurer, or state auditor, it shall be filled for the unexpired term at the next regular general election.

(b) The governor shall fill the vacancy until the next regular general election by appointing a person who meets the qualifications for the office from three persons nominated by the state central committee of the same political party as the prior officeholder.

(2) If a vacancy occurs in the office of lieutenant governor, the governor shall appoint a person to hold the office until the next regular general election at which the governor stands for election.

Section 25. Section Enacted.

Section 20A-1-505, Utah Code Annotated 1953, is enacted to read:

20A-1-505. Judicial vacancies — Courts of record.

(1)(a) When a vacancy occurs in a court of record, the governor shall, within 30 days after receiving the list of nominees, fill the vacancy by appointing a person who meets the qualifications for the office from a list of at least three nominees certified to the governor by the judicial nominating commission that has authority over the vacancy.

(b) If the governor fails to fill the vacancy within 30 days, the chief justice of the Supreme Court shall, within 20 days, appoint a person who meets the qualifications for the office from the list of nominees.

(2)(a) The Senate shall:

(i) consider and decide on each judicial appointment within 30 days of the date of appointment; and

(ii) if necessary, convene itself in extraordinary session to consider a judicial appointment.

(b) If the Senate fails to approve the appointment, the office is considered vacant and a new nominating process begins.

(3) An appointment is effective upon approval of a majority of all members of the Senate.

(4) The judicial nominating commission, the governor, the chief justice, and the Senate shall nominate and select judges based solely upon consideration of their fitness for office without regard to any partisan political considerations.

Section 26. Section Enacted.

Section 20A-1-506, Utah Code Annotated 1953, is enacted to read:

20A-1-506. Judicial vacancies — Courts not of record.

(1) As used in this section:

(a) "Appointing authority" means:

(i) the chair of the county commission in counties having the county commission form of county government;

(ii) the county executive in counties having the county executive-council form of government;

(iii) the chair of the city commission, city council, or town council in municipalities having:

(A) the traditional management arrangement established by Title 10, Chapter 3, Part 1; and

(B) the council-manager optional form of government defined in Section 10-3-1209; and

(iv) the mayor, in the council-mayor optional form of government defined in Section 10-3-1209;

(b) "Local legislative body" means:

(i) the county commission or county council; and

(ii) the city commission, city council, or town council.

(2)(a) If a vacancy occurs in the office of a municipal justice court judge before the completion of his term of office, the appointing authority may:

(i) fill the vacancy by appointment for the unexpired term by following the procedures and requirements for appointments in Section 78-5-134; or

(ii) contract with a justice court judge of the county, an adjacent county, or another municipality within those counties for judicial services.

(b) When the appointing authority chooses to contract under Subsection (1), it shall ensure that the contract is for the same term as the term of office of the judge whose services are replaced by the contract.

(c) The appointing authority shall notify the Office of the State Court Administrator in writing of the appointment, resignation, or the contractual agreement for services of a judge under this section within 30 days after filling the vacancy.

(3)(a) If a vacancy occurs in the office of a county justice court judge before the completion of that judge's term of office, the appointing authority may fill the vacancy by appointment for the unexpired term by following the procedures and requirements for appointments in Section 78-5-134.

(b) The appointing authority shall notify the Office of the State Court Administrator in writing of any appointment of a county justice court judge under this section within 30 days after the appointment is made.

(4)(a) When a vacancy occurs in the office of a justice court judge, the appointing authority shall:

(i) advertise the vacancy and solicit applications for the vacancy;

(ii) appoint the best qualified candidate to office based solely upon fitness for office;

(iii) comply with the procedures and requirements of Title 52, Chapter 3, prohibiting employment of relatives in making appointments to fill the vacancy; and

(iv) submit the name of the appointee to the local legislative body.

(b) If the local legislative body does not confirm the appointment within 30 days of submission, the appointing authority may either appoint another of the applicants or reopen the vacancy by advertisement and solicitations of applications.

Section 27. Section Enacted.

Section 20A-1-507, Utah Code Annotated 1953, is enacted to read:

20A-1-507. Midterm vacancies in the State Board of Education.

(1) If a vacancy occurs on the State Board of Education for any reason other than the expiration of a member's term, the governor, with the consent of the Senate, shall fill the vacancy by appointment of a qualified member to serve out the unexpired term.

(2) The lieutenant governor shall issue a certificate of appointment to the appointed member and certify the appointment to the board.

Section 28. Section Enacted.

Section 20A-1-508, Utah Code Annotated 1953, is enacted to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

(b) "County offices" does not mean the offices of President and Vice-President, U. S. Senators and Representatives, members of the Utah Legislature, state constitutional officers, or judges.

(2)(a) The requirements of this subsection apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more;

(ii) the vacancy occurs after less than five days before the regular county convention of any political party registered under this title; and

(iii) the vacancy occurs before there are less than 35 days before the primary election.

(b)(i) When the conditions established in Subsection (2)(a) are met, the county clerk shall issue a public notice that the vacancy exists.

(ii) All persons intending to become candidates for the vacant offices shall, within five days, ending at 5 p.m. on the fifth day, file a declaration of candidacy for the vacant office as required by Section 20-4-9.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the proper election officer no later than five days after the closing date of filing.

(3)(a) The requirements of this subsection apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more;

(ii) the vacancy occurs after less than 35 days before the primary; and

(iii) the vacancy occurs when there are less than 30 days before the regular general election.

(b) When the conditions established in Subsection (3)(a) are met, the county central committee shall summarily certify the name of one candidate, if available, to the proper filing officer.

(4)(a) The requirements of this subsection apply to all county offices that become vacant when less

than 30 days remain before the regular general election.

(b) When the conditions established in Subsection (4)(a) are met, the county central committee of the party to which the person belonged who created the vacancy shall submit a list of the names of at least six candidates for the position to the county legislative body.

(c) The county legislative body shall appoint a person to fill the vacancy from that list.

(d) (i) If the board fails to make the appointment within 30 days after the vacancy occurs, the county clerk shall notify the governor.

(ii) The governor shall within 30 days after receipt of the notice, appoint a person from the list to fill the vacancy.

(e) (i) If at any time there is not a majority of the county legislative body remaining in office, the governor shall appoint a sufficient number of members from the lists to create a majority.

(ii) That majority shall select the additional members needed as provided in this subsection.

(f) Persons appointed under this Subsection (4) shall hold office for the unexpired term of the person whom they replaced or until their successor is elected and has qualified.

(5) (a) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(b) Except as otherwise provided by law, the county legislative body shall appoint a replacement to fill any vacancy in any elective county or district offices.

(c) If a vacancy occurs in a partisan elective county or district office, the county legislative body shall fill the vacancy by appointing one of three persons who are registered voters in the county nominated by the state central committee of the same political party as the prior officeholder.

(d) Persons appointed by the county legislative body to fill vacancies in appointed or elected offices shall hold office for the unexpired term, or until their successor is elected and has qualified.

(6) The county legislative body shall appoint a person to serve in any vacant position until the replacement is elected and qualified.

(7) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

Section 29. Section Enacted.

Section 20A-1-509, Utah Code Annotated 1953, is enacted to read:

20A-1-509. Midterm vacancies in the office of county attorney.

(1) (a) If a vacancy occurs in the office of county attorney, the county legislative body shall publish a notice of the vacancy and a request for applications in a newspaper of general circulation in the county.

(ii) If three or more registered voters in the county who are licensed active members in good standing of the Utah State Bar submit applications for the position within four weeks of the first publication of notice, the county legislative body shall appoint one of them to be county attorney.

(b) (i) If less than three resident attorneys submit applications, the county legislative body may publicly solicit and accept additional applications for the position from licensed active members in good standing of the Utah State Bar who are not electors of the county.

(ii) The county legislative body shall consider the applications submitted by the attorneys who are registered voters in the county and the applications submitted by the attorneys who are not registered voters in the county and shall appoint one of the applicants to be county attorney.

(2) The county legislative body shall appoint a person to serve in any vacant position for the unexpired term and until the replacement is elected and qualified.

Section 30. Section Enacted.

Section 20A-1-510, Utah Code Annotated 1953, is enacted to read:

20A-1-510. Midterm vacancies in municipal offices.

(1) (a) Except as otherwise provided in Subsection (2), if any vacancy occurs in the office of municipal executive or member of a municipal legislative body, the municipal legislative body shall appoint a registered voter in the municipality to fill the unexpired term of the office vacated until the January following the next municipal election.

(b) (i) If, for any reason, the municipal legislative body does not fill the vacancy within 30 days after the vacancy occurs, the two persons having the highest number of votes of the municipal legislative body shall appear before the municipal legislative body.

(ii) If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body.

(2) A vacancy in the office of municipal executive or member of a municipal legislative body shall be filled by an interim appointment, followed by an election to fill a two-year term, if:

(a) the vacancy occurs, or a letter of resignation is received, by the municipal executive at least 14 days before the deadline for filing for election in an odd-numbered year; and

(b) two years of the vacated term will remain after the first Monday of January following the next municipal election.

Section 31. Section Enacted.

Section 20A-1-511, Utah Code Annotated 1953, is enacted to read:

20A-1-511. Midterm vacancies on local school boards.

(1) (a) A local school board shall fill vacancies on the board by appointment, except as otherwise provided in Subsection (2).

(b) If the board fails to make an appointment within 30 days after a vacancy occurs, the county legislative body, or municipal legislative body in a city district, shall fill the vacancy by appointment.

(c) A member appointed and qualified under this subsection shall serve until a successor is elected or appointed and qualified.

(2) (a) A vacancy on the board shall be filled by an interim appointment, followed by an election to fill a two-year term if:

(i) the vacancy on the board occurs, or a letter of resignation is received by the board, at least 14 days before the deadline for filing a declaration of candidacy; and

(ii) two years of the vacated term will remain after the first Monday of January following the next school board election.

(b) Members elected under this subsection shall serve for the remaining two years of the vacated term and until a successor is elected and qualified.

Section 32. Section Enacted.

Section 20A-1-512, Utah Code Annotated 1953, is enacted to read:

20A-1-512. Midterm vacancies on special district boards.

(1) Whenever a vacancy occurs on any special district board for any reason, a replacement to serve out the unexpired term shall be appointed as provided in this section by:

(a) the special district board, if the person vacating the position was elected; or

(b) the appointing authority, if the person vacating the position was appointed.

(2) If the special district board fails to appoint a person to complete an elected board member's term within 30 days, the county or municipality that created the special district shall fill the vacancy.

Section 33. Section Enacted.

Section 20A-1-601 Utah Code Annotated 1953, is enacted to read:

Part 6. Election Offenses — Generally

20A-1-601. Bribery in elections.

(1) It is unlawful for any person, directly or indirectly, by himself or through any other person to:

(a) pay, loan, or contribute, or offer or promise to pay, loan, or contribute any money or other valuable consideration to or for any voter or to or for any other person:

(i) to induce the voter to vote or refrain from voting at any election provided by law;

(ii) to induce any voter to vote or refrain from voting at an election for any particular person or persons;

(iii) to induce a voter to go to the polls or remain away from the polls at any election;

(iv) because a voter voted or refrained from voting for any particular person, or went to the polls or remained away from the polls; or

(v) to obtain the political support or aid of any person at an election;

(b) give, offer, or promise any office, place, or employment, or to promise or procure, or endeavor to procure, any office, place, or employment, to or for any voter, or to or for any other person, in order to:

(i) induce a voter to vote or refrain from voting at any election;

(ii) induce any voter to vote or refrain from voting at an election for any particular person or persons; or

(iii) obtain the political support or aid of any person;

(c) advance or pay, or cause to be paid, any money or other valuable thing to, or for the use of, any other person with the intent that the money or other valuable thing be used in bribery at any election provided by law; or

(d) knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money expended wholly or in part in bribery at any election.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section shall be punished by a fine of not more than $1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

Section 34. Section Enacted.

Section 20A-1-602, Utah Code Annotated 1953, is enacted to read:

20A-1-602. Receiving bribe.

(1) It is unlawful for any person, for himself or for any other person, directly or indirectly, by himself or through any person, before, during or after any election to:

(a) receive, agree to receive, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) receive any money or other valuable thing because the person induced any other person to vote or refrain from voting or to vote or refrain from voting for any particular person or measure at an election.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section shall be punished by a fine of not more than $1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

Section 35. Section Enacted.

Section 20A-1-603, Utah Code Annotated 1953, is enacted to read:

20A-1-603. Fraud, interference, disturbance — Tampering with ballots or records.

(1) It is unlawful for:

(a) any person who is not entitled to vote to fraudulently vote; and

(b) any person to:

(i) vote more than once at any one election;

(ii) knowingly hand in two or more ballots folded together;

(iii) change any ballot after it has been deposited in the ballot box;

(iv) add or attempt to add any ballot to those legally polled at any election by fraudulently introducing the ballot into the ballot box either before or after the ballots have been counted;

(v) add to or mix, or attempt to add or mix, other ballots with the ballots lawfully polled while those ballots are being counted or canvassed, or at any other time;

(vi) willfully detain, mutilate, or destroy any election returns;

(vii) in any manner, interfere with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, so as to prevent the election or canvass from being fairly held or lawfully conducted;

(viii) engage in riotous conduct at any election or interfere in any manner with any election officer in the discharge of his duties;

(ix) induce any election officer, or officer whose duty it is to ascertain, announce, or declare the result of any election or to give or make any certificate, document, or evidence in relation to any election, to violate or refuse to comply with his duty or any law regulating his duty;

(x) take, carry away, conceal, remove, or destroy any ballot, pollbook, or other thing from a polling place, or from the possession of the person authorized by law to have the custody of that thing; or

(xi) aid, counsel, provide, procure, advise, or assist any person to do any of the acts specified in this section.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established in this section shall be punished by a fine of not more than $1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

Section 36. Section Enacted.

Section 20A-1-604, Utah Code Annotated 1953, is enacted to read:

20A-1-604. Destroying instruction cards, sample ballots, or election paraphernalia.

(1) It is unlawful for any person to:

(a) willfully deface or destroy any list of candidates posted in accordance with the provisions of this title;

(b) willfully deface, tear down, remove or destroy any card of instruction or sample ballot, printed or posted for the instruction of voters during an election;

(c) willfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot during an election; or

(d) willfully hinder the voting of others.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section shall be punished by a fine of not less than $5 nor more than $100, or by imprisonment in the county jail not exceeding three months, or by both a fine and imprisonment.

Section 37. Section Enacted.

Section 20A-1-605, Utah Code Annotated 1953, is enacted to read:

20A-1-605. Mutilating certificate of nomination — Forging declination or resignation — Tampering with ballots.

(1) It is unlawful for any person to:

(a) falsely mark or willfully deface or destroy:

(i) any certificate of nomination or any part of a certificate of nomination; or

(ii) any letter of declination or resignation;

(b) file any certificate of nomination or letter of declination or resignation knowing it, or any part of it, to be falsely made;

(c) suppress any certificate of nomination, or letter of declination or resignation, or any part of a certificate of nomination or letter of declination or resignation that has been legally filed;

(d) forge any letter of declination or resignation;

(e) falsely make the official endorsement on any ballot;

(f) willfully destroy or deface any ballot;

(g) willfully delay the delivery of any ballots;

(h) examine any ballot offered or cast at the polls or found in any ballot box for any purpose other than to determine which candidate was elected; and

(i) make or place any mark or device on any ballot in order to determine the name of any person for whom the elector has voted.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section is guilty of a class A misdemeanor.

Section 38. Section Enacted.

Section 20A-1-606, Utah Code Annotated 1953, is enacted to read:

20A-1-606. Wagering on elections forbidden.

(1) (a) It is unlawful for any candidate, before or during any primary or election campaign to:

(i) make any bet or wager anything of pecuniary value on the result of the primary or election, or on any event or contingency relating to any pending primary or election;

(ii) become a party to any bet or wager on the result of a primary or election or on any event or contingency relating to any pending primary or election; and

(iii) provide money or any other valuable thing to be used by any other person in betting or wagering upon the results of any impending primary or election.

(b) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by Subsection (1) is guilty of a felony.

(2) (a) It is unlawful for any person to make any bet or wager anything of pecuniary value on the result of any primary or election, or on any event or contingency relating to any primary or election.

(b) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by Subsection (2) is guilty of a misdemeanor.

(3) (a) It is unlawful for any person to directly or indirectly make a bet or wager with any voter that is dependent upon the outcome of any primary or election with the intent to subject that voter to the possibility of challenge at a primary or election or to prevent the voter from voting at a primary or election.

(b) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this Subsection (3) is guilty of a class B misdemeanor.

Section 39. Section Enacted.

Section 20A-1-607, Utah Code Annotated 1953, is enacted to read:

20A-1-607. Inducing attendance at polls — Payment of workers.

(1) (a) It is unlawful for any person to pay another for any loss due to attendance at the polls or to registering.

(b) This subsection does not permit an employer to make any deduction from the usual salary or wages of any employee who takes a leave of absence as authorized under Section 20A-3-103 for the purpose of voting.

(2) (a) A person may not pay for personal services performed or to be performed on the day of a caucus, primary, convention, or election, or for any purpose connected with a caucus, primary, convention, or election that directly or indirectly affect the result of the caucus, primary, convention, or election.

(b) Subsection (2) does not prohibit the hiring of persons whose sole duty it is to act as challengers and watch the count of official ballots.

Section 40. Section Enacted.

Section 20A-1-608, Utah Code Annotated 1953, is enacted to read:

20A-1-608. Promises of appointment to office forbidden.

(1) In order to aid or promote his nomination or election, a person may not directly or indirectly appoint or promise to appoint any person or secure or promise to secure, or aid in securing the appointment, nomination, or election of any person to any public or private position or employment, or to any position of honor, trust, or emolument.

(2) Nothing contained in this section prevents:

(a) a candidate from stating publicly his preference for, or support of, any other candidate for any office to be voted for at the same primary or election; or

(b) a candidate for any office in which the person elected will be charged with the duty of participating in the election or nomination of any person as a candidate for any office from publicly stating or pledging his preference for, or support of, any person for that office or nomination.

Section 41. Section Enacted.

Section 20A-1-609, Utah Code Annotated 1953, is enacted to read:

20A-1-609. Omnibus penalties.

(1) Unless another penalty is specifically provided, any person who violates any provision of this title is guilty of a class B misdemeanor.

(2) A person convicted of any offense under this title may not:

(a) file a declaration of candidacy for any office or appear on the ballot as a candidate for any office during the election cycle in which the violation occurred;

(b) take or hold the office to which he was elected; and

(c) receive the emoluments of the office to which he was elected.

(3) (a) Any person convicted of any offense under this title forfeits the right to vote at any election unless restored to civil rights as provided by law.

(b) Any person may challenge that person's right to vote by following the procedures and requirements of Section 20A-3-202.

Section 42. Section Enacted.

Section 20A-1-610, Utah Code Annotated 1953, is enacted to read:

20A-1-610. Abetting violation of chapter — Penalty.

In addition to the penalties established in Section 20A-1-609, any person who aids, abets, or advises a violation of any provision of this title is guilty of a class B misdemeanor, unless another penalty is specifically provided.

Section 43. Section Enacted.

Section 20A-1-611, Utah Code Annotated 1953, is enacted to read:

20A-1-611. Cost of defense of action no part of campaign expense.

(1) Nothing contained in this chapter prevents any candidate from employing counsel to represent him in any action or proceeding affecting his rights as a candidate or from paying all costs and disbursements arising from that representation.

(2) Expenses paid or incurred for that representation may not be considered part of the campaign expenses of any candidate.

Section 44. Section Enacted.

Section 20A-1-701, Utah Code Annotated 1953, is enacted to read:

Part 7. Prosecuting and Adjudicating Election Offenses

20A-1-701. Prosecutions — Venue.

Violations of the provisions of this title concerning expenditure of money or making contributions or providing services may be prosecuted in the county where the expenditure or contribution was made, or where the services were provided, or in any county where the money was paid or distributed.

Section 45. Section Enacted.

Section 20A-1-702, Utah Code Annotated 1953, is enacted to read:

20A-1-702. Offenders as witnesses — Privilege.

(1) Any person convicted of violating any provision of this title:

(a) is a competent witness against any other person accused of violating this title; and

(b) may be compelled to attend and testify at any trial, hearing, proceeding, or investigation in the same manner as any other person.

(2) Any testimony received under Subsection (1) may not be used in any prosecution or proceeding, civil or criminal, against the person testifying, except for perjury in giving the testimony.

(3) (a) Except as provided in Subsection (b), any person testifying under the authority of this subsection:

(i) may not be indicted, prosecuted, or punished for the offense about which he testified; and

(ii) may plead or prove that he gave that testimony in order to bar an indictment or prosecution.

(b) Notwithstanding the provisions of this section, any candidate or other person may be required to forfeit his nomination or election to office because of his testimony or production of evidence in a trial, hearing, proceeding, or investigation.

Section 46. Section Enacted.

Section 20A-1-703, Utah Code Annotated 1953, is enacted to read:

20A-1-703. Proceedings by registered voter.

(1) Any registered voter who has information that any provisions of this title have been violated by any candidate for whom the registered voter had the right to vote, or by any personal campaign committee of that candidate or any member of that committee, may file a verified petition with a district judge of the district in which the violation has occurred, with the attorney general, or with the governor, asking for:

(a) permission to bring a special proceeding to investigate and determine whether or not there has been a violation; and

(b) appointment of special counsel to conduct that proceeding on behalf of the state.

(2) If it appears from the petition or otherwise that sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred, the judge, attorney general, or governor shall:

(a) grant leave to bring the proceeding; and

(b) appoint special counsel to conduct the proceeding.

(3) (a) If leave is granted, the registered voter may, by a special proceeding brought in the district court in the name of the state upon the relation of the registered voter, investigate and determine whether or not the candidate, candidate's personal campaign committee, or any member of the candidate's personal campaign committee has violated any provision of this title.

(b) (i) In the proceeding, the complaint shall:

(A) be served with the summons; and

(B) set forth the name of the person or persons who have allegedly violated this title and the grounds of those violations in detail.

(ii) The complaint may not be amended except by leave of the court.

(iii) The summons and complaint in the proceeding shall be filed with the court no later than five days after they are served.

(c) (i) The answer to the complaint shall be served and filed within ten days after the service of the summons and complaint.

(ii) Any allegation of new matters in the answer shall be considered controverted by the adverse party without reply, and the proceeding shall be considered at issue and stand ready for trial upon five days' notice of trial.

(d) (i) All proceedings initiated under this section have precedence over any other civil actions.

(ii) The court shall always be considered open for the trial of the issues raised in this proceeding.

(iii) The proceeding shall be tried and determined as a civil action without a jury, with the court determining all issues of fact and issues of law.

(iv) If more than one proceeding is pending or the election of more than one person is investigated and contested, the court may:

(A) order the proceedings consolidated and heard together; and

(B) equitably apportion costs and disbursements.

(e) (i) Either party may request a change of venue as provided by law in civil actions, but application for a change of venue must be made within five days after service of summons and complaint.

(ii) The judge shall decide the request for a change of venue and issue any necessary orders within three days after the application is made.

(iii) If a party fails to request a change of venue within five days of service, he has waived his right to a change of venue.

(f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to recover his taxable costs and disbursements against the person whose right to the office is contested.

(ii) The judge may not award costs to the defendant unless it appears that the proceeding were brought in bad faith.

(iii) Subject to the limitations contained in Subsection (f), the judge may decide whether or not to award costs and disbursements.

(4) Nothing in this section may be construed to prohibit any other civil or criminal actions or remedies against alleged violators.

Section 47. Section Enacted.

Section 20A-1-704, Utah Code Annotated 1953, is enacted to read:

20A-1-704. Judgment and findings — Appeal — Criminal prosecution not affected by judgment.

(1) (a) If the court finds that the candidate whose right to any office is being investigated, or that the candidate, the candidate's personal campaign committee or any member of the candidate's personal campaign committee has violated any provision of this title in the conduct of the campaign for nomination or election, and if the candidate is not one mentioned in Subsection (2), the judge shall enter an order:

(i) declaring void the election of the candidate to that office;

(ii) ousting and excluding the candidate from office; and

(iii) declaring the office vacant.

(b) The vacancy created by that order shall be filled as provided in this chapter.

(2) (a) If a proceeding has been brought to investigate the right of a candidate for either house of the Legislature, and the court finds that the candidate, the candidate's personal campaign committee, or any member of the candidate's personal campaign committee has violated any provision of this title in the conduct of the campaign for nomination or election, the court shall:

(i) prepare and sign written findings of fact and conclusions of law relating to the violation; and

(ii) without issuing an order, transmit those findings and conclusions to the lieutenant governor.

(b) The lieutenant governor shall transmit the judge's findings and conclusions to the house of the Legislature for which the person is a candidate.

(3) (a) A party may appeal the determination of the court in the same manner as appeals may be taken in civil actions.

(b) A judge may not issue an injunction suspending or staying the proceeding unless:

(i) application is made to the court or to the presiding judge of the court;

(ii) all parties receive notice of the application and the time for the hearing; and

(iii) the judge conducts a hearing.

(4) Any judgment or findings and conclusions issued as provided in this section may not be construed to bar or affect in any way any criminal prosecution of any candidate or other person.

Section 48. Section Enacted.

Section 20A-1-705, Utah Code Annotated 1953, is enacted to read:

20A-1-705. Supplemental judgment after criminal conviction.

(1) (a) If any person, in a criminal action, is found guilty of any violation of this chapter while a candidate for the offices of governor, lieutenant governor, state auditor, state treasurer, or attorney general, the court, after entering the finding of guilt, shall:

(i) enter a supplemental judgment declaring that person to have forfeited the office; and

(ii) transmit a transcript of the supplemental judgment to the state auditor.

(b) Upon issuance of the order, the office is vacant and shall be filled as provided by this chapter.

(2) (a) If any person, in a similar action, is found guilty of any violation of this chapter committed while a member of the personal campaign committee of any candidate for the offices of governor, lieu-

tenant governor, state auditor, state treasurer, or attorney general, the court before which the action is tried shall, immediately after entering the finding of guilt:

(i) enter a supplemental judgment declaring the candidate to have forfeited the office; and

(ii) transmit a transcript of the supplemental judgment to the state auditor.

(b) Upon issuance of the order, the office is vacant and shall be filled as provided by this chapter.

(3) If any person, in a criminal action, is found guilty of any violation of this chapter, committed while a candidate for the office of state senator or state representative, the court, after entering the finding of guilt, shall transmit a certificate setting forth the finding of guilt to the presiding officer of the legislative body for which the person is a candidate.

Section 49. Section Enacted.

Section 20A-1-706, Utah Code Annotated 1953, is enacted to read:

20A-1-706. Special counsel on appeal.

(1) If either party appeals the judgment of the trial court, the district judge, the attorney general, or the governor who appointed special counsel for the trial court shall authorize that counsel, or some other person, to appear as special counsel in the appellate court in the matter.

(2)(a) The special counsel authorized by this chapter shall receive a reasonable compensation for his services.

(b) The compensation shall be audited by the lieutenant governor and paid out of the state treasury upon a voucher and upon the written statement of the officer appointing the counsel that:

(i) the appointment has been made;

(ii) the person appointed has faithfully performed the duties imposed upon him; and

(iii) that the special counsel's bill is accurate and correct.

(c) Compensation for special counsel shall be audited and paid in the same manner as other claims against the state are audited and paid.

Section 50. Section Enacted.

Section 20A-2-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 2. VOTER REGISTRATION

Part 1. General Voter Registration Requirements

20A-2-101. Eligibility for registration.

(1) Except as provided in Subsection (2), any person may apply to register to vote in an election who:

(a) is a citizen of the United States;

(b) has been a resident of Utah for at least the 30 days immediately before the election; and

(c) will be at least 18 years old on the day of the election.

(2)(a) A person who is involuntarily confined or incarcerated in a jail or prison within a voting precinct is not a resident of that voting precinct and may not register to vote in that voting precinct unless the person was a resident of that voting precinct before the confinement or incarceration.

(b) A person who is involuntarily confined or incarcerated in a jail or prison is resident of the voting precinct in which the person resided before the confinement or incarceration.

(3) Any person who is eligible or qualified to vote in a regular general election may register and vote in a municipal general election, a statewide special election, a local special election, a special district election, or a bond election unless that person resides outside the geographic boundaries of the entity in which the election is held.

Section 51. Section Enacted.

Section 20A-2-102, Utah Code Annotated 1953, is enacted to read:

20A-2-102. Registration a prerequisite to voting.

A person may not vote at any election unless that person is registered to vote as required by this chapter.

Section 52. Section Enacted.

Section 20A-2-103, Utah Code Annotated 1953, is enacted to read:

20A-2-103. Special elections — Lists of voters.

(1) (a) A special registration of voters is not required for a statewide or local special election.

(b) The last official or revised register is the register for the statewide or local special election.

(2) If a statewide or local special election is held at the same time and place as a regular general election, a municipal general election, or a primary, persons qualified to vote at those elections may also vote in the statewide or local special election.

(3)(a) If a statewide or local special election is held on a date other than the date of a regular or municipal general election, the county clerk of each county in which the municipality or entity is wholly or partly located shall register persons to vote in that election during regular office hours.

(b) The county clerk may not register persons to vote in that election if ten or fewer days remain before the election.

(4) The county clerk of each county in which the entity holding the statewide or local special election is located shall cause registration agents in the municipality or entity to make registration lists or copies of those lists available at each polling place for use by registered voters entitled to use those polling places.

Section 53. Section Enacted.

Section 20A-2-104, Utah Code Annotated 1953, is enacted to read:

20A-2-104. Voter registration form.

(1) Every person applying to be registered shall complete a registration form printed in substantially the following form:

.....

UTAH ELECTION REGISTRATION FORM

Name of Voter.....Date of Birth.....

First Middle Last

Street Address of Principal Place of Residence

.....

.City County State Zip Code

Telephone Number.....

Place of Birth.....

Last former address at which I was registered to vote (if known).....

City County State Zip Code Voting District (if known)

I do swear (or affirm), subject to penalty of law for false statements, that the information contained in this form is true, and that I am a citizen of the United States and a resident of the state of Utah, residing at the above address. I will be at least 18 years old and will have resided in Utah for 30 days immediately before the next election to be held.....,.....

Signed and sworn .....

Voter's Signature

Date....., 19...

NOTICE: IN ORDER TO VOTE, YOUR NAME MUST APPEAR IN THE OFFICIAL REGISTER.

FOR OFFICIAL USE ONLY

Voting District.....

Voting I.D. Number.....

.....

(2) Book voter registration forms shall be four-part forms printed in white, canary, pink, and goldenrod on 5-1/2 inch by 8-1/2 inch paper.

(3) (a) After the form is completed, the registration agent shall retain the canary copy, deliver the goldenrod copy to the voter, and mail the white and pink copies to the county clerk in the prestamped and preaddressed envelopes provided by the county clerk's office.

(b) Any other person authorized to register voters shall:

(i) give the goldenrod copy to the voter; and

(ii) mail or deliver the white, canary, and pink copies to the county clerk.

(c) The county clerk shall:

(i) retain the white copy in a permanent countywide alphabetical file, which may be electronic or some other recognized system; and

(ii) mail the remaining copies to the appropriate persons.

Section 54. Section Enacted.

Section 20A-2-105, Utah Code Annotated 1953, is enacted to read:

20A-2-105. Determining residency.

(1) Except as provided in Subsection (4), election officials and judges shall apply the standards and requirements of this section when determining whether or not a person is a resident for purposes of interpreting this title or the Utah constitution.

(2) A "resident" is a person who resides within a specific voting precinct in Utah.

(3) (a) A person resides in Utah if the person:

(i) has his principal place of residence within Utah; and

(ii) has a present intention to continue residency within Utah permanently or indefinitely.

(b) A person resides within a particular voting precinct if the person:

(i) has, or will have as of the date of the election, his principal place of residence in the voting precinct.

(4) (a) The principal place of residence of any person shall be determined by applying the rules contained in this subsection.

(b) A person's "principal place of residence" is that place in which the person's habitation is fixed and to which, whenever he is absent, he has the intention of returning.

(c) A person has not gained or lost a residence solely because he is present in Utah or in a voting precinct or absent from Utah or his voting precinct because he is:

(i) employed in the service of the United States or of Utah;

(ii) a student at any institution of learning;

(iii) incarcerated in prison or jail; or

(iv) residing upon any Indian or military reservation.

(d) (i) A member of the armed forces of the United States is not a resident of Utah merely because that member is stationed at any military facility within Utah.

(ii) In order to be a resident of Utah, that member must meet the other requirements of this section.

(e) (i) Except as provided in Subsection (ii) a person has not lost his residence if that person leaves his home to go into a foreign country or into another state or into another voting precinct within Utah for temporary purposes with the intention of returning.

(ii) If that person has voted in that state or voting precinct, the person is a resident of that state or voting precinct.

(f) A person is not a resident of any county or voting precinct if that person comes for temporary purposes without intending to make that county his home.

(g) If a person removes to another state with the intention of making it his principal place of residence, he loses his residence in Utah.

(h) If a person moves to another state with the intent of remaining there for an indefinite time as a place of permanent residence, he loses his residence in Utah, even though he intends to return at some future time.

(i) (i) Except as provided in Subsection (ii) the place where a person's family resides is presumed to be his place of residence.

(ii) A person may rebut the presumption established in Subsection (i)(i) by proving his intent to remain at a place other than where his family resides.

(j) (i) A person has changed his residence if:

(A) the person has acted affirmatively to remove himself from one geographic location; and

(B) the person has an intent to remain in another place.

(ii) There can only be one residence.

(iii) A residence cannot be lost until another is gained.

(2) In computing the period of residence, a person shall:

(a) include the day on which the person's residence begins; and

(b) exclude the day of the next election.

(3) (a) There is a presumption that a person is a resident of Utah and a voting precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath or affirmation upon a registration application form that his residence address and place of residence is within a specific voting precinct in Utah.

(b) The election officers and election officials shall allow that person to register and vote unless, upon a challenge by the registration agent or some other person, it is shown by law or by clear and compelling evidence that:

(i) the person does not intend to remain permanently or indefinitely in Utah; or

(ii) the person is incarcerated in prison or jail.

(4) (a) The rules set forth in this section for determining place of residence for voting purposes do not apply to a person incarcerated in prison or jail.

(b) For voting registration purposes, a person incarcerated in prison or jail is considered to reside in the voting precinct in which his place of residence was located before incarceration.

Section 55. Section Enacted.

Section 20A-2-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Alternate Means of Registering to Vote

20A-2-201. Registration at office of county clerk.

The county clerk shall register to vote all persons who present themselves for registration at his office during designated office hours if those persons, on voting day, will be legally qualified and entitled to vote in a voting precinct in the county.

Section 56. Section Enacted.

Section 20A-2-202, Utah Code Annotated 1953, is enacted to read:

20A-2-202. Registration by mail.

(1) (a) A citizen who will be qualified to vote at the next election may register by mail.

(b) To register by mail, a citizen shall complete and sign the by-mail registration form and mail or deliver it to the county clerk of the county in which the citizen resides.

(c) In order to register to vote in a particular election, the citizen shall:

(i) address the by-mail voter registration form to the county clerk; and

(ii) ensure that it is postmarked at least 20 days before the date of the election.

(d) The citizen has effectively registered to vote under this section only when the county clerk's office has received a correctly completed by-mail voter registration form.

(2) Upon receipt of a correctly completed by-mail voter registration form, the county clerk shall:

(a) enter the applicant's name on the list of registered voters for the voting precinct in which the applicant resides; and

(b) mail the quadruplicate copy of the registration form to the newly registered voter after entering the applicant's voting precinct number on that copy.

(3) (a) If the county clerk receives a correctly completed by-mail voter registration form that is postmarked less than 20 days before an election, the county clerk shall:

(i) register the applicant after the next election; and

(ii) if possible, promptly phone or mail a notice to the applicant before the election, informing the applicant that his registration will not be effective until after the election.

(b) When the county clerk receives by-mail voter registration forms at least seven days before an election that are postmarked at least 20 days before the election, the county clerk shall:

(i) process the by-mail voter registration forms; and

(ii) deliver them to the appropriate registration agent.

(4) If the county clerk determines that a registration form received by mail or otherwise is incorrect

because of an error or because it is incomplete, the county clerk shall mail notice to the person attempting to register, informing him that he has not been registered because of an error or because the form is incomplete.

Section 57. Section Enacted.

Section 20A-2-203, Utah Code Annotated 1953, is enacted to read:

20A-2-203. Registration by registration agent.

(1) (a) Voters may register to vote with the registration agent in the voter's voting precinct between 8 a.m. and 9 p.m.:

(i) on the first Tuesday, the first Wednesday, and the first Thursday before the regular primary election;

(ii) on the first Tuesday, the first Wednesday, and the first Thursday before the regular general election;

(iii) on the first Tuesday before the municipal primary election in municipalities holding a municipal primary election; and

(iv) on the second Tuesday and the second Wednesday before the municipal general election.

(b) Each registration agent shall register to vote all persons who:

(i) present themselves for registration; and

(ii) are legally qualified and entitled to vote in that voting precinct on election day.

(2) For municipal elections, the municipality in which the registration is made shall pay the expenses of registration.

Section 58. Section Enacted.

Section 20A-2-301, Utah Code Annotated 1953, is enacted to read:

Part 3. County Clerk's Voter Registration Responsibilities

20A-2-301. Registration form — Forms available to interested organizations — Distribution of form — Verification of residency.

(1) The county clerk shall prepare book voter registration forms and by-mail voter registration forms for use in the voter registration process.

(2) (a) (i) The clerk shall place by-mail voter registration forms at convenient public locations throughout the county such as banks, municipal offices, libraries, post offices, and high schools in order to implement the provisions of this chapter.

(ii) The county clerk shall provide copies of by-mail voter registration forms to public school districts and nonpublic schools as provided in Section 20A-2-302.

(b) (i) Each general regular election year, the county clerk shall make by-mail voter registration forms available to the political parties as provided in this Subsection (b).

(ii) The county clerk shall set aside by-mail registration forms equal to 10% of the number of registered voters in the county as of January 1 of that regular general election year for allocation to political parties.

(iii) The forms shall be allocated to the respective political parties in each county as provided in this Subsection (iii):

(A) 90% of the forms shall be made available on an equal basis to all parties who had any candidate who polled 10% or more of the vote for any partisan office in the last regular general election.

(B) 10% of the forms will be made available on an equal basis to all other parties who qualify for a position on the ballot for the next regular general election.

(c) Candidates, parties, organizations, and interested persons may purchase by-mail voter registration forms from the county clerk or from the printer.

(3) (a) The clerk shall make available book voter registration forms to interested organizations in lots of 250, to be replaced when each lot of 200 is returned to the county clerk in alphabetical order by voting precinct with data completed.

(b) Interested organizations that receive book voter registration forms from the county clerk shall return them to the county clerk at least 20 days before the date of the election.

(4) The county clerk may not refuse to register any person to vote for failing to provide a telephone number on the voter registration form.

(5) The county clerk shall remove all inactive voter registration sheets from the file.

(6) (a) It is unlawful for any person to willfully fail or refuse to deliver completed voter registration forms, obtained as provided in this section, to the county clerk.

(b) A person who violates this subsection is guilty of a class B misdemeanor.

Section 59. Section Enacted.

Section 20A-2-302, Utah Code Annotated 1953, is enacted to read:

20A-2-302. Voter registration forms for high school students.

(1) In September and March of each year, the school board of each local public school district and the authorities in charge of each accredited nonpublic school shall provide to the county clerk an estimate of how many students are 18 years old or who within six months will be 18 years old.

(2) The county clerk shall provide the public school district and accredited nonpublic schools of the county, free of charge, a sufficient number of by-mail voter registration forms for distribution to the students who are eligible to register or are about to become eligible to register to vote.

(3) Each school shall make the by-mail voter registration forms available to any unregistered student who is or who within six months will be 18 years old.

Section 60. Section Enacted.

Section 20A-2-303, Utah Code Annotated 1953, is enacted to read:

20A-2-303. Notice of time and place of registration.

(1) The election officer shall give notice of voter registration within the voting precinct by either:

(a) publishing the notice in one issue of a newspaper of general circulation in the county at least two days before the first day of registration; or

(b) requiring the registration agents to post the notice at least ten days before the first day of registration in:

(i) at least five conspicuous places within their voting precincts; or

(ii) at least four conspicuous places within their voting precincts and in a well-used public location in a nearby voting precinct.

(2) The notice of voting precinct registration shall:

(a) be signed by the county clerk;

(b) identify the time and place for voter registration within the voting precinct.

Section 61. Section Enacted.

Section 20A-2-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Crimes Involving Voter Registration

20A-2-401. Fraudulent registration — Penalty.

(1) It is unlawful for any person to willfully cause, procure, or allow himself to be registered to vote, knowing that he is not entitled to register to vote.

(2) It is unlawful for any person to willfully cause, procure, advise, encourage, or assist any other person to be registered to vote, knowing or believing that the person is not entitled to register to vote.

(3) Any person who violates this section is guilty of a class A misdemeanor.

Section 62. Section Enacted.

Section 20A-3-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 3. VOTING

Part 1. General Voting Requirements

20A-3-101. Residency and age requirements of voters.

(1) A person may vote in any regular general election, statewide special election, or statewide primary election if that person:

(a) is a citizen of the United States;

(b) is a resident of Utah;

(c) will, on the date of that election:

(i) be at least 18 years old; and

(ii) have been a resident of Utah for 30 days immediately before that election; and

(d) has registered to vote.

(2) A person may vote in a municipal general election, municipal primary, in a local special election, in a special district election, or in a bond election if that person:

(a) is a citizen of the United States;

(b) is a resident of Utah;

(c) is a resident of the local entity that is holding the election;

(d) will, on the date of the election:

(i) be at least 18 years old; and

(ii) have been a resident of Utah for 30 days immediately before the election; and

(e) has registered to vote.

Section 63. Section Enacted.

Section 20A-3-102, Utah Code Annotated 1953, is enacted to read:

20A-3-102. Voting by secret ballot.

All voting at each regular and municipal general election, at each statewide or local special election, at each primary election, at each special district election, and at each bond election shall be by secret ballot.

Section 64. Section Enacted.

Section 20A-3-103, Utah Code Annotated 1953, is enacted to read:

20A-3-103. Employee's right to time off for election.

(1) (a) Each employer shall allow any voter to be absent from service or employment on election day for not more than two hours between the time the polls open and close.

(b) The voter shall apply for a leave of absence before election day.

(c) (i) The employer may specify the hours during which the employee may be absent.

(ii) If the employee requests the leave of absence at the beginning or end of the work shift, the employer shall grant that request.

(d) The employer may not deduct from an employee's usual salary or wages because of the absence.

(2) This section does not apply to an employee who has three or more hours between the time polls open and close during which the employee is not employed on the job.

(3) Any employer who violates this section is guilty of a class B misdemeanor.

Section 65. Section Enacted.

Section 20A-3-104, Utah Code Annotated 1953, is enacted to read:

20A-3-104. Manner of voting.

(1) (a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.

(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.

(c) If the voter is challenged as provided in Section 20A-3-202, the judge shall provide a ballot to the voter if the voter takes an oath that the grounds of the challenge are false.

(2) (a) When the voter is properly identified, the election judge in charge of the official register shall check the official register to determine whether or not the person is registered to vote.

(b) (i) If the voter's name is not found on the official register and, if it is not unduly disruptive of the election process, the election judge shall attempt to contact the county clerk's office to request oral verification of the voter's registration.

(ii) If oral verification is received from the county clerk's office, the judge shall record the verification on the official register, perform the other administrative steps required by Subsection (3), repeat the voter's name, hand the voter a ballot, and allow the voter to enter the voting booth.

(3) If the election judge determines that the voter is registered:

(a) the election judge in charge of the official register shall:

(i) write the ballot number opposite the name of the voter in the official register; and

(ii) direct the voter to sign his name in the election column in the official register;

(b) another judge shall list the ballot number and voter's name in the pollbook;

(c) the election judge having charge of the ballots shall:

(i) endorse his initials on the stub;

(ii) check the name of the voter on the pollbook list with the number of the stub;

(iii) hand the voter a ballot; and

(iv) allow the voter to enter the voting booth.

(4) Whenever the election officer is required to furnish more than one kind of official ballot to the voting precinct, the election judges of that voting precinct shall give the registered voter the kind of ballot that the voter is qualified to vote.

Section 66. Section Enacted.

Section 20A-3-105, Utah Code Annotated 1953, is enacted to read:

20A-3-105. Marking and depositing ballots.

(1) (a) If paper ballots are used, the voter, upon receipt of the ballot, shall go to a voting booth and prepare the voter's ballot by marking the appropriate position with a mark opposite the name of each candidate of the voter's choice for each office to be filled.

(b) A mark is not required opposite the name of a write-in candidate.

(c) If a ballot proposition is submitted to a vote of the people, the voter shall mark in the appropriate square with a mark opposite the answer the voter intends to make.

(d) The voter shall fold the ballot before leaving the booth so its contents are concealed and the stub can be removed.

(2) (a) (i) If ballot cards are used, the voter shall insert the ballot card into the voting device and mark the ballot card according to the instructions provided on the device.

(ii) If the voter is issued a ballot card with a long stub without a secrecy envelope, the voter shall record any write-in votes on the long stub.

(iii) If the voter is issued a ballot card with a secrecy envelope, the voter shall record any write-in votes on the secrecy envelope.

(b) After the voter has marked the ballot card, the voter shall either:

(i) place the ballot card inside the secrecy envelope, if one is provided; or

(ii) fold the long stub over the face of the ballot card to maintain the secrecy of the vote if the voter is issued a ballot card with a long stub without a secrecy envelope.

(3) (a) After preparation of the ballot, the voter shall:

(i) leave the voting booth; and

(ii) announce his name to the election judge in charge of the ballot box.

(b) The election judge in charge of the ballot box shall:

(i) clearly and audibly announce the name of the voter and the number on the stub of the voter's ballot;

(ii) if the stub number on the ballot corresponds with the number previously recorded in the official register, and bears the initials of the election judge, remove the stub from the ballot; and

(iii) return the ballot to the voter.

(c) The voter shall, in full view of the election judges, cast his vote by depositing the ballot in the ballot box.

(d) (i) The election judge may not accept a ballot from which the stub has been detached.

(ii) The election judge shall treat a ballot from which the stub has been detached as a spoiled ballot and shall provide the voter with a new ballot and dispose of the spoiled ballot as provided in Section 20A-3-107.

(4) A voter voting a paper ballot in a primary election shall, after marking the ballot:

(a) (i) detach the part of the paper ballot containing the names of the candidates of the party he has voted from the remainder of the paper ballot;

(ii) fold that portion of the paper ballot so that its face is concealed; and

(iii) deposit it in the ballot box; and

(b) (i) fold the remainder of the paper ballot, containing the names of the candidates of the parties that the elector did not vote; and

(ii) deposit it in a separate ballot box that is marked and designated as a blank ballot box.

(5) (a) Each voter shall mark and deposit the ballot without delay and leave the voting area after voting.

(b) A voter may not:

(i) occupy a voting booth occupied by another, except as provided in Section 20A-3-108;

(ii) remain within the voting area more than ten minutes; or

(iii) occupy a voting booth for more than five minutes if all booths are in use and other voters are waiting to occupy them.

(6) If the official register shows any voter as having voted, that voter may not reenter the voting area during that election unless that voter is an election official or watcher.

(7) The election judges may not allow more than four voters more than the number of voting booths into the voting area at one time unless those excess voters are election officials, watchers, or are assisting handicapped voters.

Section 67. Section Enacted.

Section 20A-3-106, Utah Code Annotated 1953, is enacted to read:

20A-3-106. Voting straight ticket — Splitting ballot — Writing in names — Effect of unnecessary marking of cross — Manner of becoming valid write-in candidate.

(1) When voting a paper ballot, any voter desiring to vote for all the candidates from any one registered political party may:

(a) mark in the circle or position above that political party;

(b) mark in the squares or position opposite the names of all candidates for that party ticket; or

(c) make both markings.

(2) (a) When voting a ballot card, any voter desiring to vote for all the candidates from any one registered political party may:

(i) mark the selected party on the straight party page; or

(ii) mark the name of each candidate from that party.

(b) To vote for candidates from two or more political parties, the voter may:

(i) mark in the squares or positions opposite the names of the candidates for whom the voter wishes to vote without marking in any circle; or

(ii) indicate his choice by marking in the circle or position above one political party and marking in the squares or positions opposite the names of desired candidates.

(3) In any election other than a primary election, if a voter voting either a paper ballot or ballot card has placed a mark next to a party name in order to vote a straight party ticket and wishes to vote for a person on another party ticket for an office, the voter shall mark the ballot next to the name of the candidate for whom the voter wishes to vote.

(4) (a) The voter may also insert the name of a valid write-in candidate in writing or by means of a sticker with the office and write-in name printed on it.

(b) A voter shall cast a write-in vote by writing the write-in name or pasting the write-in sticker on the blank write-in part of the ballot.

(c) A voter is considered to have voted for the person whose name is written or whose sticker appears in the blank write-in part of the ballot, whether a mark is made or is not made opposite that name.

(5) The unnecessary marking of a mark in a square on the ticket below the marked circle does not affect the validity of the vote.

Section 68. Section Enacted.

Section 20A-3-107, Utah Code Annotated 1953, is enacted to read:

20A-3-107. No ballots may be taken away — Spoiled ballots.

(1) A person may not take or remove any ballot from the polling place before the close of the polls.

(2) If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one.

(3) If any ballot is spoiled by the printer or an election judge, the election judge shall give the voter a new ballot.

(4) The election judge shall:

(a) immediately write the word "spoiled" across the face of the ballot; and

(b) place the ballot in the envelope for spoiled ballots.

Section 69. Section Enacted.

Section 20A-3-108, Utah Code Annotated 1953, is enacted to read:

20A-3-108. Assisting disabled, illiterate, or blind voters.

(1) Any voter who is blind, disabled, unable to read or write, unable to read or write the English language, or is physically unable to enter a polling place, may be given assistance by a person of the voter's choice.

(2) The person providing assistance may not be:

(a) the voter's employer;

(b) an agent of the employer;

(c) an officer or agent of the voter's union; or

(d) a candidate.

(3) The person providing assistance may not request, persuade, or otherwise induce the voter to vote for or vote against any particular candidate or issue or release any information regarding the voter's selection.

(4) Each time a voter is assisted, the electio udge shall note that fact in the official register a: the pollbook.

Section 70. Section Enacted.

Section 20A-3-109, Utah Code Annotated 1953, is enacted to read:

20A-3-109. Instructions to voters.

(1) If any voter, after entering the voting booth, asks for further instructions concerning the manner of voting, two election judges, each from a different political party, shall instruct the voter.

(2) After instructing the voter, and before the voter has cast his vote, the election judges shall leave the voting booth so that the voter may vote in secret.

(3) An election judge instructing a voter about the voting process may not request, suggest, or seek to persuade or induce the voter to vote for or against any particular ticket, any particular candidate, or for or against any ballot proposition.

Section 71. Section Enacted.

Section 20A-3-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Poll Watchers and Challenges to Voters

20A-3-201. Watchers.

(1) (a) (i) For each regular general election or statewide special election, and for each primary, each registered political party and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) Each party poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the county chair of each of the parties.

(iii) Each issue poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the individual appointing him.

(b) (i) For each municipal general election, municipal primary, local special election, or bond election that uses paper ballots, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots and as a counting poll watcher to observe the counting of ballots and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) For each municipal general election, municipal primary, local special election, or bond election that uses ballot cards, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(iii) Each candidate poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the candidate appointing him.

(iv) Each issue poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the individual appointing him.

(2) If an appointed poll watcher is temporarily absent for meals, or is sick or otherwise absent, that poll watcher may substitute some other watcher of similar political beliefs by informing the election judges of the substitution by affidavit.

(3) Voting poll watchers may watch and observe the voting process, and may make a written memorandum, but they may not interfere in any way with the process of voting except to challenge a voter as provided in this part.

(4) The counting poll watcher shall remain in the counting room, except in the case of necessity, until the close of the polls and may not divulge the progress of the count until the count is completed.

(5) (a) It is unlawful for a counting poll watcher to communicate in any manner, directly or indirectly, by word or sign, the progress of the count, the result so far, or any other information about the count.

(b) Any person who violates this subsection is guilty of a third degree felony.

(6) The inspecting poll watcher may be present in the office of the clerk or recorder to whom ballots are delivered after elections to:

(a) inspect the condition of the packages containing the ballots upon their arrival; and

(b) observe the placement of these packages in a safe and secure place.

Section 72. Section Enacted.

Section 20A-3-202, Utah Code Annotated 1953, is enacted to read:

20A-3-202. Challenges — Record challenges — Official register and in pollbook.

(1) (a) When any person applies for a ballot or when a person offers a ballot for deposit in the ballot

box, the person's right to vote in that voting precinct and in that election may be orally challenged by an election judge or any challenger orally stating the challenged voter's name and the basis for the challenge.

(b) A person may challenge another person's right to vote by alleging that:

(i) the voter is not the person whose name appears in the official register, and under which name the right to vote is claimed;

(ii) the voter is not a resident of Utah;

(iii) the voter is not a citizen of the United States;

(iv) the voter has not or will not have resided in Utah for 30 days immediately before the date of the election;

(v) the voter does not live in the voting precinct;

(vi) the voter does not live within the geographic boundaries of the entity holding the election;

(vii) the voter's principal place of residence is not in the voting precinct;

(viii) the voter's principal place of residence is not in the geographic boundaries of the election area;

(ix) the voter has voted before in the election;

(x) the voter is not at least 18 years old; or

(xi) the voter is involuntarily confined or incarcerated in jail or prison and was not a resident of the entity holding the election before the voter was confined or incarcerated.

(c) If the person challenged takes an oath before any of the election judges that the grounds of challenge are false, the judges shall allow the person to vote.

(d) If the person applying to vote does not meet the legal requirements to vote, or refuses to take the oath, the election judges may not deliver a ballot to him.

(2) (a) Any person may challenge the right to vote of any person whose name appears on the posting list by filing a written signed statement identifying the challenged voter's name and the basis for the challenge with the registration agent on the Saturday before the election between 6 p.m. and 9 p.m.

(b) The person challenging a person's right to vote shall allege one or more of the grounds established in Subsection (1)(b) as the basis for the challenge.

(c) The registration agent shall transmit the written challenges to election judges of that voting precinct as provided in Section 20A-5-203.

(d) On election day, the judges shall raise the written challenge with the voter before giving the voter a ballot.

(e) If the person challenged takes an oath before any of the election judges that the grounds of the challenge are false, the judges shall allow the person to vote.

(f) If the person applying to vote does not meet the legal requirements to vote, or refuses to take the oath, the election judges may not deliver a ballot to him.

(3) The election judges shall record all challenges in the official register and on the challenge sheets in the pollbook.

Section 73. Section Enacted.

Section 20A-3-203, Utah Code Annotated 1953, is enacted to read:

20A-3-203. Officer or watcher revealing vote.

(1) It is unlawful for any election official or watcher to reveal to any other person the name of any candidate for whom a voter has voted or to communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.

(2) Any person who violates this section is guilty of a class A misdemeanor.

Section 74. Section Enacted.

Section 20A-3-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Voting by Absent or Physically Disabled Voters

20A-3-301. Right of absent or disabled person to vote.

(1) Any person who is registered to vote may vote by absentee ballot, if, on the day of election, the person:

(a) is disabled;

(b) will be absent from the county; or

(c) will be serving as an election judge in another election precinct.

(2) Any registered voter who unexpectedly returns to his voting precinct before or on election day may vote in person if his absentee ballot has not already been deposited in the ballot box.

Section 75. Section Enacted.

Section 20A-3-302, Utah Code Annotated 1953, is enacted to read:

20A-3-302. Absentee voting — No polling place for remote districts.

(1) Whenever, on the 60th day before an election, there are 100 or less persons registered to vote in a voting precinct, the county legislative body of the county in which the voting precinct is located may elect to administer an election entirely by absentee ballot.

(2) If the county legislative body of the county in which the voting precinct is located decides to administer an election entirely by absentee ballot, the county clerk shall mail to each registered voter within that voting precinct:

(a) an absentee ballot;

(b) a statement that there will be no polling place for the election;

(c) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for his vote to be counted; and

(d) a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, he will be unable to vote in that election because there will be no polling place in the voting precinct on the day of the election.

(3) Any voter who votes by absentee ballot under this subsection is not required to apply for an absentee ballot as required by Section 20-6-3.

(4) (a) The county clerk of a county that administers an election entirely by absentee ballot shall:

(i) obtain, in person, the signatures of each voter within that voting precinct before the election; and

(ii) maintain the signatures on file in the county clerk's office.

(b) (i) Upon receiving the returned absentee ballots, the county clerk shall compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same.

(ii) If the county clerk questions the authenticity of the signature on the absentee ballot, the clerk shall immediately contact the voter to verify the signature.

(iii) If the voter does not confirm his signature on the absentee ballot, the county clerk shall:

(A) immediately send another absentee ballot and other voting materials as required by this subsection to the voter; and

(B) disqualify the initial absentee ballot.

Section 76. Section Enacted.

Section 20A-3-303, Utah Code Annotated 1953, is enacted to read:

20A-3-303. Form of absentee ballot.

(1) For all elections, the election officer shall:

(a) cause a sufficient number of official ballots to be known as absentee ballots to be prepared and printed; and

(b) ensure that the absentee ballots are prepared and printed in the same form, are of the same size and texture, and contain the same matter as the regular official ballot, except that the words "absentee ballot" are printed on the stub of the absentee ballots.

(2) The election officer may prepare absentee ballots as paper ballots or ballot cards or may use both methods.

Section 77. Section Enacted.

Section 20A-3-304, Utah Code Annotated 1953, is enacted to read:

20A-3-304. Application for absentee ballot — Time for filing and voting.

(1) A registered voter who is physically disabled, who will be serving as an election judge in another voting precinct, or who otherwise expects to be absent from the entity holding the election on election day may file an absentee ballot application with the appropriate election officer for an official absentee ballot.

(2) (a) Each election officer shall prepare blank applications for absentee ballot applications in substantially the following form:

"I, ____ a qualified elector, in full possession of my mental faculties, residing at ____ Street, ____ City, ____ County, Utah and to my best knowledge and belief am entitled to vote by absentee ballot at the next election because:

____ I am physically disabled.

____ I will be serving as an election judge in another voting precinct.

____ I will be absent from the entity holding the election.

I apply for an official absentee ballot to be voted by me at the election.

Dated ____ 19__ Signed _____

Voter "

(b) If requested by the applicant, the election officer shall:

(i) mail the application blank to the absentee voter; or

(ii) deliver the application blank to any voter who personally applies for it at the office of the election officer.

(3) (a) (i) Except as provided in Subsection (ii), the voters shall file the application for an absentee ballot with the appropriate election officer no later than the Friday before election day.

(ii) Overseas applicants shall file their applications with the appropriate election officer no later than 20 days before the day of election.

(b) Persons voting an absentee ballot at the office of the election officer shall apply for and cast their ballot no later than the day before the election.

Section 78. Section Enacted.

Section 20A-3-305, Utah Code Annotated 1953, is enacted to read:

20A-3-305. Mailing of ballot to voter — Enclose self-addressed envelope — Affidavit.

(1) Upon timely receipt of an absentee voter application properly filled out and signed, or as soon after receipt of the application as the official absentee ballots for the voting precinct in which the applicant resides have been printed, the election officer shall mail an official absentee ballot, postage paid, to the absentee voter and enclose an envelope printed as required in Subsection (2).

(2) The election officer shall ensure that:

(a) the name, official title, and post office address of the election officer is printed on the front of the envelope; and

(b) a printed affidavit in substantially the following form, is printed on the back of the envelope:
"County of____
State of____

I, ____, solemnly swear that: I am a resident voter in full possession of my mental faculties, of the ____ voting precinct in ____ County, Utah; I am entitled to vote in that voting precinct at the next election; (I am physically disabled) or (I expect to be absent from the entity holding the election on the day the election will be held) or (I will be serving as an election judge in another election precinct on election day); and I will have no opportunity to vote in person on that day.

_____
Signature of Absentee Voter"

Section 79. Section Enacted.

Section 20A-3-306, Utah Code Annotated 1953, is enacted to read:

20A-3-306. Voting ballot — Returning ballot.

(1) To vote an absentee ballot, the absentee voter shall:

(a) complete and sign the affidavit on the envelope;

(b) mark his votes on the absentee ballot;

(c) place the voted absentee ballot in the envelope;

(d) securely seal the envelope; and

(e) attach postage and deposit the envelope in the mail or deliver it in person to the election officer from whom the ballot was obtained.

(2) An absentee ballot is not valid unless it is:

(a) received at the office of the appropriate election officer before the closing of polls on election day; or

(b) clearly postmarked on the day before election day and received in the office of the election officer before noon on the day of the official canvass following the election.

Section 80. Section Enacted.

Section 20A-3-307, Utah Code Annotated 1953, is enacted to read:

20A-3-307. Processing of absentee ballot.

(1) Except as provided in Subsection (2), upon receipt of an envelope containing an absentee ballot, the election officer shall:

(a) enclose the unopened envelope containing the absentee ballot and the written application of the absentee voter in a larger envelope;

(b) seal that envelope and endorse it with:

(i) the name or number of the proper voting precinct;

(ii) the name and official title of the election officer; and

(iii) the words "This envelope contains an absentee ballot and may only be opened on election day at the polls while the polls are open."; and

(c) safely keep the envelope in his office until it is delivered by him to the proper election judges.

(2) If the election officer receives envelopes containing absentee ballots too late to transmit them to the election judges on election day, the election officer shall retain those absentee ballots in a safe and secure place until they can be processed as provided in Section 20A-3-309.

(3) (a) Except as provided in Subsection (c), when reasonably possible, the election officer shall deliver or mail valid absentee ballots to the appropriate voting precinct election judges so that they may be processed at the voting precinct on election day.

(b) If the election officer is unable to determine the voting precinct to which an absentee ballot should be sent, or if a valid absentee ballot is received too late for delivery on election day to election judges, the election officer shall retain the absentee ballot in a safe place until it can be processed as required by Section 20A-3-309.

(c) When the absentee ballots will be centrally counted, the election officer shall deliver those absentee ballots to the counting center on election day for counting.

Section 81. Section Enacted.

Section 20A-3-308, Utah Code Annotated 1953, is enacted to read:

20A-3-308. Absentee ballots in the custody of election judges — Disposition.

(1) (a) Voting precinct election judges shall open envelopes containing absentee ballots that are in their custody on election day at the polling places during the time the polls are open as provided in this subsection.

(b) The election judges shall:

(i) first, open the outer envelope only; and

(ii) compare the signature of the voter on the application with the signature on the affidavit.

(2) (a) The judges shall carefully open and remove the absentee voter envelope so as not to destroy the affidavit on the envelope if they find that:

(i) the affidavit is sufficient;

(ii) the signatures correspond; and

(iii) the applicant is registered to vote in that voting precinct and has not voted in that election.

(b) The election judges shall:

(i) remove the absentee ballot from the envelope without unfolding it or permitting it to be opened or examined;

(ii) initial the stub in the same manner as for other ballots;

(iii) deposit the ballot in the proper ballot box; and

(iv) mark the official register and pollbook to show that the voter has voted.

(3) If the election judges determine that the affidavit is insufficient, or that the signatures do not correspond, or that the applicant is not a registered voter in the voting precinct, they shall:

(a) disallow the vote; and

(b) without opening the absentee voter envelope, mark across the face of the envelope:

(i) "Rejected as defective;" or

(ii) "Rejected as not a registered voter."

(4) The election judges shall deposit the absentee voter envelope, when the absentee ballot is voted, and the absentee voter envelope with its contents unopened when the absent vote is rejected, in the ballot box containing the ballots.

(5) The election officer shall retain and preserve the absentee voter envelopes in the manner provided by law for the retention and preservation of official ballots voted at that election.

Section 82. Section Enacted.

Section 20A-3-309, Utah Code Annotated 1953, is enacted to read:

20A-3-309. Absentee ballots in the custody of the election officer — Dispositions.

(1) The election officer shall deliver all envelopes containing valid absentee ballots that are in the election officer's custody to the place of the official canvass of the election by noon on the day of the official canvass following the election.

(2) At the canvass, election judges, acting under the supervision of the official canvassers of the election, shall comply with the procedures and requirements of Section 20A-3-308 in opening envelopes, verifying signatures, confirming eligibility of the ballots, and depositing them in a ballot box.

(3) After all valid absentee ballots have been deposited, they shall be counted in the usual manner and the resulting tally added to the official canvass of the election.

Section 83. Section Enacted.

Section 20A-3-310, Utah Code Annotated 1953, is enacted to read:

20A-3-310. Frauds and malfeasance in absent voting — Penalty.

(1)(a) It is unlawful for any person to willfully falsify the absentee voter affidavits required by this part.

(b) Any person violating this subsection is guilty of perjury and may be prosecuted and punished as provided in Title 76, Chapter 8, Part 5.

(2)(a) It is unlawful for any election officer to:

(i) refuse or neglect to perform any of the duties required by this part; or

(ii) violate any of the provisions of this part.

(b) Any person who violates this subsection is guilty of a class B misdemeanor.

Section 84. Section Enacted.

Section 20A-3-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Voting by Members of the Military and by Other Persons Living or Serving Abroad

20A-3-401. Intent and purpose of part.

(1) Each election officer, election official, and judge shall liberally interpret and apply this part to:

(a) make it possible for Utah voters living or serving abroad to vote in county, state, and national elections during their absence;

(b) enable these voters to register more conveniently; and

(c) conform to 42 U.S.C. 1973ff, Uniformed and Overseas Citizens Absentee Voting Act.

(2) This part may not be construed to apply to municipal and local special elections.

(3) The state selective service, all military organizations, and citizens and officers of Utah or of the respective counties and municipalities of the state shall cooperate with the election and party officers in carrying out the intent and purpose of this part.

(4) All state and county officers of Utah shall:

(a) do all things and perform all acts necessary to put into effect the provisions of any Act of Congress or this state allowing uniformed and overseas citizen voters to vote; and

(b) permit the use of any official ballot authorized by any Act of Congress and this part as a ballot supplementary to the official Utah election military ballot.

(5) Each provision of this part prevails over any inconsistent provision of any other statute or any part of any statute.

Section 85. Section Enacted.

Section 20A-3-402, Utah Code Annotated 1953, is enacted to read:

20A-3-402. Scope of part.

(1) This part governs:

(a) each military or overseas citizen voter who is or expects to be absent on election day from the place in which he resides or is registered to vote, regardless of whether the military or overseas citizen voter is within or outside the territorial limits of the United States at the time of voting; and

(b) any overseas citizen voter whose overseas service was terminated by discharge from the armed forces, by separation from the merchant marine, or by termination of service or employment outside the territorial limits of the United States too late to enable that voter to register to vote as required by this title.

(2) All other persons may vote by absentee ballot only as provided in Part 3.

Section 86. Section Enacted.

Section 20A-3-403, Utah Code Annotated 1953, is enacted to read:

20A-3-403. Definitions.

As used in this part:

(1)(a) "Ballot," "disabled voter's ballot" and "official Utah military ballot" means the same ballots that will be submitted to and used by other voters of Utah at the primary or general election.

(b) "Ballot" includes any official federal ballot provided by any Act of Congress to allow voting by voters in the military service of the United States.

(2) "Military voter" means each person who is qualified as a voter under the Utah Constitution and laws or who is eligible for registration and who would, by registration, be qualified to vote, and who is:

(a) a member of the armed forces of the United States while in the active service or is the spouse or dependent of that member;

(b) a member of the merchant marine of the United States or is the spouse or dependent of that member;

(c) a civilian employee of the United States in all categories who is serving outside the territorial limits of the United States whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not the employee is paid from funds appropriated by the Congress or is the spouse or dependent of that member when residing with or accompanying them; and

(d) a member of religious groups or welfare agencies assisting members of the armed forces, who is officially attached to and serving with the armed forces, or is the spouse or dependent of that member.

(3) "Overseas citizen voter" means:

(a) a member of the armed forces of the United States while in the active service or the spouse or dependent of that member;

(b) a member of the merchant marines of the United States or the spouse or dependent of that member; and

(c) a citizen of the United States residing outside the territorial limits of the United States or the spouse or dependent of that member when residing with them or accompanying them.

Section 87. Section Enacted.

Section 20A-3-404, Utah Code Annotated 1953, is enacted to read:

20A-3-404. Special military write-in absentee ballots.

(1) Notwithstanding any other provisions of this chapter, a military voter may apply for a special write-in absentee ballot not later than 30 days before an election.

(2) To qualify for a special write-in absentee ballot, a military voter shall:

(a) apply for a special write-in absentee ballot by submitting a federal postcard application form; and

(b) state on the form or on a separate paper submitted with the form that he is unable to vote by regular absentee ballot or in person because of his military service.

(3) Upon receipt of the application, the county clerk shall issue and mail a special military write-in ballot, in substantially the following form, to the military voter who requested it.

"OFFICIAL MILITARY WRITE-IN ABSENTEE-VOTER BALLOT

Instructions: You may vote this ballot by:

1. Listing the name of the party for whose candidate for each office you wish to vote; or

2. By listing the name of the candidate, if known, or the person of your choice for whom you wish to vote.

BALLOT

President/Vice-president _____

United States Senator _____

United States Representative _____ "

Section 88. Section Enacted.

Section 20A-3-405, Utah Code Annotated 1953, is enacted to read:

20A-3-405. Registration of military voters and overseas citizen voters.

(1)(a)(i) Any military or overseas citizen voter not otherwise registered to vote in Utah may register in the manner provided by this section.

(ii) That registration entitles him to vote in the elections as provided for in this part.

(b) The county clerk shall cause a registration and voting certificate to be printed on the back of the ballot envelope in substantially the following form:

"REGISTRATION AND VOTING CERTIFICATE

I ____ (Print Name), place of birth ____, date of birth ____, solemnly swear (or affirm) that I am now a citizen of the United States and am at least 18 years old or will be 18 years old on the ____ (Date of election to be inserted) that I am a legal resident of ____ County, residing at ____ (Street and Number if any or rural route number) in the city or town of ____; that I am: (check appropriate blank)

____In the armed forces of the United States;

____In the merchant marine of the United States;

____In the American Red Cross, in the Society of Friends, in the United States service organizations, attached to and serving with the armed forces of the United States;

____A citizen of the United States residing outside the territorial limits of the United States;

____A spouse or dependent of a person who meets the requirements of the above;
that I have never been convicted of treason or crime against the elective franchise or other high crime causing a loss of my franchise without thereafter being restored to my civil rights; and that I expect to be absent from the above-named county on the date of the election.

Signature of voter
Identification Number

(To be signed when voter is physically unable to see or write.)

_____.

Signature of additional witness who is a commissioned, noncommissioned, or petty officer not below the rank of sergeant (or its equivalent) or other person authorized to administer oaths, who does swear that at the request of (the voter), he assisted him in voting because the voter was on account of physical disability unable to see or write. At the voter's direction he did read to him the registration and voting certificate and filled in the blanks and marked the ballot as the voter directed and signed his name at his request in the presence of both attesting officers.

This ballot may be voted even though an official federal ballot has already been voted, and if received by the proper election officials in time to be counted under the provisions of law, will be counted in lieu of the federal ballot."

(2) (a) Any overseas citizen voter whose overseas service was terminated by discharge from the armed forces, by separation from the merchant marine, or by termination of service or employment outside the territorial limits of the United States too late to enable that voter to register to vote as required by this title may register to vote by filing an affidavit establishing his eligibility with the county clerk of his county of residence by noon on the day before the election.

(b) After receiving and verifying the affidavit, the county clerk shall give the person a regular absentee ballot to vote.

Section 89. Section Enacted.

Section 20A-3-406, Utah Code Annotated 1953, is enacted to read:

20A-3-406. Absentee ballots for military personnel and citizens living overseas — Federal postcard applications for ballot.

(1) (a) Applications for absentee ballots for military voters shall be filed in the county clerk's office no later than the Friday immediately before the day of election.

(b) Military personnel voting an absentee ballot at the office of the clerk shall apply and cast their ballot no later than the day before the election.

(2) (a) Military voters stationed overseas and overseas citizen voters shall file an application for a ballot with the county clerk no later than 20 days before the day of election.

(b) Upon receipt of a properly completed written application for an absentee ballot signed by any military voter or overseas citizen voter, the county clerk shall mail an appropriate ballot to the military voter or overseas citizen voter.

(c) The county clerk, at the time he furnishes the ballot, shall record, in a record book provided for that purpose, the name and home address of the military voter or overseas citizen voter to whom the ballot is mailed, the address mailed to, and the date of mailing the ballot.

(d) If the military voter or overseas citizen voter sends his application to the lieutenant governor, the lieutenant governor shall forward the application to the county clerk of the county where the military voter or overseas citizen voter is entitled to vote.

(3) Any military voter or overseas citizen voter who is physically disabled so as to be unable to see or write may apply for a ballot by having a commissioned, noncommissioned, or petty officer not below the rank of sergeant, or other person authorized to administer oaths to apply for a ballot on the voter's behalf.

(4) (a) A federal postcard application issued under the authority of any Act of Congress or federal regulation is acceptable, when properly executed, as an application for a ballot under this chapter.

(b) The county clerk shall accept the completed postcard application as an application for ballots for every election held in even-numbered years and shall send the applicant a ballot for each election as required by Section 20A-3-407.

(5) The county clerk shall retain the application for use at the time the ballot is received from the military voter or overseas citizen voter.

Section 90. Section Enacted.

Section 20A-3-407, Utah Code Annotated 1953, is enacted to read:

20A-3-407. Mailing of ballot to military voter.

(1) (a) Upon receipt of the military or overseas citizen voter's application for a ballot, or as soon after receipt as the ballot for the voting precinct in which the applicant resides has been printed, the county clerk shall:

(i) enclose a ballot in an unsealed ballot envelope printed as required in Subsection 20A-3-405(1)(b);

(ii) enclose that envelope in a carrier envelope; and

(iii) mail, postage prepaid, the carrier envelope containing the unsealed ballot envelope and the ballot to the military or overseas citizen voter.

(b) The county clerk may not send more than one ballot in any election to the same military or overseas citizen voter.

(2) The county clerk shall ensure that the name, official title, return address of the county clerk, and

"OFFICIAL UTAH ELECTION BALLOT" is printed on the carrier envelope.

(3) (a) The county clerk may enclose only the ballot, the ballot envelope, and an instruction sheet, if any, prepared by the county clerk in the sealed carrier envelope addressed to the military or overseas citizen voter.

(b) Both envelopes may be made of light weight paper.

Section 91. Section Enacted.

Section 20A-3-408, Utah Code Annotated 1953, is enacted to read:

20A-3-408. Voting of ballot by military or overseas citizen voter.

(1) (a) The military or overseas citizen voter shall:

(i) upon receipt of the ballot, mark it in secret;

(ii) seal it in the ballot envelope provided for that purpose;

(iii) execute the registration and voting certificate on the back of the envelope in the presence of a commissioned, noncommissioned, or petty officer not below the rank of sergeant, or other person authorized to administer oaths.

(b) (i) If the military or overseas citizen voter is physically disabled so as to be unable to see or write, he may request assistance from two persons, each of whom shall be qualified to certify to the registration and voting certificate.

(ii) The military or overseas citizen voter shall tell those persons how he wishes his ballot marked.

(iii) Those persons shall mark the ballot as directed by the military or overseas citizen voter in his presence.

(iv) One of the persons assisting the military or overseas citizen voter shall:

(A) read to the voter the registration and voting certificate upon the ballot;

(B) fill in its blanks as the voter directs; and

(C) sign, on the line provided for the signature of the voter, the name of the voter and his own name.

(2) (a) The ballot shall be sent by any available mail service to the county clerk who issued it.

(b) The military or overseas citizen voter is not required to return the ballot by registered mail.

Section 92. Section Enacted.

Section 20A-3-409, Utah Code Annotated 1953, is enacted to read:

20A-3-409. Disposition of ballot by county clerk.

(1) Upon receipt by the county clerk of the envelope containing the ballot, the county clerk shall:

(a) enclose the unopened envelope containing the ballot and the written application of the military or overseas citizen voter in a larger envelope;

(b) securely seal and endorse it with:

(i) the name or number of the proper voting precinct;

(ii) the name and official title of the clerk;

(iii) the words: "This envelope contains an absentee voter's official Utah election ballot to be voted at ____ (Insert Name and Number) district, in ____ (Insert Name) county, and may be opened on election day at the polls while the polls are open."; and

(c) safely keep the envelope in his office until it is delivered by him to the proper election judges.

(2) (a) When reasonably possible, the county clerk shall deliver or mail all military or overseas citizen voter ballot envelopes to the appropriate voting precinct election judges so that they may be processed on election day.

(b) If the clerk is unable to determine the voting precinct to which the ballot should be sent or when valid ballots are received too late to deliver to the election judges on election day, the clerk shall keep them in a safe place until delivery can be made as required by Section 20A-3-411.

Section 93. Section Enacted.

Section 20A-3-410, Utah Code Annotated 1953, is enacted to read:

20A-3-410. Duty of election judges.

(1) (a) Voting precinct election judges shall open envelopes containing military or overseas citizen voter ballots that are in their custody on election day at the polling places during the time the polls are open as provided in this subsection.

(b) The election judges shall:

(i) first, open the outer envelope only; and

(ii) unless the ballot is a disabled military or overseas citizen voter's ballot, compare the signature of the military or overseas citizen voter on the application with the signature on the registration and voting certificate.

(2) (a) The judges shall register the military or overseas citizen voter to vote if the voter is not already registered if the judges find that:

(i) the registration and voting certificate appears to be executed in proper form and contains information qualifying the military or overseas citizen voter to be registered as a voter; and

(ii) the signatures on the certificate and the application correspond, where a comparison is required.

(b) If the election judges determine that the registration and voting certificate is insufficient or that the signatures do not correspond, they shall:

(i) disallow the registration; and

(ii) without opening the ballot envelope, mark across the face of the envelope "Rejected as defective."

(c) When a military or overseas citizen voter's name is entered upon the registration books, the voter is considered to be registered and the registration and voting certificate, signed and sworn to by the military or overseas citizen voter on the back of the ballot envelope, together with his name upon the registration books, constitute his registration record.

(d) Nothing in this title may abridge the right of the military or overseas citizen voter to be registered as provided in this section.

(3) (a) After registering the voter, the judges shall carefully open the ballot envelope so as not to destroy the information printed on it if they find that:

(i) the registration and voting certificate is sufficient; and

(ii) the signatures on the certificate and the application correspond, where a comparison is required.

(b) The election judges shall:

(i) remove the ballot from the envelope without unfolding it or permitting it to be opened or examined;

(ii) initial the stub in the same manner as for other ballots;

(iii) deposit the ballot in the proper ballot box; and

(iv) mark the official register and pollbook to show that the voter has voted.

(c) If the election judges determine that the registration and voting certificate is insufficient or that the signatures do not correspond, they shall:

(i) disallow the vote; and

(ii) without opening the ballot envelope, mark across the face of the envelope "Rejected as defective."

(4) The election judges shall deposit the envelope, when the ballot is voted, and the envelope with its contents unopened, when the absent vote is rejected, in the ballot box containing the ballots.

(5) The county clerk shall retain and preserve the envelopes in the manner provided by law for the retention and preservation of official ballots voted at that election.

Section 94. Section Enacted.

Section 20A-3-411, Utah Code Annotated 1953, is enacted to read:

20A-3-411. Challenge of ballot.

(1) Except as provided in Subsection (2), a military or overseas citizen voter's ballot may be challenged in the same manner and on the same grounds as provided in this part.

(2) Notwithstanding the provisions of Subsection (1), a military or overseas citizen voter's ballot, may not be challenged because the ballot envelope has been opened and resealed if it appears from the envelope that the opening and resealing was done for the purpose of military censorship.

Section 95. Section Enacted.

Section 20A-3-412, Utah Code Annotated 1953, is enacted to read:

20A-3-412. State and county officials to carry out provisions of part — Violation a misdemeanor.

(1) All state and county officials charged with the duty of providing ballots, forms, envelopes, postage, or other supplies shall:

(a) provide those supplies at the expense of the particular department or office charged with those duties; and

(b) provide them as expeditiously as possible in order to carry out the intent and purpose of this chapter.

(2) Any person who violates this section is guilty of a class B misdemeanor.

Section 96. Section Enacted.

Section 20A-3-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Voting Offenses

20A-3-501. Polling place — Prohibited activities.

(1) As used in this section, "electioneering" includes any oral or written attempt to persuade persons to refrain from voting or to vote for or vote against any candidate or issue.

(2) On the day of any election, within a polling place or in any public area within 150 feet of the building where a polling place is located, a person may not:

(a) do any electioneering;

(b) circulate cards or handbills of any kind;

(c) solicit signatures to any kind of petition; or

(d) engage in any practice that interferes with the freedom of voters to vote or disrupts the administration of the polling place.

(2) (a) A person may not obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(b) A sheriff, deputy sheriff, or municipal law enforcement officer shall prevent the obstruction of the entrance to a polling place and may arrest any person creating an obstruction.

(3) A person may not:

(a) remove any ballot from the polling place before the closing of the polls, except as provided in Section 20A-4-101; or

(b) solicit any voter to show his ballot.

(4) A person may not receive a voted ballot from any voter or deliver an unused ballot to a voter unless that person is an election judge.

(5) Any person who violates any provision of this section is guilty of a class A misdemeanor.

(6) A political subdivision may not prohibit political signs that are located more than 150 feet away

from a polling place, but may regulate their placement to protect public safety.

Section 97. Section Enacted.

Section 20A-3-502, Utah Code Annotated 1953, is enacted to read:

20A-3-502. Intimidation — Undue influence.

(1)(a) It is unlawful for any person, directly or indirectly, by himself or by any other person on his behalf, to make use of any force, violence, or restraint, or to inflict or threaten the infliction of, by himself or through any other person, any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person in order to induce or compel that person to:

(i) vote or refrain from voting for any particular person or measure at any election provided by law; or

(ii) vote or refrain from voting at any election.

(b) It is unlawful for any person by abduction or duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any voter, either in giving or refraining from giving his vote at any election, or in giving or refraining from giving his vote for any particular person at any election.

(c) It is unlawful for any employer, corporation, association, company, firm, or person to:

(i) enclose their employees' salary or wages in envelopes on which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinion, views, or action of the employees; or

(ii) within 90 days of any election provided by law to put up, or otherwise exhibit, in its, their, or his factory, workshop, mine, mill, boarding house, office, or other establishment or place where employees may be working or be present in the course of employment, any handbill, notice, or placard containing any threat, notice, or information, that if any particular ticket or candidate is or is not elected:

(A) work in the establishment will cease in whole or in part;

(B) the establishment will be closed;

(C) wages of workmen be reduced; or

(D) other threats, express or implied, intended or calculated to influence the political opinions or actions of employees.

(2) Any person, whether acting in his individual capacity or as an officer or agent of any corporation, who violates any of the provisions of this section is guilty of a class B misdemeanor.

Section 98. Section Enacted.

Section 20A-3-503, Utah Code Annotated 1953, is enacted to read:

20A-3-503. Influencing employee's vote.

(1) It is unlawful for any corporation, or any officer or agent of any corporation, to influence, or attempt to influence, induce, or compel by force, violence, or restraint, or by inflicting or threatening to inflict any injury, damage, harm, or loss, or by discharging from employment or promoting in employment, or by intimidation, or in any manner whatever, any employee to vote or refrain from voting at any election provided by law, or to vote or refrain from voting for any particular person or measure at that election.

(2)(a) Any corporation or any officer or agent of that corporation who violates any of the provisions of this section is guilty of a class B misdemeanor.

(b) Any corporation violating any of the provisions of this section shall forfeit its charter and right to do business in this state in addition to any other penalties imposed by law.

Section 99. Section Enacted.

Section 20A-3-504, Utah Code Annotated 1953, is enacted to read:

20A-3-504. Violations — Penalties.

(1) Except as allowed by Section 20A-3-108, a person is guilty of a class C misdemeanor if:

(a) he allows his ballot to be seen by any other person with an intent to reveal how he is about to vote;

(b) he states falsely that he is unable to mark his ballot;

(c) he interferes or attempts to interfere with any person who is inside the voting booth or who is marking a ballot; or

(d) he induces or attempts to induce any voter who is inside a voting booth or who is marking a ballot to vote to show how he marked his ballot.

(2) The election judges and clerks shall report any person violating this section to the county attorney for prosecution.

Section 100. Section Enacted.

Section 20A-3-505, Utah Code Annotated 1953, is enacted to read:

20A-3-505. False impersonation — Double voting.

(1)(a) It is unlawful for any person to apply for a ballot in the name of some other person, whether it is that of a person living or dead, or of a fictitious person, or who, having voted once at a primary or election, applies at the same election for a ballot in his own name or any other name.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison at hard labor for not less than one nor more than three years.

(2)(a) It is unlawful for any person to aid, abet, counsel, or procure another person to commit the felony prohibited in Subsection (1).

(b) Any person who violates this subsection is guilty of a felony and shall be punished by imprison-

ment in the state prison at hard labor for not less than one nor more than three years.

Section101. Section Enacted.

Section 20A-4-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 4. ELECTION RETURNS AND ELECTION CONTESTS

Part 1. Counting Ballots and Tabulating Results

20A-4-101. Counting paper ballots during election day.

(1) Each county legislative body that has voting precincts that use paper ballots, and each election judge in those voting precincts shall comply with the requirements of this section.

(2) (a) Each county legislative body shall provide:

(i) two sets of ballot boxes for all voting precincts where both receiving and counting judges have been appointed; and

(ii) a counting room for the use of the election judges counting the ballots during the day.

(b) At any election in any voting precinct in which both receiving and counting judges have been appointed, when at least 20 votes have been cast, the receiving judges shall:

(i) close the first ballot box and deliver it to the counting judges; and

(ii) prepare and use another ballot box to receive voted ballots.

(c) Upon receipt of the ballot box, the counting judges shall:

(i) take the ballot box to the counting room;

(ii) count the votes in the ballot box; and

(iii) when they have finished counting the votes in the ballot box, return the emptied box to the receiving judges.

(d) (i) During the course of election day, whenever there are at least 20 ballots contained in a ballot box, the receiving judges shall deliver that ballot box to the counting judges for counting; and

(ii) the counting judges shall immediately count the ballots contained in that box.

(e) The counting judges shall continue to exchange the ballot boxes and count ballots until the polls close.

(3) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the count.

(4) The counting judges shall apply the standards and requirements of Section 20A-4-104 to resolve any questions that arise as they count the ballots.

Section 102. Section Enacted.

Section 20A-4-102, Utah Code Annotated 1953, is enacted to read:

20A-4-102. Counting paper ballots after the polls close.

(1) (a) Except as provided in Subsection (2), as soon as the polls have been closed and the last qualified voter has voted, the election judges shall count the ballots by performing the tasks specified in this section in the order that they are specified.

(b) The election judges shall apply the standards and requirements of Section 20A-4-104 to resolve any questions that arise as they count the ballots.

(2) (a) First, the election judges shall count the number of ballots in the ballot box.

(b) (i) If there are more ballots in the ballot box than there are names entered in the pollbook, the judges shall examine the official endorsements on the ballots.

(ii) If, in the unanimous opinion of the judges, any of the ballots do not bear the proper official endorsement, the judges shall put those ballots in an excess ballot file and not count them.

(c) (i) If, after examining the official endorsements, there are still more ballots in the ballot box than there are names entered in the pollbook, the judges shall place the remaining ballots back in the ballot box.

(ii) One of the judges, without looking, shall draw a number of ballots equal to the excess from the ballot box.

(iii) The judges shall put those excess ballots into the excess ballot envelope and not count them.

(d) When the ballots in the ballot box equal the number of names entered in the pollbook, the judges shall count the votes.

(3) The judges shall:

(a) place all unused ballots in the envelope or container provided for return to the county clerk or city recorder; and

(b) seal that envelope or container.

(4) (a) In counting the votes, the election judges shall read and count each ballot separately.

(b) In primary elections the judges shall:

(i) count the number of ballots cast for each party;

(ii) place the ballots cast for each party in separate piles; and

(iii) count all the ballots for one party before beginning to count the ballots cast for other parties.

(5) (a) In all elections, the counting judges shall:

(i) count one vote for each candidate designated by the marks in the squares next to the candidate's name;

(ii) count one vote for each candidate on the ticket beneath a marked circle, excluding any candidate for an office for which a vote has been cast for a candidate for the same office upon another ticket by the placing of a mark in the square opposite the name of that candidate on the other ticket;

(iii) read every name marked on the ballot and mark every name upon the tally sheets before another ballot is counted;

(iv) evaluate each ballot and each vote based on the standards and requirements of Section 20A-4-104;

(v) write the word "spoiled" on the back of each ballot that lacks the official endorsement and deposit it in the spoiled ballot envelope;

(vi) read, count, and record upon the tally sheets the votes that each candidate and ballot proposition received from all ballots, except excess or spoiled ballots.

(b) Election judges need not tally write-in votes for fictitious persons, nonpersons, or persons clearly not eligible to qualify for office.

(c) The judges shall certify to the accuracy and completeness of the tally list in the space provided on the tally list.

(d) When the judges have counted all of the voted ballots, they shall record the results on the total votes cast form.

(7) Only election judges and counting poll watchers may be present at the place where counting is conducted until the count is completed.

Section 103. Section Enacted.

Section 20A-4-103, Utah Code Annotated 1953, is enacted to read:

20A-4-103. Preparing ballot cards for the counting center.

(1) (a) In voting precincts using ballot cards, as soon as the polls have been closed and the last qualified voter has voted, the election judges shall prepare the ballot cards for delivery to the counting center as provided in this section.

(b) The election judges, election officers, and other persons may not manually count any votes or ballots before delivering the ballots to the counting center.

(2) (a) The judges shall check each secrecy envelope to see if either contains any write-in votes.

(b) If a secrecy envelope does not contain any write-in votes, the election judges shall remove the ballot card from the secrecy envelope.

(c) If a secrecy envelope contains any write-in votes, the election judges may not separate the ballot card from the secrecy envelope.

(3) The election judges shall place:

(a) the voted ballot cards and one copy of the statement of disposition of ballots in the transfer case;

(b) the other copy of the statement of disposition of ballots, the pollbook, any unprocessed absentee ballots, the judges' pay vouchers, the official register, and the spoiled ballot envelope in the carrier envelope provided; and

(c) the other election materials in the election supply box.

Section 104. Section Enacted.

Section 20A-4-104, Utah Code Annotated 1953, is enacted to read:

20A-4-104. Counting ballots electronically.

(1) (a) Before beginning to count ballot cards using automatic tabulating equipment, the election officer shall test the automatic tabulating equipment to ensure that it will accurately count the votes cast for all offices and all measures.

(b) The election officer shall publish public notice of the time and place of the test at least 48 hours before the test in one or more daily or weekly newspapers of general circulation published in the county, municipality, or jurisdiction where the equipment is used.

(c) The election officer shall conduct the test by processing a preaudited group of ballot cards.

(d) The election officer shall ensure that:

(i) a predetermined number of valid votes for each candidate and measure are recorded on the ballot cards;

(ii) for each office, one or more ballot cards have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject those votes; and

(iii) a different number of valid votes are assigned to each candidate for an office, and for and against each measure.

(e) If any error is detected, the election officer shall determine the cause of the error and correct it.

(f) The election officer shall ensure that:

(i) the automatic tabulating equipment produces an errorless count before beginning the actual counting; and

(ii) the automatic tabulating equipment passes the same test at the end of the count before the election returns are approved as official.

(2) (a) The election officer or his designee shall supervise and direct all proceedings at the counting center.

(b) (i) Proceedings at the counting center are public and may be observed by interested persons.

(ii) Only those persons authorized to participate in the count may touch any ballot, ballot card, or return.

(c) The election officer shall deputize and administer an oath or affirmation to all persons who are engaged in processing and counting the ballots that they will faithfully perform their assigned duties.

(d) (i) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the testing of equipment and actual counting of the ballot cards.

(ii) Those counting poll watchers may make independent tests of the equipment before, during, and

after the vote count as long as the testing does not interfere in any way with the official tabulation of the ballot cards.

(3) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, the election officer shall:

(a) cause a true duplicate copy of the ballot card to be made with an identifying serial number;

(b) substitute the duplicate for the damaged ballot card;

(c) label the duplicate ballot card "duplicate"; and

(d) record the duplicate ballot card's serial number on the damaged or defective ballot card.

(4) The election officer may:

(a) conduct an unofficial count before conducting the official count in order to provide early unofficial returns to the public;

(b) release unofficial returns from time to time after the polls close; and

(c) report the progress of the count for each candidate during the actual counting of ballots.

(5) (a) The judges shall:

(i) separate, count, and tabulate any ballots containing write-in votes; and

(ii) complete the standard form provided by the clerk for recording write-in votes.

(b) In counting the write-in votes, if, by casting a write-in vote, a voter has cast more votes for an office than that voter is entitled to vote for that office, the judges shall count the write-in vote as being the obvious intent of the voter.

(6) (a) The election officer shall certify the return printed by the automatic tabulating equipment, to which have been added write-in and absentee votes, as the official return of each voting precinct.

(b) Upon completion of the count, the election officer shall make official returns open to the public.

(7) If for any reason it becomes impracticable to count all or a part of the ballot cards with tabulating equipment, the election officer may direct that they be counted manually according to the procedures and requirements of this part.

(8) After the count is completed, the election officer shall seal and retain the programs, test materials, and ballots as provided in Section 20A-4-203.

Section 105. Section Enacted.

Section 20A-4-105, Utah Code Annotated 1953, is enacted to read:

20A-4-105. Standards and requirements for evaluating voter's ballot choices.

(1) Each person counting ballots shall apply the standards and requirements of this section to resolve any questions that arise as ballots are counted.

(2) If a voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the choice of any voter for any office to be filled, the counter may not count that voter's ballot for that office.

(3) The counter shall count a defective or incomplete mark on any paper ballot if:

(a) it is in the proper place; and

(b) there is no other mark or cross on the paper ballot indicating the voter's intent to vote other than as indicated by the defective mark.

(4) (a) (i) When the voter has marked the ballot so that it appears that the voter has voted more than one straight ticket, the election judges may not count any votes for party candidates.

(ii) The election judges shall count the remainder of the ballot if it is voted correctly.

(5) A counter may not reject a ballot marked by the voter because of marks on the ballot other than those marks allowed by this section unless the extraneous marks on a ballot or group of ballots show an intent by a person or group to mark their ballots so that their ballots can be identified.

(6) (a) In counting the ballots, the counters shall give full consideration to the intent of the voter.

(b) The counters may not invalidate a ballot because of mechanical and technical defects in voting or failure on the part of the voter to follow strictly the rules for balloting required by Chapter 3.

(7) The counters may not reject a ballot because of any error in:

(a) stamping or writing any official endorsement; or

(b) delivering the wrong ballots to any polling place.

(8) The counter may not count any paper ballot that does not have the official endorsement by an election judge.

(9) If the counter discovers that the name of a candidate voted for is misspelled or that the initial letters of a candidate's given name are transposed or omitted in part or altogether, the counter shall count the voter's vote for that candidate if it is apparent that the voter intended to vote for that candidate.

(10) The counter shall count a vote for the president and the vice president of any political party as a vote for the presidential electors selected by the political party at its convention.

(11) In counting the write-in votes, if, by casting a write-in vote, a voter has cast more votes for an office than that voter is entitled to vote for that office, the judges shall count the write-in vote as being the obvious intent of the voter.

Section 106. Section Enacted.

Section 20A-4-106, Utah Code Annotated 1953, is enacted to read:

20A-4-106. Paper ballots — Sealing.

(1) (a) (i) At all elections using paper ballots, as soon as the counting judges have read and tallied the ballots, they shall string the counted, excess, and spoiled ballots on separate strings.

(ii) After the ballots are strung, they may not be examined by anyone, except when examined during a recount conducted under the authority of Section 20A-4-401.

(b) The judges shall carefully seal all of the strung ballots in a strong envelope.

(2) (a) For primary elections, after all the ballots have been counted, certified to, and strung by the judges, they shall seal the ballots cast for each of the parties in separate envelopes.

(b) The judges shall:

(i) seal each of the envelopes containing the votes of each of the political parties in one large envelope; and

(ii) return that envelope to the county clerk.

(3) As soon as the judges have counted all the votes and sealed the ballots they shall sign and certify the pollbooks.

(4) (a) Except as provided in Subsection (c), the judges, before they adjourn, shall:

(i) enclose and seal the official register, the pollbook, all affidavits of registration received by them, the ballot disposition form, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, and any unprocessed absentee ballots in a strong envelope or pouch;

(ii) ensure that all counted ballots, all excess ballots, and all spoiled ballots have been strung and placed in a separate envelope or pouch as required by Subsection (1);

(iii) place all unused ballots, all spoiled ballots, one tally list, and a copy of the ballot disposition form in a separate envelope or pouch; and

(iv) place the total votes cast form and the judges' vouchers requesting compensation for services rendered in a separate pouch.

(b) Before enclosing the official register in the envelope or pouch, the election judges shall certify it substantially as follows:

"We, the undersigned, judges of election for precinct _____, (jurisdiction) _____, Utah, certify that the required entries have been made for the election held _____, 19__, including:

a list of the ballot numbers for each voter;

the voters' signatures, except where a judge has signed for the absentee voters;

a list of information surrounding a voter who is challenged,

including any affidavits; and

a notation for each time a voter was assisted with a ballot."

(c) Notwithstanding the requirements of Subsection (a), after the primary election, the election judges shall return the official register to the registration agent.

(5) Each judge shall:

(a) write his name across the seal of each envelope or pouch;

(b) mark on the exterior of the envelope or pouch:

(i) the word "ballots" or "returns" or "unused ballots," or other words plainly indicating the contents of the packages; and

(ii) the number of the voting precinct.

Section 107. Section Enacted.

Section 20A-4-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Transmittal and Disposition of Ballots and Election Returns

20A-4-201. Delivery of election returns.

(1) One judge shall deliver the ballot box, the lock, and the key to:

(a) the registration agent for the voting precinct;

(b) the election officer; or

(c) the location directed by the election officer.

(2) (a) Before they adjourn, the election judges shall:

(i) for paper ballots, choose one of their number to deliver the election returns to the election officer; and

(ii) for ballot cards, choose two of their number, each from a different political party, to deliver the election returns to the counting center.

(b) That judge or those judges shall:

(i) deliver the unopened envelopes or pouches to the election officer or counting center immediately but no later than 24 hours after the polls close; or

(ii) if the polling place is 15 miles or more from the county seat, mail the election returns to the election officer by registered mail from the post office most convenient to the polling place within 24 hours after the polls close.

(3) The election officer shall pay each election judge that transports election returns $2 plus 30 cents per mile, one way, for every mile necessarily traveled between the polling place and the place of delivery.

Section 108. Section Enacted.

Section 20A-4-202, Utah Code Annotated 1953, is enacted to read:

20A-4-202. Election officers — Disposition of ballots.

(1) (a) Upon receipt of the election returns from an election judge, the election officer shall:

(i) ensure that the election judge has provided all of the ballots and election returns;

(ii) inspect the ballots and election returns to ensure that they are sealed; and

(iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and secure place; or

(B) for punch card ballots, count the ballots and deposit and lock the ballots and election returns in a safe and secure place.

(b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be present and observe the election officer's receipt, inspection, and deposit of the ballots and election returns.

(2) Each election officer shall:

(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;

(b) package and seal a true copy of the ballot label used in each voting district;

(c) preserve all other official election returns for at least 22 months after an election; and

(d) after that time, destroy them without opening or examining them.

(3) (a) The election officer shall package and retain all tabulating cards and other materials used in the programming of the automatic tabulating equipment;

(b) The election officer:

(i) may access these tabulating cards and other materials;

(ii) may make copies of these materials and make changes to the copies;

(iii) may not alter or make changes to the materials themselves; and

(iv) within 22 months after the election in which they were used, may dispose of those materials or retain them.

(4) (a) If an election contest is begun within 12 months, the election officer shall:

(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or

(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

(b) When all election contests arising from an election are complete, the election officer shall either:

(i) retain the ballots and election returns until the time for preserving them under this section has run; or

(ii) destroy the ballots and election returns remaining in his custody without opening or examining them if the time for preserving them under this section has run.

Section 109. Section Enacted.

Section 20A-4-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Canvassing Returns

20A-4-301. Board of canvassers.

(1) (a) Each county legislative body is the board of county canvassers for the county.

(b) The board of county canvassers shall meet to canvass the returns at the usual place of meeting of the county legislative body, at noon on the Monday after the election.

(c) If one or more of the county legislative body fails to attend the meeting of the board of county canvassers, the remaining members shall replace the absent member by appointing in the order named:

(i) the county treasurer;

(ii) the county assessor; or

(iii) the county sheriff.

(d) The board of county canvassers shall always consist of three acting members.

(e) The county clerk is the clerk of the board of county canvassers.

(2) (a) The mayor and the municipal legislative body are the board of municipal canvassers for the municipality.

(b) The board of municipal canvassers shall meet to canvass the returns at the usual place of meeting of the municipal legislative body no later than seven days after the election.

Section 110. Section Enacted.

Section 20A-4-302, Utah Code Annotated 1953, is enacted to read:

20A-4-302. Duties of the board of canvassers — Receiving returns.

(1) If the election returns from each voting precinct in which polls were opened have been received at the time the board of canvassers convenes, the board of canvassers shall canvass the election returns as provided in this part.

(2) If all of the election returns have not been received, the board shall postpone the canvass from day to day, Sundays and legal holidays excepted, until:

(a) all of the election returns are received; or

(b) the board has postponed the canvass seven times.

(3) (a) If the election officer has not received the election returns from any voting precinct within seven days after the election, the election officer shall send a messenger to the judges to obtain the missing election returns.

(b) The messenger shall obtain the election returns from the judges and return the election returns to the election officer.

(c) The election officer shall pay the messenger ten cents per mile for the distance necessarily traveled.

(4) If the board determines that election returns were not received from a voting precinct because the polls did not open in that precinct, the board shall:

(a) sign a certificate attesting to that fact; and

(b) file the certificate with the election officer.

Section 111. Section Enacted.

Section 20A-4-303, Utah Code Annotated 1953, is enacted to read:

20A-4-303. Duties of the board of canvassers — Canvassing the returns.

(1) (a) The board of canvassers shall canvass the election returns by publicly opening the returns and determining from them the votes of each voting precinct for:

(i) each person voted for; and

(ii) for and against each ballot proposition voted upon at the election.

(b) The board of canvassers shall, once having begun the canvass, continue until it is completed without recessing or adjourning.

(2) In canvassing returns, the board of canvassers may not:

(a) reject any election returns if the board can determine the number of votes cast for each person from it;

(b) reject any election returns if the election returns:

(i) do not show who administered the oath to the judges of election;

(ii) show that the election judges failed to fill out all the certificates in the pollbooks; or

(iii) show that the election judges failed to do or perform any other act in preparing the returns that is not essential to determine for whom the votes were cast;

(c) reject any returns from any voting precinct that do not conform with the requirements for making, certifying, and returning the returns if those returns are sufficiently explicit to enable the board of canvassers to determine the number of votes cast for each person and for and against each ballot proposition.

(3) (a) If it clearly appears to the election officer and board of canvassers that certain matters are omitted or that clerical mistakes exist in election returns received, they shall transmit the election returns to the election judges for correction.

(b) Upon receipt of the election returns for correction from the board of canvassers, the election judges shall correct the election returns as required by the facts.

(c) The clerk and the board of canvassers may adjourn from day to day to await receipt of corrected election material.

(4) Immediately after the canvass of votes in any primary election, the board of canvassers and judges of election shall, without examination, destroy the ballots deposited in the blank ballot box.

Section 112. Section Enacted.

Section 20A-4-304, Utah Code Annotated 1953, is enacted to read:

20A-4-304. Declaration of results — Canvasser's report.

(1) Each board of canvassers shall:

(a) declare "elected" those persons who:

(i) had the highest number of votes; and

(ii) sought election to an office completely within the board's jurisdiction;

(b) declare:

(i) "approved" those ballot propositions that:

(A) had more "yes" votes than "no" votes; and

(B) were submitted only to the voters within the board's jurisdiction;

(ii) "rejected" those ballot propositions that:

(A) had more "no" votes than "yes" votes or an equal number of "no" votes and "yes" votes; and

(B) were submitted only to the voters within the board's jurisdiction; and

(c) certify the vote totals for persons and for and against ballot propositions that were submitted to voters within and beyond the board's jurisdiction and transmit those vote totals to the lieutenant governor.

(2) (a) As soon as the result is declared, the election officer shall prepare a report of the result, which shall contain:

(i) the total number of votes cast in the board's jurisdiction;

(ii) the names of each candidate whose name appeared on the ballot;

(iii) the title of each ballot proposition that appeared on the ballot;

(iv) each office that appeared on the ballot;

(v) from each voting precinct:

(A) the number of votes for each candidate; and

(B) the number of votes for and against each ballot proposition;

(vi) the total number of votes given in the board's jurisdiction to each candidate, and for and against each ballot proposition; and

(vii) a statement certifying that the information contained in the report is accurate.

(b) The election officer and the board of canvassers shall:

(i) review the report to ensure that it is correct; and

(ii) sign the report.

(c) The election officer shall:

(i) record or file the certified report in a book kept for that purpose;

(ii) prepare and transmit a certificate of nomination or election under the officer's seal to each nominated or elected candidate;

(iii) publish a copy of the certified report in a newspaper with general circulation in the board's jurisdiction, or if no newspaper is published within the board's jurisdiction, post it in a conspicuous place within the jurisdiction; and

(iv) file a copy of the certified report with the lieutenant governor.

(3) When there has been a regular general or a statewide special election for statewide officers, for officers that appear on the ballot in more than one county, or for a statewide or two or more county ballot proposition, each board of canvassers shall:

(a) prepare a separate report detailing the number of votes for each candidate and the number of votes for and against each ballot proposition; and

(b) transmit it by registered mail to the lieutenant governor.

(4) In each county election, municipal election, school election, special district election, and local special election but excluding bond elections, the election officer shall transmit the reports to the lieutenant governor without delay.

(5) In primary elections, the board shall transmit to the lieutenant governor:

(a) the county totals for multi-county races, to be telephoned to the lieutenant governor not later than the Tuesday after the primary election; and

(b) a complete tabulation showing voting totals for all primary races, precinct by precinct, to be mailed to the lieutenant governor on or before the second Friday following the primary election.

Section 113. Section Enacted.

Section 20A-4-305, Utah Code Annotated 1953, is enacted to read:

20A-4-305. Delivery of checked official register to county clerk after canvass.

Within ten days after the canvass of a November municipal election, the clerk or recorder shall transmit the checked official register and pollbook to the county clerk.

Section 114. Section Enacted.

Section 20A-4-306, Utah Code Annotated 1953, is enacted to read:

20A-4-306. Statewide canvass.

(1) (a) The state board of canvassers shall convene:

(i) on the fourth Monday of November, at noon; or

(ii) at noon on the day following the receipt by the lieutenant governor of the last of the returns of a statewide special election.

(b) The state auditor, the state treasurer, and the attorney general are the state board of canvassers.

(2) (a) The state board of canvassers shall:

(i) meet in the lieutenant governor's office; and

(ii) compute and determine the vote for officers and for and against any ballot propositions voted upon by the voters of the entire state or of two or more counties.

(b) The lieutenant governor, as secretary of the board shall file a report in his office that details:

(i) for each statewide officer and ballot proposition:

(A) the name of the statewide office or ballot proposition that appeared on the ballot;

(B) the candidates for each statewide office whose names appeared on the ballot, plus any recorded write-in candidates;

(C) the number of votes from each county cast for each candidate and for and against each ballot proposition;

(D) the total number of votes cast statewide for each candidate and for and against each ballot proposition; and

(E) the total number of votes cast statewide; and

(ii) for each officer or ballot proposition voted on in two or more counties:

(A) the name of each of those offices and ballot propositions that appeared on the ballot;

(B) the candidates for those offices, plus any recorded write-in candidates;

(C) the number of votes from each county cast for each candidate and for and against each ballot proposition; and

(D) the total number of votes cast for each candidate and for and against each ballot proposition.

(c) The lieutenant governor shall:

(i) prepare certificates of election for each successful candidate;

(ii) authenticate them with his seal; and

(iii) deliver a certificate of election to each candidate who had the highest number of votes for each office.

(3) If the lieutenant governor has not received election returns from all counties on the fifth day before the day designated for the meeting of the state board of canvassers, the lieutenant governor shall:

(a) send a messenger to the clerk of the board of county canvassers of the delinquent county;

(b) instruct the messenger to demand a certified copy of the board of canvasser's report required by Section 20A-4-304 from the clerk; and

(c) pay the messenger the per diem provided by law as compensation.

(4) The state board of canvassers may not withhold the declaration of the result or any certificate of election because of any defect or informality in the returns of any election if the board can determine from the returns, with reasonable certainty, what office is intended and who is elected to it.

(5) (a) At noon on the second Thursday after the primary election, the lieutenant governor shall:

(i) canvass the returns for all candidates required to file with the office of the lieutenant governor; and

(ii) publish and file the results of the canvass in the offices of the lieutenant governor.

(b) The lieutenant governor shall certify the results of the primary canvass to the county clerks not later than the second Friday after the primary election.

Section 115. Section Enacted.

Section 20A-4-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Recounts and Election Contests

20A-4-401. Recounts — Procedure.

(1) (a) Any candidate whose name appears on the official ballot in any voting precinct for any regular primary or municipal primary election may request that the board of canvassers recount the ballots cast in that voting precinct by alleging, in an affidavit filed with the election officer at least one day before the date fixed for canvassing the returns, that fraud was committed or error or mistake was made in counting or returning the votes cast in that voting precinct.

(b) (i) If the board receives an affidavit requesting a recount, the board shall recount the ballots cast in those voting precincts for the office for which the contestant was a candidate.

(ii) If, after recounting the ballots, the board reaches a different result from that returned by the election judges, the board shall substitute its result as the true and correct return and use its result in all subsequent proceedings.

(c) The board's decision based upon the recount is final and no other contest is permitted.

(2) If a court orders a recount of votes, the ballots shall be recounted in the manner directed by the judicial authority.

(3) (a) For any regular general or municipal general election, when any candidate loses by not more than a total of one vote per voting precinct, he may file a request for a recount with the appropriate election officer within seven days of the canvass.

(b) The election officer shall:

(i) supervise the recount;

(ii) recount all ballots cast for that office;

(iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part 3; and

(iv) declare elected the person receiving the highest number of votes on the recount.

(4) (a) Any ten voters who voted in an election when any ballot proposition was on the ballot may file a request for a recount with the appropriate election officer within seven days of the canvass.

(b) The election officer shall:

(i) supervise the recount;

(ii) recount all ballots cast for that ballot proposition;

(iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part 3; and

(iv) declare the ballot proposition to have "passed" or "failed" based upon the results of the recount.

(c) Proponents and opponents of the ballot proposition may designate representatives to witness the recount.

(d) The person or entity requesting the recount shall pay the costs of the recount.

(5) Costs incurred by recount under Subsection (3) may not be assessed against the person requesting the recount.

Section 116. Section Enacted.

Section 20A-4-402, Utah Code Annotated 1953, is enacted to read:

20A-4-402. Election contests — Grounds.

(1) The election or nomination of any person to any public office, and the declared result of the vote on any ballot proposition submitted to a vote of the people may be contested according to the procedures established in this part only:

(a) for malconduct, fraud, or corruption on the part of the judges of election at any polling place, or of any board of canvassers, or any judge or member of the board sufficient to change the result;

(b) when the person declared elected was not eligible for the office at the time of the election;

(c) when the person declared elected has:

(i) given or offered to any registered voter, judge, or canvasser of the election any bribe or reward in money, property, or anything of value for the purpose of influencing the election; or

(ii) committed any other offense against the elective franchise;

(d) when illegal votes have been received or legal votes have been rejected at the polls sufficient to change the result;

(e) for any error of any board of canvassers or judges of election in counting the votes or declaring the result of the election, if the error would change the result;

(f) when the election result would change because a sufficient number of ballots containing uncor-

rected errors or omissions have been received at the polls;

(g) when the candidate declared elected is ineligible to serve in the office to which the candidate was elected;

(h) when an election judge or clerk was a party to malconduct, fraud, or corruption sufficient to change the result of the election; and

(i) for any other cause that shows that another person was legally elected.

(2) Any irregularity or improper conduct by the election judges does not void an election unless the irregularity or improper conduct would result in the election of a person who did not receive the highest number of legal votes.

(3) When any election held for any office is contested because of any irregularity or improper conduct on the part of a judge of any voting precinct, a court, upon proof of the irregularity or improper conduct may not set aside the election unless the irregularity or improper conduct would change the result for that office.

Section 117. Section Enacted.

Section 20A-4-403, Utah Code Annotated 1953, is enacted to read:

20A-4-403. Election contest — Petition and response.

(1) (a) In contesting the results of all elections except primary elections, a registered voter shall contest the right of any person declared elected to any office by filing a verified written complaint with the district court of the county in which he resides within 40 days after the canvass.

(b) The complaint shall include:

(i) the name of the party contesting the election;

(ii) a statement that the party is a registered voter in the jurisdiction in which the election was held;

(iii) the name of the person whose right to the office is contested;

(iv) the office to which that person was ostensibly elected;

(v) one or more of the grounds for an election contest specified in Section 20A-4-402;

(vi) the person who was purportedly elected to the office as respondent; and

(vii) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected.

(c) When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, it is sufficient to state generally that:

(i) illegal votes were given in one or more specified voting precincts to a person whose election is contested, which, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office; or

(ii) that legal votes for another person were rejected, which, if counted, would raise the number of legal votes for that person above the number of legal votes cast for the person whose election is contested.

(d) (i) The court may not take or receive evidence of any of the votes described in Subsection (c) unless the party contesting the election delivers to the opposite party, at least three days before the trial, a written list of the number of contested votes and by whom the contested votes were given or offered, which he intends to prove at trial.

(ii) The court may not take or receive any evidence of contested votes except those that are specified in that list.

(2) (a) In contesting the results of a primary election, when contesting the petition nominating an independent candidate, or when challenging any person, election officer, election official, board, or convention for failing to nominate a person, a registered voter shall contest the right of any person declared nominated to any office by filing a verified written complaint within ten days from the date of the primary election, filing of the petition, or date of the convention with:

(i) the district court of the county in which he resides if he is contesting a nomination made only by voters from that county; or

(ii) the Utah Supreme Court, if he is contesting a nomination made by voters in more than one county.

(b) The complaint shall include:

(i) the name of the party contesting the nomination;

(ii) a statement that the contesting party is a registered voter in the jurisdiction in which the election was held;

(iii) the name of the person whose right to nomination is contested or the name of the person who failed to have their name placed in nomination;

(iv) the office to which that person was nominated or should have been nominated;

(v) one or more of the grounds for an election contest specified in Subsection (1);

(vi) the person who was purportedly nominated to the office as respondent; and

(vii) if the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the name and address of all persons who allegedly cast illegal votes or whose legal vote was rejected.

(c) When the reception of illegal votes or the rejection of legal votes is alleged as a cause of contest, it is sufficient to state generally that:

(i) illegal votes were given to a person whose election is contested, which, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office; or

(ii) legal votes for another person were rejected, which, if counted, would raise the number of legal votes for that person above the number of legal votes cast for the person whose election is contested.

(d)(i) The court may not take or receive evidence of any the votes described in Subsection (c), unless the party contesting the election delivers to the opposite party, at least three days before the trial, a written list of the number of contested votes and by whom the contested votes were given or offered, which he intends to prove at trial.

(ii) The court may not take or receive any evidence of contested votes except those that are specified in that list.

(3) The court may not reject any statement of the grounds of contest or dismiss the proceedings because of lack of form, if the grounds of the contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the election is contested.

(4)(a) The petitioner shall serve a copy of the petition on the respondent.

(b)(i) If the petitioner cannot obtain personal service of the petition on the respondent, the petitioner may serve the respondent by leaving a copy of the petition with the clerk of the court with which the petition was filed.

(ii) The clerk shall make diligent inquiry and attempt to inform the respondent that he has five days to answer the complaint.

(c) The respondent shall answer the petition within five days after the service.

(d) If the reception of illegal votes or the rejection of legal votes is alleged as a ground for the contest, the defendant shall set forth in the answer the name and address of all persons whom the defendant believes were properly or improperly admitted or denied the vote.

(e) If the answer contains a counterclaim, the petitioner shall file a reply within ten days after service of the counterclaim.

(5)(a) The provisions of this Subsection (5) provide additional requirements that apply to municipal election contests that are in addition to the other requirements of this section governing election contest.

(b) Municipal election contests shall be filed, tried, and determined in the district court of the county in which the municipality is located.

(c)(i) As a condition precedent to filing a municipal election contest, the petitioner shall file a written affidavit of intention to contest the election with the clerk of the court within seven days after the votes are canvassed.

(ii) The affidavit shall include:

(A) the petitioner's name;

(B) the fact that the petitioner is a qualified voter of the municipality;

(C) the respondent's name;

(D) the elective office contested;

(E) the time of election; and

(F) the grounds for the contest.

(d)(i) Before the district court takes jurisdiction of a municipal election contest, the petitioner shall file a bond with the clerk of the court with the sureties required by the court.

(ii) The bond shall name the respondent as obligee and be conditioned for the payment of all costs incurred by the respondent if the respondent prevails.

Section 118. Section Enacted.

Section 20A-4-404, Utah Code Annotated 1953, is enacted to read:

20A-4-404. Election contest — Calendaring and disposition.

(1)(a) Upon receipt of the petition, the clerk shall inform the chief judge of the court having jurisdiction.

(b) The chief judge shall issue an order:

(i) assigning the case to a district court judge, if the district court has jurisdiction; and

(ii) setting a date and time, not less than ten nor more than 30 days from the date the petition was filed to hear and determine the contest.

(c) The clerk shall:

(i) issue a subpoena for the person whose right to the office is contested to appear at the time and place specified in the order; and

(ii) cause the subpoena to be served.

(2) The court shall meet at the time and place designated to determine the contest.

(3)(a) If it is necessary for the court to inspect the ballots of any voting precinct in order to determine any election contest the judge may order the proper officer to produce them.

(b) The judge shall:

(i) open and inspect the ballots in open court in the presence of the parties or their attorneys; and

(ii) immediately after the inspection, seal them in an envelope and return them, by mail or otherwise, to their legal custodian.

(4)(a) If the petition, response, or counterclaim alleges an error in the canvass sufficient to change the result, the court may order and conduct a recount of the ballots or vote tabulation.

(b) The court may also require the production of any documents, records, and other evidence necessary to enable it to determine the legality or illegality of any vote cast or counted.

(c)(i) After all the evidence in the contest is submitted, the court shall enter its judgment, either confirming the election result or annulling and setting aside the election.

(ii) If the court determines that a person other than the one declared elected received the highest number of legal votes, the court shall declare that person elected.

Section 119. Section Enacted.

Section 20A-4-405, Utah Code Annotated 1953, is enacted to read:

20A-4-405. Election contests — Costs.

(1) The court shall enter judgment for costs against the party contesting the election if:

(a) the proceedings are dismissed for:

(i) insufficiency of pleading or proof; or

(ii) want of prosecution; or

(b) the election is confirmed by the court.

(2) The court shall enter judgment for costs against the party whose election was contested if the election is annulled and set aside.

(3) (a) Each party is liable for the costs of the officers and witnesses that appeared on his behalf.

(b) The party may pay, and the officers and witnesses may collect, those costs in the same manner as similar costs are paid and collected in other cases.

Section 120. Section Enacted.

Section 20A-4-406, Utah Code Annotated 1953, is enacted to read:

20A-4-406. Election contests — Appeal.

(1) (a) Either party may appeal the district's court's judgment to the Supreme Court as in other cases of appeal from the district court.

(b) When an appeal is taken, the district court may not stay execution or proceedings, except execution for costs.

(2) Whenever an election is annulled or set aside by the judgment of a court and no appeal is taken within ten days, the certificate of election, if any has been issued, is void, and the office is vacant.

Section 121. Section Enacted.

Section 20A-4-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Offenses Involving Election Returns

20A-4-501. Election returns — Forgery.

(1) It is unlawful for any person to:

(a) forge or counterfeit any election returns from any election purporting to have been held at any voting precinct where no election was in fact held;

(b) willfully substitute any forged or counterfeit election returns in the place of the true return for a voting precinct where any election was actually held; or

(c) commit or cause any fraud in any election in any manner.

(2) Each person who violates this section may be sentenced to imprisonment in the state prison for a term of not less than two nor more than ten years.

Section 122. Section Enacted.

Section 20A-4-502, Utah Code Annotated 1953, is enacted to read:

20A-4-502. Altering vote count or returns.

(1) It is unlawful for any person to:

(a) willfully add to or subtract from the votes actually cast at an election in any election returns; or

(b) alter any election returns.

(2) Any person who violates this section may be sentenced to imprisonment in the state prison for not less than one nor more than five years.

Section 123. Section Enacted.

Section 20A-4-503, Utah Code Annotated 1953, is enacted to read:

20A-4-503. Abetting forgery or alteration.

(1) It is unlawful for any person to willfully aid or abet in the commission of any of the offenses defined in this part.

(2) Each person who violates this section may be sentenced to imprisonment in the state prison for a period not exceeding two years.

Section 124. Section Enacted.

Section 20A-4-504, Utah Code Annotated 1953, is enacted to read:

20A-4-504. Interfering with count.

(1) It is unlawful for any person to intentionally ascertain, or attempt to ascertain, the progress or state of the count before the ballot count is completed in the voting precinct, or before 8 p.m., whichever is later.

(2) Any person who violates this section is guilty of a third degree felony.

Section 125. Section Enacted.

Section 20A-4-505, Utah Code Annotated 1953, is enacted to read:

20A-4-505. Communicating about the count.

(1) It is unlawful for any election judge to communicate in any manner, directly or indirectly, by word or sign, the progress of the count, the result so far, or any other information about the count.

(2) Any person who violates this section is guilty of a third degree felony.

Section 126. Section Enacted.

Section 20A-5-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 5. ELECTION ADMINISTRATION

Part 1. Election Notices and Instructions

20A-5-101. Notice of election.

(1) Before each election, the election officer shall give written or printed notice of:

(a) the date and place of election;

(b) the hours during which the polls will be open;

(c) the polling places in each voting precinct; and

(d) the qualifications for persons to vote in the election.

(2) To provide the notice required in Subsection (1), the election officer shall either:

(a) publish the notice at least two days before the election in a newspaper of general circulation common to the area or in which the election is being held;

(b) require the registration agents to post the notice at least five days before the election in:

(i) at least five conspicuous places within each of their voting precincts;

(ii) at least four conspicuous places within each of their voting precincts and in a well-used public location in a nearby district; or

(c) provide notice by both publishing and posting.

Section 127. Section Enacted.

Section 20A-5-102, Utah Code Annotated 1953, is enacted to read:

20A-5-102. Voting instructions.

(1) Each election officer shall:

(a) print instruction cards for voters;

(b) ensure that the cards are printed in English in large clear type; and

(c) ensure that the cards instruct voters:

(i) about how to obtain ballots for voting;

(ii) about how to prepare ballots for deposit in the ballot box;

(iii) about how to obtain a new ballot in the place of one spoiled by accident or mistake;

(iv) about how to obtain assistance in marking ballots;

(v) about obtaining a new ballot if the voter's ballot is defaced;

(vii) that identification marks or the spoiling or defacing of a ballot will make it invalid.

(2) Each election officer shall:

(a) provide the election judges of each voting precinct with sufficient instruction cards to instruct voters in the preparation of their ballots;

(b) direct the election judges to post:

(i) at least one instruction card in each voting booth; and

(ii) at least three instruction cards and at least one sample ballot elsewhere in and about the polling place.

Section 128. Section Enacted.

Section 20A-5-103, Utah Code Annotated 1953, is enacted to read:

20A-5-103. Constitutional amendments — Posting.

(1) Whenever a constitutional amendment is submitted to a vote of the people for their approval or rejection, the county clerk shall:

(a) cause the original section of the constitution to be printed on cards in large clear type with the changes to it indicated by bracketing and interlining any language proposed to be repealed and underlining any new language proposed to be inserted; and

(b) place the question as it appears upon the official ballot after the original section.

(2) If there is more than one amendment submitted, the clerk shall ensure that the proposed amendments are placed upon the cards in columns in the same order as they will appear upon the official ballot.

(3) Each county clerk shall:

(a) provide the election judges for each voting precinct with six constitutional amendment cards;

(b) direct the election judges to post:

(i) at least one constitutional amendment card in each voting booth; and

(ii) at least three constitutional amendment cards elsewhere in and about the polling place.

Section 129. Section Enacted.

Section 20A-5-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Registration Agents

20A-5-201. Registration agents — Appointment.

(1) (a) Each county legislative body shall:

(i) appoint one person as registration agent for each voting precinct from names furnished and certified by the chairman and secretary of the political party from which the appointment is to be made; and

(ii) ensure that the registration agent appointed for a voting precinct belongs to the political party that received the highest number of total votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer in that voting precinct at the last regular general election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(b) If the chairman and secretary of the political party fail to provide the county legislative body with a list of names within ten days after being requested to do so by the county clerk, the county legislative body shall appoint qualified persons to be registration agents according to the requirements of this chapter.

(2) (a) If the voting precinct boundaries have been changed since the last regular general election, the

county legislative body shall comply with the procedures and requirements of this subsection in making the appointment.

(b) When two or more voting precincts have been created out of a single voting district, the county legislative body shall:

(i) appoint a person as registration agent for each voting precinct; and

(ii) ensure that the person is a member of the political party that cast the highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer in the old voting precinct at the last regular general election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(c) When a voting district is created by combining two or more voting precincts, or parts of two or more voting precincts, the county legislative body shall ensure that the registration agent appointed for that precinct is a member of the political party that cast the highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer in the newly created voting precinct at the last November election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(3) (a) The county legislative body shall appoint registration agents every two years at the regular meeting of the county legislative body held nearest to the first day of the June before the regular general election.

(b) The county legislative body shall appoint registration agents to serve two year terms, but may remove them at any time for cause.

(c) The county legislative body may not appoint a person who is a candidate for, or who holds, an elective state, county, municipal, school district, special district, or other public office to be a registration agent.

(d) A person who is a candidate for, or who holds, an elective state, county, municipal, school district, special district, or other public office may not act as a registration agent.

(e) A registration agent may also serve as an election judge.

(f) The county clerk shall provide each registration agent with written notice of his appointment.

(4) (a) Each county legislative body shall provide each registration agent with all books, stationery, and other supplies necessary to carry out the provisions of this chapter.

(b) The registration agent shall return all remaining materials to the county clerk, or to a person designated by the county clerk, when his appointment ends.

(5) A registration agent who resigns or becomes a nonresident of his voting precinct shall:

(a) notify the county clerk of that fact; and

(b) deliver to the county clerk, or to another person designated by the county clerk, the official register for the voting precinct and all other books, documents, and materials in the agent's possession that pertain to the office.

(6) (a) (i) The chair of the county legislative body, upon receipt of notice of the death, disqualification, or resignation of any registration agent after the opening and before the closing of the registration books, shall immediately, without giving notice, appoint some competent person to fill the vacancy.

(ii) The person appointed shall qualify within two days after receiving notice of the appointment.

(b) (i) If a registration agent is sick or otherwise unable to serve on a designated registration day, the registration agent shall select a responsible adult to perform the agent's duties on that day.

(ii) The county clerk shall approve the substituted adult.

(iii) If possible the substitute shall use the original designated registration office.

(iv) If it is necessary to use an alternate registration site, the substitute registration agent shall post a large sign on the front door of the building in which the regular registration site is located that identifies the address of the alternate registration site.

(7) (a) Before entering upon the duties prescribed in this chapter, each registration agent shall:

(i) take and subscribe the oath of office required by Article IV, Section 10, of Utah's Constitution before any person authorized to administer an oath; and

(ii) file the oath with the county clerk.

(b) Each county legislative body shall establish a per diem of not more than $20 per day as compensation for all services provided by registration agents.

(c) Each registration agent shall:

(i) keep a written account that clearly shows the number of days spent in the performance of their official duties; and

(ii) swear to and file the account with their county auditor.

(8) The county clerk shall make detailed entries of all proceedings had under this chapter and notify in writing the registration agents of their appointment.

Section 130. Section Enacted.

Section 20A-5-202, Utah Code Annotated 1953, is enacted to read:

20A-5-202. Registration agents — Duties.

(1) Registration agents may administer oaths and affirmations and perform all other acts that are necessary to fully accomplish the requirements of this part.

(2) A registration agent shall register to vote all persons who:

(a) present themselves for registration between 8 a.m. and 9 p.m on:

(i) the first Tuesday, the first Wednesday, and the first Thursday before the regular primary election;

(ii) the first Tuesday, the first Wednesday, and the first Thursday before the regular general election;

(iii) the first Tuesday before the municipal primary election in municipalities holding a municipal primary election; and

(iv) the second Tuesday and the second Wednesday before the municipal general election; and

(b) are legally qualified and entitled to vote in that voting precinct on election day.

(3) The registration agent shall write the names of the persons who registered to vote with the county clerk on the:

(a) official register of the voting precinct; and

(b) posting list.

(4) During the time voter registration is being held, registration agents may not display any political signs, posters, or other designations of support for candidates, issues, or political parties on the premises.

Section 131. Section Enacted.

Section 20A-5-203, Utah Code Annotated 1953, is enacted to read:

20A-5-203. Correction of errors — Challenges.

(1) Between the hours of 6 p.m. and 9 p.m. on the Saturday before election day, each registration agent shall:

(a) receive any written challenges of the right to vote of any persons whose name appears on the official register; and

(b) receive all requests for correction of errors in the official register.

(2) The registration agent shall:

(a) carefully preserve the written challenges;

(b) deliver the written challenges to the election judges; and

(c) write in the official register opposite the name of any person for whom the registration agent received a written challenge or whom the registration agent believes to be dead or to no longer be a resident of that voting precinct, the words "To be challenged".

(3) Each registration agent shall:

(a) post the list outside the registration office on each registration day during the hours of registration; and

(b) provide notice with the posted list of the date and time during which the registration agent will accept:

(i) a challenge to any person's right to vote;

(ii) requests for corrections of any errors in the official register and posting list.

Section 132. Section Enacted.

Section 20A-5-204, Utah Code Annotated 1953, is enacted to read:

20A-5-204. Registration agents — Verification of residency.

(1) (a) Before the Saturday immediately before election day, registration agents who have received notification of persons registering under the methods outlined in this chapter shall verify actual residency in the district.

(b) If the agent is unable to confirm residency, the agent shall notify the county clerk and enter the words: "To be challenged" opposite the registered name, together with the grounds for disqualification.

(2) (a) Upon finding duplicate registration, the county clerk shall first check for errors in the record.

(b) If duplicate registration does exist, the clerk shall give written notice to the county attorney of alleged violations of this title.

Section 133. Section Enacted.

Section 20A-5-205, Utah Code Annotated 1953, is enacted to read:

20A-5-205. Delivery of official register.

(1) Before delivering the official register to the election judges, the election officer and registration agent shall attach the certificate required by law to the book.

(2) (a) The registration agent shall deliver the official register and the posting list, its accuracy verified by his signature, to an election judge in each voting precinct by noon on the day before the election.

(b) The registration agent shall obtain a receipt for the official register from the election judge.

Section 134. Section Enacted.

Section 20A-5-206, Utah Code Annotated 1953, is enacted to read:

20A-5-206. Change of district boundaries — Revising list.

(1) Whenever the boundaries of any voting precinct are changed, or a new voting precinct is created, the registration agents of the voting precincts affected shall meet before the first day of the next registration period and transfer the names of all voters residing within the territory affected by such change from one official register to the other.

(2) Any registered voter whose name has been erroneously transferred from one official register to another, or erroneously allowed to remain on any official register, may vote in the voting precinct in which he resides if he:

(a) takes the registration oath before one of the election judges; and

(b) presents sufficient proof to the election judges that his name does not appear on the official register because of an error.

Section 135. Section Enacted.

Section 20A-5-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Duties of the County and Municipal Legislative Bodies

20A-5-301. Combined voting districts — Municipalities.

(1) (a) The municipal legislative body of cities of the first and second class may combine two regular county voting precincts into one municipal voting precinct for purposes of a municipal election if they designate the location and address of each of those combined voting precincts.

(b) The polling place shall be within the combined voting precinct or within 1/2 mile of the boundaries of the voting precinct.

(2) (a) The municipal legislative body of cities of the third class and towns, may combine two or more regular county voting precincts into one municipal voting precinct for purposes of an election if they designate the location and address of that combined voting precinct.

(b) If only two precincts are combined, the polling place shall be within the combined precinct or within 1/2 mile of the boundaries of the combined voting precinct.

(c) If more than two precincts are combined, the polling place should be as near as practical to the middle of the combined precinct.

Section 136. Section Enacted.

Section 20A-5-302, Utah Code Annotated 1953, is enacted to read:

20A-5-302. Automated voting system.

(1) Any county or municipal legislative body or special district board may:

(a) adopt, experiment with, acquire by purchase, lease, or otherwise, or abandon any automated voting system that meets the requirements of this section;

(b) use that system in any election, in all or a part of the voting precincts within its boundaries, or in combination with paper ballots.

(2) (a) Each automated voting system shall:

(i) provide for voting in secrecy, except in the case of voters who have received assistance as authorized by Section 20A-3-108;

(ii) permit each voter at any election to:

(A) vote for all persons and offices for whom and for which that voter is lawfully entitled to vote;

(B) vote for as many persons for an office as that voter is entitled to vote; and

(C) vote for or against any ballot proposition upon which that voter is entitled to vote;

(iii) permit each voter, at presidential elections, by one mark or punch to vote for the candidates of that party for president, vice president, and for their presidential electors;

(iv) at elections other than primary elections, permit each voter to vote for the nominees of one or more parties and for independent candidates;

(v) at primary elections:

(A) permit each voter to vote for candidates of the political party of his choice; and

(B) reject any votes cast for candidates of another party;

(vi) prevent the voter from voting for the same person more than once for the same office;

(vii) include automatic tabulating equipment that rejects choices recorded on a voter's ballot if the number of the voter's recorded choices is greater than the number which the voter is entitled to vote for the office or on the measure;

(viii) be of durable construction, suitably designed so that it may be used safely, efficiently, and accurately in the conduct of elections and counting ballots; and

(ix) when properly operated, record correctly and count accurately each vote cast.

(b) Notwithstanding any other provisions of this section, the election officers shall ensure that the ballots to be counted by means of electronic or electromechanical devices are of a size, layout, texture, and printed in a type of ink or combination of inks that will be suitable for use in the counting devices in which they are intended to be placed.

Section 137. Section Enacted.

Section 20A-5-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Election Officer's Duties

20A-5-401. Official Register — Preparation — Contents.

(1) (a) Before the registration days for each regular general or municipal general election, each county clerk shall prepare an official register of voters for each voting precinct that will participate in the election.

(b) The county clerk shall ensure that the official register is a bound book prepared for the alphabetical entry of names and ruled in columns of suitable dimensions to provide for the following entries:

(i) registered voter's name;

(ii) grounds for challenge;

(iii) name of person challenging a voter;

(iv) ballot numbers, primary, November, special;

(v) date of birth;

(vi) place of birth;

(vii) place of current residence;

(viii) street address;

(ix) zip code; and

(x) space for the voter to sign his name for each election.

(2) The county clerk shall deliver the official register to the registration agent of the voting precinct at least 30 days before the first day of registration.

(3) (a) For municipal, special district, and bond elections, the county clerk shall make an official register only for voting precincts affected by the municipal, special district, or bond election.

(b) Municipalities shall pay the costs of making the register.

Section 138. Section Enacted.

Section 20A-5-402, Utah Code Annotated 1953, is enacted to read:

20A-5-402. Removing voter's names from the official register.

(1) The county clerk shall annually purge the official register of all voters who have failed to vote in at least one general or municipal election held in one of the four calendar years preceding the current calendar year.

(2) The county clerk may remove a voter's name from the registration list before the time period in Subsection (1) has expired if:

(a) the voter requests removal in a written, signed, and notarized statement; or

(b) upon the annual receipt of a listing of all deceased residents from the Department of Health's Bureau of Vital Records, the county clerk:

(i) compares that listing to the list of registered voters;

(ii) sends a letter addressed to the person whose name appears on both lists indicating that, unless advised otherwise, the clerk will delete that name from the registered voter's roll; and

(iii) the clerk has received no objection to the removal after 30 days from the date the notice was mailed.

Section 139. Section Enacted.

Section 20A-5-403, Utah Code Annotated 1953, is enacted to read:

20A-5-403. Polling places — Booths — Ballot boxes — Provisions — Arrangements.

(1) Each election officer shall:

(a) designate polling places for each voting precinct in the jurisdiction; and

(b) obtain the approval of the county or municipal legislative body or special district governing board for those polling places.

(2) (a) For each polling place, the election officer shall provide:

(i) an American flag;

(ii) a sufficient number of voting booths or compartments;

(iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot cards, write-in ballots, and any other records and supplies necessary to enable a voter to vote.

(b) Each election officer shall ensure that:

(i) each voting booth is at least three feet square, contains a shelf that is at least one foot wide extending across one side of the booth at a convenient height for writing, and is arranged so that the voter can prepare his ballot screened from observation; and

(ii) there is at least one voting booth for every 100 voters who voted at the last election in the voting precinct.

(c) Each county clerk shall provide a ballot box for each polling place that is large enough to properly receive and hold the ballots to be cast.

(3) The municipality in which the election is held shall pay the cost of conducting each municipal election, including the cost of printing and supplies.

(4) The county clerk shall make detailed entries of all proceedings had under this chapter.

Section 140. Section Enacted.

Section 20A-5-404, Utah Code Annotated 1953, is enacted to read:

20A-5-404. Election forms — Preparation and contents.

(1) For each election, the election officer:

(a) shall prepare, for each voting precinct, a:

(i) ballot disposition form;

(ii) total votes cast form;

(iii) tally sheet form; and

(iv) pollbook.

(b) For each election, the election officer shall:

(i) provide a copy of each form to each of those precincts using paper ballots; and

(ii) provide a copy of the ballot disposition form and a pollbook to each of those voting precincts using an automated voting system.

(2) The election officer shall ensure that the ballot disposition form contains a space for the judges to identify:

(a) the number of ballots voted;

(b) the number of substitute ballots voted, if any;

(c) the number of ballots delivered to the voters;

(d) the number of spoiled ballots;

(e) the number of registered voters listed in the official register;

(f) the total number of voters voting according to the pollbook; and

(g) the number of unused ballots.

(3) The election officer shall ensure that the total votes cast form contains:

(a) the name of each candidate appearing on the ballot, the office for which the candidate is running, and a blank space for the election judges to record the number of votes that the candidate received;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to record the number of votes that the write-in candidate received;

(c) a heading identifying each ballot proposition and blank spaces for the election judges to record the number of votes for and against each proposition; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the total votes cast form:

"TOTAL VOTES CAST

At an election held at ____ in ____ voting precinct in _____(name of entity holding the election) and State of Utah, on the ____ day of ____, in the year ____, the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were as follows:

Certified by us ____, ____, ____, Judges of Election."

(4) The election officer shall ensure that the tally sheet form contains:

(a) for each office, the names of the candidates for that office, and blank spaces to tally the votes that each candidate receives;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to tally the votes for each write-in candidate;

(c) for each ballot proposition, a heading identifying the ballot proposition and the words "Yes" and "No" or "For" and "Against" on separate lines with blank spaces after each of them for the election judges to tally the ballot proposition votes; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the tally sheet form:

"Tally Sheet

We the undersigned election judges for voting precinct #_____, _____(entity holding the election) certify that this is a true and correct list of all persons voted for and ballot propositions voted on at the election held in that voting precinct on _____(date of election) and is a tally of the votes cast for each of those persons. Certified by us ____, ____, ____, Judges of Election."

(5) The election officer shall ensure that the pollbook:

(a) identifies the voting precinct number on its face; and

(b) contains:

(i) a section to record persons voting on election day, with columns entitled "Ballot Number" and "Voter's Name";

(ii) another section in which to record absentee ballots;

(iii) a section in which to record voters who are challenged; and

(iv) a certification, in substantially the following form:

"We, the undersigned, judges of an election held at _____ voting precinct, in _____ County, state of Utah, on the ____ day of ____, 19__, having first been sworn according to law, certify that the information listed in this book is a true statement of the number and names of the persons voting in the voting precinct at the election, and that the total number of persons voting at the election was ____."

_____

_____

_____

Judges of Election

Section 141. Section Enacted.

Section 20A-5-405, Utah Code Annotated 1953, is enacted to read:

20A-5-405. Election officer to provide ballots.

(1) In jurisdictions using paper ballots, each election officer shall:

(a) provide printed official paper ballots and absentee ballots for every election of public officers in which the voters, or any of the voters, within the election officer's jurisdiction participate;

(b) cause the name of every candidate whose nomination has been certified to or filed with the election officer in the manner provided by law to be printed on each official paper ballot and absentee ballot;

(c) cause any ballot proposition that has qualified for the ballot as provided by law to be printed on each official paper ballot and absentee ballot;

(d) ensure that the official paper ballots are printed and in the possession of the election officer at least four days before election day;

(e) ensure that the absentee ballots are printed and in the possession of the election officer at least 15 days before election day;

(f) allow candidates and their agents and the sponsors of ballot propositions that have qualified for the official ballot to inspect the official paper ballots and absentee ballots;

(g) cause sample ballots to be printed that are in the same form as official paper ballots and that contain the same information as official paper ballots but that are printed on different colored paper than official paper ballots;

(h) ensure that the sample ballots are printed and in the possession of the election officer at least seven days before election day;

(i) make the sample ballots available for public inspection by:

(i) posting a copy of the sample ballot in his office at least seven days before the election;

(ii) mailing a copy of the sample ballot to:

(A) each candidate listed on the ballot; and

(B) the lieutenant governor; and

(iii) publishing a copy of the sample ballot immediately before the election in at least one newspaper of general circulation in the jurisdiction holding the election;

(j) deliver 25 copies of the sample ballot to election judges in each voting precinct and direct them to post the sample ballots at each voting precinct as required by Section 20A-5-102; and

(k) print and deliver, at the expense of the jurisdiction conducting the election, enough official paper ballots, absentee ballots, sample ballots, and instruction cards to meet the voting demands of the qualified voters in each voting precinct.

(2) In jurisdictions using ballot cards, each election officer shall:

(a) provide official ballot cards, absentee ballot cards, and printed official ballot labels for every election of public officers in which the voters, or any of the voters, within the election officer's jurisdiction participate;

(b) cause the name of every candidate who filed with the election officer in the manner provided by law or whose nomination has been certified to the election officer to be printed on each official ballot label;

(c) cause each ballot proposition that has qualified for the ballot as provided by law to be printed on each official ballot label;

(d) ensure that the official ballot labels are printed and in the possession of the election officer at least four days before election day;

(e) allow candidates and their agents and the sponsors of ballot propositions that have qualified for the official sample ballot to inspect the official sample ballot;

(f) cause sample ballots to be printed that are in the same form as official ballot labels and that contain the same information as official ballot labels but that are distinguishable from official ballot labels;

(g) ensure that the sample ballots are printed and in the possession of the election officer at least seven days before election day;

(h) make the sample ballots available for public inspection:

(i) post the sample ballots as required by Section 20A-5-102; and

(j) print and deliver official ballot cards, official ballot labels, sample ballots, and instruction cards at the expense of the jurisdiction conducting the election.

(3) (a) Each election officer shall, without delay, correct any error discovered in any official paper ballot, ballot label, or sample ballot, if the correction can be made without interfering with the timely distribution of paper ballots and ballot labels.

(b) If the election officer discovers errors or omissions in the paper ballots or ballot labels and it is not possible to correct the errors or omissions by reprinting the paper ballots or ballot labels, the election officer shall direct the election judges to make the necessary corrections on the official paper ballots or ballot labels before they are distributed at the polls.

(c) (i) If the election officer refuses or fails to correct an error or omission in the paper ballots or ballot labels, a candidate or his agent may file a verified petition with the district court asserting that:

(A) an error or omission has occurred in the publication of the name or description of a candidate or in the printing of sample or official paper ballots or ballot labels; and

(B) the election officer has failed to correct or provide for the correction of the error or omission.

(ii) The district court shall issue an order requiring correction of any error in a paper ballot or ballot label, or an order to show cause why the error should not be corrected if it appears to the court that the error or omission has occured and the election officer has failed to correct it or failed to provide for its correction.

(iii) A party aggrieved by the district court's decision may appeal the matter to the Utah Supreme Court within five days after the decision of the district court.

Section 142. Section Enacted.

Section 20A-5-406, Utah Code Annotated 1953, is enacted to read:

20A-5-406. Delivery of ballots.

(1) Each election officer shall deliver ballots to the election judges of each voting precinct in his jurisdiction as follows:

(a) if the boundaries of the voting precinct have not been changed since the last election, 75 ballots for every 50, or fraction of 50, voters registered at the last election in the voting precinct;

(b) if the boundaries of the voting precinct have been changed since the last election, or when a new voting precinct has been created, 75 ballots for every 50, or fraction of 50, voters that the election officer estimates are registered to vote in the revised or new district.

(2) The election officer shall:

(a) deliver the ballots to the election judges in two sealed packages, each package containing one half the ballots sent to that voting precinct;

(b) clearly mark the outside of the package with:

(i) the voting precinct and polling place for which it is intended; and

(ii) the number of ballots enclosed;

(c) ensure that each package is delivered before noon the Monday before election day to an election judge in each district; and

(d) obtain a receipt for the ballots from the election judge to whom they were delivered that identifies the time when, and the manner in which, each ballot package was sent and delivered.

(3)(a) The election officer shall prepare substitute ballots in the form required by this subsection if any election judge reports that:

(i) the ballots were not delivered on time; or

(ii) after delivery, they were destroyed or stolen.

(b) The election officer shall:

(i) prepare the substitute ballots as nearly in the form prescribed for official ballots as practicable;

(ii) cause the word "substitute" to be printed in brackets immediately under the facsimile signature of the clerk or recorder preparing the ballots;

(iii) place the ballots in two separate packages, each package containing 1/2 the ballots sent to that voting precinct; and

(iv) place a signed statement in each package certifying that the substitute ballots found in the package were prepared and furnished by him, and that the original ballots were not received, were destroyed, or were stolen.

Section 143. Section Enacted.

Section 20A-5-407, Utah Code Annotated 1953, is enacted to read:

20A-5-407. Election officer to provide ballot boxes.

(1) Except as provided in Subsection (3), each election officer shall:

(a) provide one ballot box with a lock and key for each polling place; and

(b) deliver the ballot boxes, locks, and keys to the election judges of each voting precinct no later than noon on the day before the election.

(2) Election officers for municipalities and special districts may obtain ballot boxes from the county clerk's office.

(3) If locks and keys are unavailable, the ballot box lid shall be secured by tape.

Section 144. Section Enacted.

Section 20A-5-408, Utah Code Annotated 1953, is enacted to read:

20A-5-408. Disposition of election returns.

(1) Each election officer shall produce the packages containing the election returns before the board of canvassers.

(2) As soon as the returns are canvassed, the election officer shall file the pollbook, lists, and papers produced before the board as required by Section 20A-4-202.

Section 145. Section Enacted.

Section 20A-5-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Ballot Form

20A-5-501. Form of paper ballots.

(1) For paper ballots, each election officer shall ensure that:

(a) all ballots furnished for use at any one election:

(i) are printed on only one side of the paper;

(ii) are printed using precisely the same quality and tint of plain white paper through which the printing or writing cannot be seen;

(iii) are printed using precisely the same quality and kind of type;

(iv) are printed using precisely the same quality and tint of plain black ink;

(v) are uniform in size for all the voting precincts within the election officer's jurisdiction; and

(vi) contain no captions or other endorsements except as provided in this Subsection (1);

(b) the ballot stub is at least one inch wide, placed above the party names and emblems, and divided from them by a perforated line;

(c) the ballot number and the words "Judge's Initial ____" are printed on the stub;

(d) ballot stubs are numbered consecutively;

(e) immediately below the perforated ballot stub, the following endorsements are printed in 18 point bold type:

(i) "Official Ballot (or Primary Ballot) for (tax entity responsible for the election) ____ County, Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer who has caused the ballot to be printed; and

(iv) for primary elections and municipal general elections, an "Instructions to Voters" section in ten-point bold type and separated from the facsimile signature of the election officer by two one-point parallel horizontal rules;

(f) each ticket is placed in a separate column on the ballot in the order determined by the election officer;

(g) the party name or title is printed in capital letters not less than 1/4 of an inch high;

(h) a circle 1/2 inch in diameter is printed immediately below the party name or title, and the top of the circle is placed not less than two inches below the perforated line;

(i) the columns containing the lists of candidates, including the party name and device, are separated by heavy parallel lines;

(j) the offices to be filled are plainly printed immediately above the names of the candidates for those offices;

(k) for primary elections, the designations of office and the directions for voting are separated from the names of the candidates by a light line;

(l) for primary elections, each group of names of candidates is separated from the succeeding group by one light and one heavy line or rule;

(m) candidates' surnames are listed in alphabetical order on the ballots when two or more candidates' names are required to be listed on a ticket under the title of an office;

(n) the names of candidates are printed in capital letters, not less than 1/8 nor more than 1/4 of an inch high in heavy-faced type not smaller than ten point, between lines or rules;

(o) a square with sides measuring not less than 1/4 of an inch in length is printed at the right of the name of each candidate;

(p) for the offices of president and vice-president and governor and lieutenant governor, one square with sides measuring not less than 1/4 of an inch in length is printed opposite a double bracket enclosing the right side of the names of the two candidates;

(q) immediately to the right of the last partisan ticket on the ballot, the ballot contains a write-in column long enough to contain as many written names of candidates as there are persons to be elected with:

(i) the offices to be filled printed above the blank spaces on the ticket; and

(ii) the words "Write-In Voting Column" printed at the head of the column without a 1/2 inch circle;

(r) when required, the ballot includes a nonpartisan ticket placed immediately to the right of the blank partisan ticket with the word "NONPARTISAN" in reverse type in an 18 point solid rule running vertically the full length of the nonpartisan ballot copy; and

(s) constitutional amendments or other questions submitted to the vote of the people, are printed on the ballot after the list of candidates.

(2) When the ballot contains a nonpartisan section, the election officer shall ensure that:

(a) the designation of the office to be filled in the election and the number of candidates to be elected are printed in type not smaller than eight point;

(b) the words designating the office are printed flush with the left-hand margin;

(c) the words, "Vote for one" or "Vote for two or more" extend to the extreme right of the column;

(d) the nonpartisan candidates are grouped according to the office for which they are candidates;

(e) the names in each group are placed in alphabetical order with the surnames last, except for candidates for the State Board of Education and local school boards;

(f) the names of candidates for the State Board of Education and local school boards are placed on the ballot as required by Sections 53A-1-103 and 53A-3-101; and

(g) each group is preceded by the designation of the office for which the candidates seeks election, and the words, "Vote for one" or "Vote for two or more", according to the number to be elected.

(3) The election officer shall ensure that the "Instruction to Voters" section of each paper ballot is printed in bold-face double-leaded type not smaller than ten point, and states:

(a) for each municipal general election: "Place a mark in the square following the name of the person you favor as the candidate for each respective office."

(b) for primary elections, "To vote for a candidate place a mark in the square following the name of the person you favor as the candidate for each respective office. Do not vote for any candidate listed under more than one party or group designation."

(4) (a) In addition to the requirements of Subsection (1), each election officer shall ensure, for paper ballots at regular general elections, that:

(i) each person nominated by any political party or group of petitioners is placed on the ballot:

(A) under the party name and emblem, if any; or

(B) under the title of the party or group as designated by them in their certificates of nomination or petition, or, if none is designated, then under some suitable title;

(ii) the names of the candidates for president and vice president are used on the ballot instead of the names of the presidential electors; and

(iii) the ballots contain no other names.

(b) In addition to the requirements of Subsection (1), each election officer shall ensure, for paper ballots at municipal general elections, that:

(i) the names of the two candidates who received the highest number of votes for mayor in the municipal primary are placed upon the ballot;

(ii) for other offices:

(A) twice the number of candidates as there are positions to be filled are certified as eligible for election in the municipal general election from those candidates who received the greater number of votes in the primary election; and

(B) the names of those candidates are placed upon the municipal general election ballot.

(5) In primary elections, the election officer shall ensure, for paper ballots, that:

(a) the candidates of each party are all listed in one or more columns under their party name and emblem; and

(b) each ballot is folded and perforated so that:

(i) the candidates of one party are separate from those of the other parties; and

(ii) the voter is able to separate the part of the ballot containing the names of the party of his choice from the remainder of the ballot; and

(iii) the side edges of the ballots are also perforated so that the outside sections of the ballots, when detached, are similar in appearance to inside sections when detached; and

(c) the names of the candidates are grouped according to the office for which they are candidates with each group preceded by the designation of the office for which the candidates seek nomination, and the words, "Vote for one," or "Vote for two or more," according to the number to be elected to the office at the next regular general election.

(6) Whenever the vote for candidates is to be limited to the voters of a particular county, municipality, or special district, the names of the candidates from that county, municipality, or special district may not be printed on any official ballot other than those ballots provided for use in that county, municipality, or special district.

Section 146. Section Enacted.

Section 20A-5-502, Utah Code Annotated 1953, is enacted to read:

20A-5-502. Form of ballot labels and ballot cards.

(1) Each election officer shall ensure that:

(a) ballot labels used in conjunction with ballot cards are, as far as practicable, in the same order or arrangement as provided for paper ballots, except that the the titles of offices, the names of the candidates, and the other ballot information may be printed in vertical columns or in a number of separate pages that are placed on the voting device;

(b) if pages are used, the pages placed on the voting device are of sufficient number to include, after the list of candidates:

(i) the names of candidates for judicial offices and any other nonpartisan offices; and

(ii) any ballot propositions submitted to the voters for their approval or rejection;

(c) ballot labels are printed:

(i) in plain, clear type in black ink on clear white stock; or

(ii) in plain, clear type in black ink on stock of different colors to:

(A) identify different ballots or parts of the ballot; or

(B) in primary elections, to identify each political party;

(d) ballot labels are printed to a size and arrangement that fits the construction of the voting device;

(e) if possible, all candidates for one office are grouped on one page;

(f) if it is impossible to print the names of all candidates for an office in one column or one ballot page, the ballot label:

(i) explicitly states that the list of candidates is continued on the next column or page; and

(ii) includes, as far as possible, the same number of names on each column or page;

(g) the office titles are printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected;

(h) in partisan elections:

(i) the party designation of each candidate is printed to the right of or below the candidate's name;

(ii) the ballot labels include a voting square or position where the voter may record a straight party ticket vote for all the candidates of one party by one mark or punch;

(i) arrows are used to indicate the place to vote for each candidate and on each measure; and

(j) in primary elections, the ballot label includes a square for the voter to designate the party in whose primary he is voting.

(2) The election officer shall ensure that:

(a) ballot cards are of the size, design, and stock suitable for processing by automatic data processing machines;

(b) each ballot card has an attached perforated stub, on which is printed the words "Official Ballot, (initial) Judge"; and

(c) ballot stubs are numbered consecutively.

(3) In elections in which voters are authorized to cast write-in votes, the election officer shall provide a separate write-in ballot, which may be in the form of a paper ballot, a card, or a secrecy envelope in which the voter places his ballot card after voting, to permit voters to write in the title of the office and the name of the person or persons for whom the voter wishes to cast a write-in vote.

(4) (a) In primary elections, the election officer may ensure that:

(i) pages placed on the voting device are arranged so that the entire ballot label consists of several groups of pages, so that a separate group can be used to list the names of candidates seeking nomination of each qualified political party, with additional groups used to list candidates for judicial office and the other nonpartisan offices or measures; and

(ii) groups of pages are identified by color or other suitable means.

(b) In primary elections, the election officer shall ensure that the ballot label includes instructions di-

recting voters to vote only for candidates of the party of their choice and then to vote for judicial candidates and other nonpartisan candidates or measures.

(5) Notwithstanding any other provisions of this section, the election officer may authorize any ballots that are to be counted by means of electronic or electromechanical devices to be printed to a size, layout, texture, and in any type of ink or combination of inks that will be suitable for use in the counting devices in which they are intended to be placed.

Section 147. Section Enacted.

Section 20A-5-503, Utah Code Annotated 1953, is enacted to read:

20A-5-503. Placement of candidates names on the paper ballot.

(1) Each election officer shall ensure, for paper ballots in primary elections, that:

(a) the joint candidates for governor and lieutenant governor are arranged alphabetically according to the gubernatorial candidates' surnames, with one square for each set of joint candidates;

(b) the names of all candidates except candidates for the state school board and local school boards are arranged alphabetically according to surnames, under the appropriate title of the respective offices, and under the proper party designation upon the party ticket; and

(c) the names of candidates for local school boards are arranged as provided in Section 53A-3-101.

(2)(a) Each election officer shall ensure, for paper ballots in regular general elections, that, except for candidates for state school board and local school boards, each candidate is listed by party; and

(b) the names of candidates for state school board and local school boards are listed as provided in Sections 53A-1-103 and 53A-3-101.

(3)(a) The election officer may not allow the name of a candidate who dies before election day to be printed upon the ballots.

(b) If the ballots have already been printed, the election officer shall erase or cancel the name of the dead candidate, if possible, before ballots are delivered to voters.

(4)(a) When there is only one candidate for county attorney at the regular general election in counties that have three or fewer electors of the county who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of county attorney? Yes ____ No ____."

(b) If the number of "No" votes for the candidate exceeds the number of "Yes" votes for the candidate, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(c) If no qualified person files for the office of county attorney as provided in Sections 20-4-9 and 20-4-9.3, the county governing body shall appoint the county attorney as provided in Section 17-5-21.

Section 148. Section Enacted.

Section 20A-5-601, Utah Code Annotated 1953, is enacted to read:

Part 6. Election Judges

20A-5-601. Election judges — Appointment for regular general elections.

(1) By June 1 of each even-numbered year, the county chair and secretary of each registered political party shall file a list with the county clerk containing, for each voting precinct, at least six names of registered voters in the county who are willing to be election judges and who are competent and trustworthy.

(2) Each county legislative body shall provide for the appointment of:

(a)(i) three registered voters from the list to serve as receiving judges for each voting precinct when ballots will be counted after the polls close; or

(ii) three registered voters from the list to serve as receiving judges in each voting precinct and three registered voters from the list to serve as counting judges in each voting precinct when ballots will be counted throughout election day; and

(b) three registered voters from the list for each 100 absentee ballots to be counted to serve as canvassing judges.

(3) Each county legislative body may provide for the appointment of three registered voters from the list to serve as inspecting judges to observe the clerk's receipt and deposit of the ballots for safekeeping.

(4) For each set of three counting or receiving judges to be appointed for each voting precinct, the county legislative body shall ensure that:

(a) two judges are appointed from the political party that cast the highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer, excluding votes for unopposed candidates, in the voting precinct at the last regular general election before the appointment of the election judges; and

(b) one judge is appointed from the political party that cast the second highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer, excluding votes for unopposed candidates, in the voting precinct at the last regular general election before the appointment of the election judges.

(5) When the voting precinct boundaries have been changed since the last regular general election, the county legislative body shall ensure that not more than two of the judges are selected from the political party that cast the highest number of

votes for the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer in the territory that formed the voting precinct at the time of appointment.

(6) The county legislative body shall provide for the appointment of any qualified county voter who meets the party qualification of this subsection when:

(a) a political party fails to file the election judge list by the filing deadline; or

(b) the list is incomplete.

(7) A registered voter of the county may serve as an election judge in any voting precinct of the county.

(8) If a person serves as an election judge outside the voting precinct where the person is registered, that person may vote an absentee voter ballot.

(9) The county clerk shall fill all vacancies in the office of election judge.

(10) If a conflict arises over the right to certify the election judge lists for any political party, the county legislative body may decide between conflicting lists, but may only select names from a properly submitted list.

(11) The county legislative body shall establish compensation for election judges.

Section 149. Section Enacted.

Section 20A-5-602, Utah Code Annotated 1953, is enacted to read:

20A-5-602. Election judges — Appointment for local elections.

(1) (a) At least 15 days before the date scheduled for any local election, the municipal legislative body or special district board shall appoint or provide for the appointment of:

(i) three registered voters from their jurisdiction to serve as election judges for each voting precinct and at least one registered voter from their jurisdiction to serve as an alternate election judge when the municipality or special district uses paper ballots or automatic tabulating equipment;

(ii) four registered voters from their jurisdiction to serve as election judges for each voting precinct and at least one registered voter from their jurisdiction to serve as an alternate election judge when the municipality or special district uses voting machines; and

(iii) at least one registered voter from their jurisdiction to serve as canvassing judge.

(b) The municipal legislative body and special district board may not appoint a member of any candidate's immediate family to serve as an election judge in that candidate's voting precinct.

(2) The clerk shall:

(a) prepare and file a list containing the name, address, voting precinct, and telephone number of each person appointed; and

(b) make the list available in the clerk's office for inspection, examination, and copying during business hours.

(3) (a) The municipal legislative body and special district board shall compensate election judges for their services.

(b) The municipal legislative body and special district board may not compensate their election judges at a rate higher than that paid by the county to its election judges.

Section 150. Section Enacted.

Section 20A-5-603, Utah Code Annotated 1953, is enacted to read:

20A-5-603. Certificate, oath, removal of election judges.

(1) Each election officer shall:

(a) issue a certificate under the election officer's official seal certifying the appointment of each judge and alternate; and

(b) mail the certificate, a blank acceptance of appointment, and an oath to each judge and alternate.

(2) (a) Each election judge and alternate shall file the oath and acceptance in the following form with the election officer within seven days after receipt of the certificate of appointment:

"I, ____, do solemnly swear (or affirm) that I accept appointment as an election judge or alternate and will support, obey, and defend the Constitution of the United States and the Constitution of Utah, that I will discharge the duties of my office with fidelity; that I am a citizen of the United States and the State of Utah; that I am a registered voter in voting precinct ____ in the (jurisdiction) ____; that I will perform the duties of election judge according to law and the best of my ability; that I will endeavor to prevent fraud, deceit, and abuse in conducting the election; that I will not try to discover how any voter voted, or disclose how any voter voted if, in the discharge of my duties as judge, that knowledge comes to me; and that I will not disclose the result of the votes until the polls have closed."

(b) If an election judge or alternate fails to timely file the oath and acceptance, the position is vacant.

(3) If a judge or alternate is unable to serve, that judge or alternate shall immediately notify the election officer, who shall fill the vacancy as provided in this section.

(4) The election officer may fill a vacancy occuring under this section by appointing the alternate to serve, or, if that is impossible, by appointing some other qualified person to fill the vacancy.

(5) The election officer shall summarily remove any election judge who:

(a) neglects his duty;

(b) commits or encourages fraud in connection with any election;

(c) violates any election law;

(d) knowingly permits any person to violate any election law;

(e) has been convicted of a felony; or

(f) commits any act that interferes or tends to interfere with a fair and honest election.

Section 151. Section Enacted.

Section 20A-5-604, Utah Code Annotated 1953, is enacted to read:

20A-5-604. Receipt of ballots and official register by election judge.

(1) (a) The election judge who receives official or substitute ballots from the election officer shall:

(i) sign a receipt for them and file it with the election officer; and

(ii) produce the packages in the proper polling place with the seals unbroken.

(b) If the election judge receives packages of substitute ballots accompanied by a written and sworn statement of the election officer that the ballots are substitute ballots because the original ballots were not received, were destroyed, or were stolen, the election judge shall produce the packages of substitute ballots in the proper polling place with the seals unbroken.

(2) When the registration agent provides an election judge with a copy of the official register on the day before the election, the election judge shall give the registration agent a receipt for the official register.

Section 152. Section Enacted.

Section 20A-5-605, Utah Code Annotated 1953, is enacted to read:

20A-5-605. Duties of election judges on election day.

(1) (a) Receiving judges shall arrive at the polling place 30 minutes before the polls open and remain until the official election returns are prepared for delivery.

(b) Counting judges shall be at the polls as directed by the county clerk and remain until the official election returns are prepared for delivery.

(2) Upon their arrival to open the polls, each set of election judges shall:

(a) designate which judge shall preside and which judges shall act as clerks;

(b) in voting precincts using paper ballots, select one of their number to deliver the election returns to the election officer or to the place that the election officer designates;

(c) in voting precincts using ballot cards, select two of their number, each from a different party, to deliver the election returns to the election officer or to the place that the election officer designates;

(d) display the United States flag;

(e) open the voting devices and examine them to see that they are in proper working order;

(f) place the voting devices, voting booths, and the ballot box in plain view of election judges and watchers;

(g) open the ballot packages in the presence of all the judges;

(h) check the ballots, supplies, records, and forms;

(i) if directed to do so by the election officer, make any necessary corrections to the official ballots before they are distributed at the polls;

(j) post the sample ballots, instructions to voters, and constitutional amendments, if any; and

(k) open the ballot box in the presence of those assembled, turn it upside down to empty it of anything, and then, immediately before polls open, lock it, or if locks and keys are not available, tape it securely;

(3) (a) If any election judge fails to appear on the morning of the election, or fails or refuses to act, at least six qualified electors from the voting precinct who are present at the polling place at the hour designated by law for the opening of the polls shall fill the vacancy by appointing another qualified person from the voting precinct who is a member of the same political party as the judge who is being replaced to act as election judge.

(b) If a majority of the receiving election judges are present, they shall open the polls, even though the alternate judge has not arrived.

(4) (a) If it is impossible or inconvenient to hold an election at the polling place designated, the election judges, after having assembled at or as near as practicable to the designated place, and before receiving any vote, may move to the nearest convenient place for holding the election.

(b) If the judges move to a new polling place, they shall display a proclamation of the change and station a police officer or some other proper person at the original polling place to notify voters of the location of the new polling place.

(5) If the election judge who received delivery of the ballots produces packages of substitute ballots accompanied by a written and sworn statement of the election officer that the ballots are substitute ballots because the original ballots were not received, were destroyed, or were stolen, the election judges shall use those substitute ballots as the official election ballots.

(6) If, for any reason, none of the official or substitute ballots are ready for distribution at a polling place or, if the supply of ballots is exhausted before the polls are closed, the election judges may use unofficial ballots, made as nearly as possible in the form of the official ballot, until substitutes prepared by the election officer are printed and delivered.

(7) (a) If any registration agent has failed or refused to deliver a copy of the official register of the voting precinct to the election judges, the election judges may take and use the posting list that is posted in the voting precinct.

(b) The election judges shall include a note in their returns explaining the reason for using that posting

list instead of the copy of the official register that should have been delivered to them.

(8) When it is time to open the polls, one of the election judges shall announce that the polls are open as required by Section 20A-1-302.

(9) (a) The election judges shall comply with the voting procedures and requirements of Title 20A, Chapter 3, in allowing people to vote.

(b) The election judges may not allow any person, other than election officials and those admitted to vote, within six feet of voting machines, voting booths, and the ballot box.

(c) Besides the election judges and watchers, the election judges may not allow more than four voters in excess of the number of voting booths provided within six feet of voting machines, voting booths, and the ballot box.

(d) (i) If necessary, the election judges shall instruct each voter about how to operate the voting device before the voter enters the voting booth.

(ii) If the voter requests additional instructions after entering the voting booth, two election judges, who are of different political parties, may, if necessary, enter the booth and give the voter additional instructions.

Section 153. Section Enacted.

Section 20A-5-606, Utah Code Annotated 1953, is enacted to read:

20A-5-606. Closing the polls, preparation and delivery of election returns.

The election judges shall close the polls and prepare and deliver the election returns as provided in Chapter 3.

Section 154. Section Enacted.

Section 20A-5-701, Utah Code Annotated 1953, is enacted to read:

Part 7. Offenses Involving Election Administration

20A-5-701. Willful neglect of duty or corrupt conduct — Penalty.

(1) It is unlawful for any election judge to willfully neglect their duty or to willfully act corruptly in discharging their duty.

(2) Any election judge who violates this section is guilty of a felony and, upon conviction, shall be punished by a fine of $500 or by confinement in the state prison for not less than one year or both.

Section 155. Section Enacted.

Section 20A-5-702, Utah Code Annotated 1953, is enacted to read:

20A-5-702. Destroying or concealing ballots.

(1) It is unlawful for any person, or officer having charge of official ballots, to destroy, suppress, or conceal them, except authorized by this title.

(2) Any person who violates this section is guilty of a felony, and shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

Section 156. Section Enacted.

Section 20A-5-703, Utah Code Annotated 1953, is enacted to read:

20A-5-703. Neglect or refusal to deliver ballots or returns.

(1) It is unlawful for any person or officer who has undertaken to deliver official ballots or election returns to any voting precinct or to any election judge or election officer to neglect or refuse to do so.

(2) Any person who violates this subsection is guilty of a class A misdemeanor and shall be imprisoned for not less than six months, and fined not less than $250.

Section 157. Section Enacted.

Section 20A-5-704, Utah Code Annotated 1953, is enacted to read:

20A-5-704. Failure to deliver ballots or returns.

(1) It is unlawful for any person or officer who has undertaken to deliver official ballots or election returns to any voting precinct, or to any election judge or election officer, to fail to deliver them.

(2) Any person who violates this subsection is guilty of a felony.

Section 158. Section Enacted.

Section 20A-5-705, Utah Code Annotated 1953, is enacted to read:

20A-5-705. Officer or watcher revealing vote.

(1) It is unlawful for any election official or watcher to reveal to any other person the name of any candidate for whom a voter has voted, or to communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.

(2) Any election official or watcher who violates this section is guilty of a class A misdemeanor and shall be imprisoned for not less than six months, and fined not less than $250.

Section 159. Section Repealed and Reenacted.

Section 53A-1-104, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is repealed and reenacted to read:

53A-1-104. Vacancies on the State Board of Education.

Vacancies on the State Board of Education shall be filled as provided in Section 20A-1-507.

Section 160. Section Repealed and Reenacted.

Section 53A-3-104, Utah Code Annotated 1953, as last amended by Chapter 216, Laws of Utah 1988, is repealed and reenacted to read:

53A-3-104. Vacancies on local school boards.

Vacancies on local school boards shall be filled as provided in Section 20A-1-511.

Section 161. Section Repealed and Reenacted.

Section 53A-3-402.5, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1992, is repealed and reenacted to read:

53A-3-402.5. Voter registration forms for high school students.

Each public school district and each accredited nonpublic school shall provide voter registration forms to students as required by Section 20A-2-302.

Section 162. Section Amended.

Section 78-5-132, Utah Code Annotated 1953, as enacted by Chapter 157, Laws of Utah 1989, is amended to read:

78-5-132. Term of office for county court.

(1) (a) The term of a county justice court judge is four years beginning the first Monday in February 1991.

(b) Judges holding office when this act takes effect or appointed to fill any vacancy hold office until reappointed or a successor is appointed and certified by the Judicial Council.

(2) (a) The term of office of a municipal justice court judge is four years, beginning the first Monday in February 1992.

(b) Judges holding office when this section takes effect or appointed to fill any vacancy hold office until reappointed or a successor is appointed and certified by the Judicial Council.

Section 163. Section Amended.

Section 78-5-134, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1991, is amended to read:

78-5-134. Justice court judges to be appointed — Procedure — Report to Judicial Council — Retention election — Vacancy.

(1) As used in this section:

(a) "Appointing authority" means:

(i) the chair of the county commission in counties having the county commission form of county government;

(ii) the county executive in counties having the county executive-council form of government;

(iii) the chair of the city commission, city council, or town council in municipalities having:

(A) the traditional management arrangement established by Title 10, Chapter 3, Part 1; and

(B) the council-manager optional form of government defined in Section 10-3-1209; and

(iv) the mayor, in the council-mayor optional form of government defined in Section 10-3-1209; and

(b) "Local legislative body" means:

(i) the county commission or county council; and

(ii) the city commission, city council, or town council.

[~~(1) County justice~~] (2) Justice court judges shall be appointed by the [~~chairman of the county governing body~~] appointing authority and [be] confirmed by a majority vote of the [~~county commissioners. Municipal justice court judges shall be appointed by the mayor and be confirmed by the city or town council or other municipal legislative body~~] local legislative body.

[~~(2) (a) When a vacancy occurs in the office of a justice court judge, the governing body shall advertise the vacancy and solicit applications for the vacancy.~~]

[~~(b) The applications shall be reviewed and the mayor or county commission chairman shall appoint the best qualified candidate to office based solely upon fitness for office.~~]

[~~(c) Appointments of justice court judges by a county commissioner or mayor are governed by Title 52, Chapter 3, regarding employment of relatives.~~]

[~~(3) The name of the appointee shall be submitted to the local legislative body. If the local legislative body does not confirm the appointment within 30 days of submission, the mayor or county commission chairman may either appoint another of the applicants or reopen the vacancy by advertisement and solicitations of applications.~~]

[~~(4)~~] (3) (a) After a newly appointed justice court judge has been confirmed [~~by~~], the local legislative body [~~of the county or municipality,~~] shall report the confirmed judge's name [~~shall be reported~~] to the Judicial Council.

[~~(a)~~] (b) The Judicial Council shall certify the judge upon successful completion of the orientation program.

[~~(b)~~] (c) A justice court judge may not perform judicial duties until [~~so~~] certified by the Judicial Council.

[~~(5)~~] (4) Upon the expiration of a justice court judge's term of office:

(a) a county justice court judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section 20-1-7.7; and

(b) a municipal justice court judge may be considered for reappointment after the appointing authority has considered:

(i) whether [~~that~~] or not the judge has been certified as meeting the evaluation criteria for judicial performance established by the Judicial Council; and

(ii) any other factors [~~deemed~~] considered relevant by the appointing authority.

[~~(6) Prior to~~] (5) (a) Before reappointment or retention election, [~~all~~] each justice court [~~judges~~] judge shall be evaluated in accordance with the performance evaluation program established in Subsection 78-3-21 (4). [~~Not fewer than~~]

(b) At least 90 days [prior to] before reappointment or retention election, the Judicial Council shall publish whether a justice court judge has met the evaluation criteria during the judge's term of office.

[(7)] (6) (a) At the conclusion of a term of office or when a vacancy occurs in the position of justice court judge, the appointing authority may contract with a justice court judge in the county or an adjacent county to serve as justice court judge.

(b) The contract shall be for the duration of the justice court judge's term of office.

[(8)] (7) Justice court judges serving under contract are exempt from the residency requirements of Section [78-5-1] 78-5-107.

(8) Vacancies in the office of justice court judge shall be filled as provided in Section 20A-1-506.

Section 164. Repealer.

Section 20-1-1, General elections — When held, Utah Code Annotated 1953;

Section 20-1-2, Purpose of general elections, Utah Code Annotated 1953;

Section 20-1-3, Special elections — Winter Games special election, Utah Code Annotated 1953, as last amended by Chapter 41, Laws of Utah 1989;

Section 20-1-4, Election proclamations — When required, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1969;

Section 20-1-5, Filling vacancies in legislature, Utah Code Annotated 1953, as enacted by Chapter 107, Laws of Utah 1981;

Section 20-1-6, Vacancy in office of United States representative or senator, Utah Code Annotated 1953, as last amended by Chapter 107, Laws of Utah 1981;

Section 20-1-7, State executive offices — Filling vacancies, Utah Code Annotated 1953, as last amended by Chapter 107, Laws of Utah 1981;

Section 20-1-7.1, Filling a judicial vacancy, Utah Code Annotated 1953, as enacted by Chapter 47, Laws of Utah 1986;

Section 20-1-8, Highest number of votes elects, Utah Code Annotated 1953;

Section 20-1-9, Tie votes, Utah Code Annotated 1953, as last amended by Chapter 47, Laws of Utah 1986;

Section 20-1-10, Errors in ballots or list of nominations, Utah Code Annotated 1953;

Section 20-1-11, District court to decide any controversy, Utah Code Annotated 1953;

Section 20-1-12, Sundays included in computation of time, Utah Code Annotated 1953;

Section 20-1-13, Opening and closing of polls, Utah Code Annotated 1953;

Section 20-1-14, Notice of elections, Utah Code Annotated 1953, as enacted by Chapter 109, Laws of Utah 1981;

Section 20-1-15, Election Laws — Liberally construed, Utah Code Annotated 1953;

Section 20-1-16, Publication and distribution of election laws, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984;

Section 20-1-17, Residency and age requirements of voters, Utah Code Annotated 1953, as last amended by Chapter 90, Laws of Utah 1991;

Section 20-1-19, Definitions, Utah Code Annotated 1953, as enacted by Chapter 86, Laws of Utah 1979;

Section 20-2-1, Registration agents — Qualifications and appointment, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-2-2, Registration agents — Filling vacancies — Appointment of temporary agents — Alternate registration office, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-2-5, Books and stationery supplies — Official register — Provision and display of American flag, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-2-6, Registration days — Display of political campaign material prohibited, Utah Code Annotated 1953, as last amended by Chapter 198, Laws of Utah 1986;

Section 20-2-7, Registration at office of county clerk — Registration by mail, Utah Code Annotated 1953, as last amended by Chapter 110, Laws of Utah 1991;

Section 20-2-8, Entry of voters' names in official register, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-2-9, Entries in official register, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-2-10, Notice of time and place of registration, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-2-11, Registration form — Forms available to interested organizations — Distribution of form — Verification of residency, Utah Code Annotated 1953, as last amended by Chapter 197, Laws of Utah 1992;

Section 20-2-11.1, Eligibility for registration, Utah Code Annotated 1953, as enacted by Chapter 109, Laws of Utah 1981;

Section 20-2-13, "Resident" defined, Utah Code Annotated 1953, as enacted by Chapter 58, Laws of Utah 1975;

Section 20-2-14, Place of residence, how determined, Utah Code Annotated 1953, as last amended by Chapter 106, Laws of Utah 1983;

Section 20-2-15, Special elections — Lists of voters, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992;

Section 20-2-16, Compiling and posting official registration list — Delivery of copy of official register to judges, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992;

Section 20-2-17, Correction of errors — Challenges, Utah Code Annotated 1953;

Section 20-2-18, Copy of register to be transmitted to county clerk, Utah Code Annotated 1953;

Section 20-2-19, Failure to furnish register to judges — Use of copy of list, Utah Code Annotated 1953;

Section 20-2-21, Oath of registration agents, Utah Code Annotated 1953;

Section 20-2-22, Compensation of registration agents, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1973;

Section 20-2-23, Duties of county clerk under this chapter, Utah Code Annotated 1953;

Section 20-2-24, Agents to be supplied with register of last year — Deletions and revisions — Municipal elections, Utah Code Annotated 1953, as last amended by Chapter 31, Laws of Utah 1991;

Section 20-2-25, Registration days for municipal elections, Utah Code Annotated 1953, as last amended by Chapter 273, Laws of Utah 1991;

Section 20-2-26, Agents to supply judges with register book, Utah Code Annotated 1953, as enacted by Chapter 58, Laws of Utah 1975;

Section 20-2-28, Change of district boundaries — Revising lists, Utah Code Annotated 1953;

Section 20-2-29, Registration a prerequisite to voting, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-3-1, Short title, Utah Code Annotated 1953;

Section 20-3-2, Definitions, Utah Code Annotated 1953, as last amended by Chapter 44, Laws of Utah 1990;

Section 20-3-19, Official primary ballots — Voting, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1989;

Section 20-3-20, Ballots — Arrangement of candidates' names, Utah Code Annotated 1953, as last amended by Chapters 5 and 70, Laws of Utah 1991;

Section 20-3-21, Procedure for voting, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-3-22, Distribution of sample and official ballots, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-3-22.5, Loss, destruction or theft of ballots, Utah Code Annotated 1953, as enacted by Chapter 55, Laws of Utah 1975;

Section 20-3-24, Qualifications of voters — Official registers, Utah Code Annotated 1953, as last amended by Chapter 36, Laws of Utah 1967;

Section 20-3-25, Challenges — Spoiled ballots — Instruction as to marking and folding, Utah Code Annotated 1953;

Section 20-3-26, Marking ballots, Utah Code Annotated 1953;

Section 20-3-27, Folding and depositing ballots, Utah Code Annotated 1953;

Section 20-3-28, Polls — Opening and closing time — Adjournment or intermission prohibited — Temporary recess of judge, Utah Code Annotated 1953, as last amended by Chapter 37, Laws of Utah 1961;

Section 20-3-29, Counting and recording votes — Ballots sealed after counting — Returns, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-3-30, Canvass of returns — Abstract transmitted to lieutenant governor — Results published and certified to county clerks, Utah Code Annotated 1953, as last amended by Chapter 76, Laws of Utah 1987;

Section 20-3-31, Candidates receiving highest votes declared nominees, Utah Code Annotated 1953;

Section 20-3-32, Recounting of ballots, Utah Code Annotated 1953;

Section 20-3-34, Manner of correcting errors, Utah Code Annotated 1953;

Section 20-3-35, Procedure for settling contests, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1975;

Section 20-3-36, Wilful neglect of duty or corrupt conduct — Penalty, Utah Code Annotated 1953;

Section 20-3-42, Voting at primary elections shall be by secret ballot, Utah Code Annotated 1953, as last amended by Chapter 37, Laws of Utah 1987;

Section 20-4-11, Death, resignation or disqualification of candidate before primary or general election — Certification of another candidate — Declaration of replacement candidate, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1984;

Section 20-4-11.3, Resignation of primary candidate — When another may be certified, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1984;

Section 20-4-11.5, Vacancy — Procedure for filling, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-5-1, Short title — Applicability of provisions, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1988;

Section 20-5-2, Liberal construction, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-3, Special elections, Utah Code Annotated 1953, as last amended by Chapter 108, Laws of Utah 1983;

Section 20-5-4, Clerk to render interpretations and make decisions, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-5, Definitions, Utah Code Annotated 1953, as last amended by Chapter 108, Laws of Utah 1983;

Section 20-5-6, Persons eligible to register and vote — Exceptions, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-7, Registration prerequisite to voting, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-8, Official registration book, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-12, Form of ballots, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-13, Candidates eligible for placement on ballots, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1988;

Section 20-5-16, Appointment of judges and alternates, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-17, Number of judges, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-18, Certificate issued to judge, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-19, Acceptance of appointment by judge, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-20, Judge or alternate unable to serve, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-21, Neglect of duty, fraud, or violation of law by judge, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-22, Oath of judge, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-23, Compensation of judges, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-24, Selection of judge to deliver returns and supplies — Compensation, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-25, Posting notice of election and sample ballot — Publication, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-26, Combined voting districts, Utah Code Annotated 1953, as last amended by Chapter 56, Laws of Utah 1987;

Section 20-5-27, Change of polling place, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-28, Voting booth, machines, materials for electronic voting provided by governing body, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-29, Placement of voting machines, booths, and ballot boxes, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-30, Clerk to provide facilities and equipment — Cost of election, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-31, Opening of polls — Hours of election, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-32, Watchers, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-33, Employee's right to time off for election, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-34, Opening ballot box, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-5-35, Contents of pollbook, Utah Code Annotated 1953, as repealed and reenacted by Chapter 54, Laws of Utah 1987;

Section 20-5-36, Procedure for voting — Identification of voter, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-5-37, Paper ballots — Procedure for voting, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1988;

Section 20-5-38, Handicapped voters — Procedure for voting, Utah Code Annotated 1953, as last amended by Chapter 63, Laws of Utah 1992;

Section 20-5-39, Removal of ballots from polling place prohibited — Spoiled ballots, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-40, Counting ballots, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-5-41, Tally of votes, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-42, Defective or incomplete ballots — Only official ballots counted, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-43, Certificate of total votes cast — Statement of accounting of ballot, Utah Code Anno-

tated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-5-44, Materials to be placed in separate pouches — Delivery to clerk, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-5-45, Time ballots remain in custody of clerk — Destruction of ballots and other records, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-46, Delivery of checked official register book to county clerk after canvass, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-5-47, Adoption and use of electronic voting system, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-48, Ballot boxes and keys, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-5-49, Printing of ballots — Sample ballot, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-50, Death of candidate before election, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-51, Delivery of sealed packages of ballots — Duties of judges, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-52, Failure of delivery, destruction, or theft of ballots before election — Substitute ballots, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-53, Instruction cards, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-54, Rules and statutes applicable to absentee voting, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-55, Registration required for voting, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-56, Time for challenge — Challenge by judge or watcher, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-57, Manner of challenge — Marking challenge sheets and official register book, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-5-58, Grounds for challenge, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-5-59, Oath of challenged voter, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-60, Mayor and council members as board of canvassers — Time for opening returns and preparation of abstracts, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-61, Nonconforming returns — Canvassing and counting, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-62, Nonconforming returns — Correction by judges, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-63, Tie votes, Utah Code Annotated 1953, as last amended by Chapter 107, Laws of Utah 1983;

Section 20-5-64, Certified statements and determination of votes prepared by clerk — Certificates of election — Publication of statement, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-65, Compensation of judges assisting in canvass, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-66, Controversy between official and candidate or other person — Filing of petition — Court proceedings, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-67, Correction of errors in publication or in ballots, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-68, Reasons for contest — Request for recount, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-69, Trial of contested election in district court — Applicable rules and statutes — Bond of complainant — Affidavit of intention to contest election, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-70, Commencement of action — Answer to complaint — Contents of complaint alleging illegal votes or rejection of legal votes — Counterclaim, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-71, Conduct of trial, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-72, Allegation of error in canvass — Order for recount, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-73, Judgment of court, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-74, Authority of governing body to punish and prohibit violations, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-75, Prohibited conduct, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-5-76, Prosecution of offenses, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981;

Section 20-6-1, Right of disabled or absent person to vote, Utah Code Annotated 1953, as last amended by Chapter 118, Laws of Utah 1992;

Section 20-6-1.5, Absentee voting — No polling place for remote districts, Utah Code Annotated 1953, as enacted by Chapter 118, Laws of Utah 1992;

Section 20-6-2, Form of absent-voter ballot, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-6-3, Application for absentee ballot — Time for filing and voting, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-6-4, Form of application, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-6-5, Application sent by mail or delivered at office, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-6-6, Mailing of ballot to voter — Enclose self-addressed envelope — Affidavit, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-6-7, Making affidavit — Return of envelope, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-6-8, Time for return of ballots to clerk or recorder — Disposition of envelope, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1975;

Section 20-6-9, Delivery of valid ballots to election judges, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1983;

Section 20-6-10, Deposit of ballot in ballot box — Rejection, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1971, First Special Session;

Section 20-6-11, Voting in person in case of return, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-6-12, Sufficient ballots to be prepared, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-6-13, Frauds and malfeasance in absent voting — Penalty, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1971;

Section 20-7-1, Preparation of official ballots, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-7-2, Sample ballots — Printing and delivery — Publication of list of candidates, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-7-3, Instructions to voters — Posting, Utah Code Annotated 1953, as last amended by Chapter 38, Laws of Utah 1961;

Section 20-7-4, Constitutional amendments — Posting, Utah Code Annotated 1953, as last amended by Chapter 38, Laws of Utah 1961;

Section 20-7-5, Form and contents of ballot — Ballot boxes, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1988;

Section 20-7-5.1, County attorney candidates — Ballot placement procedures, Utah Code Annotated 1953, as enacted by Chapter 120, Laws of Utah 1990;

Section 20-7-6, Number of ballots to be provided, Utah Code Annotated 1953, as last amended by Chapter 38, Laws of Utah 1961;

Section 20-7-7, Expense of printing and distributing ballots, Utah Code Annotated 1953;

Section 20-7-8, Delivery of ballots to election judges, Utah Code Annotated 1953, as last amended by Chapter 216, Laws of Utah 1988;

Section 20-7-9, Theft or destruction of ballots — Substitutes and unofficial ballots — Correction of errors or omissions, Utah Code Annotated 1953, as last amended by Chapter 55, Laws of Utah 1975;

Section 20-7-10, Election judges, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-7-11, Receiving judges and counting judges, Utah Code Annotated 1953;

Section 20-7-12, Counting ballots throughout election day, Utah Code Annotated 1953;

Section 20-7-13, Progress of count to remain secret — Penalty, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1975;

Section 20-7-14, Return of count, Utah Code Annotated 1953;

Section 20-7-15, Two sets of judges only at primary general and November general elections, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1975;

Section 20-7-16, Polling places — Booths — Ballot boxes — Provisions — and arrangement, Utah Code Annotated 1953, as last amended by Chapter 43, Laws of Utah 1986;

Section 20-7-17, Manner of voting — Watchers, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-7-18, Challenges, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-7-19, Manner of marking ballot, Utah Code Annotated 1953;

Section 20-7-21, Counting ballots, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-7-22, Casting ballots — Time allowed voters, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-7-23, No ballots may be taken away — Spoiled ballots, Utah Code Annotated 1953;

Section 20-7-24, Assisting disabled, illiterate or blind voters, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-7-25, Defective marking, Utah Code Annotated 1953;

Section 20-7-26, Counting ballots — Procedure with respect to "excess ballots." Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-7-27, Tally lists — Certification, Utah Code Annotated 1953;

Section 20-7-29, Delivery to judges of election, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-7-30, Contents of pollbooks — Oath of election judges, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-7-31, Ballots to be sealed after counting, Utah Code Annotated 1953;

Section 20-7-32, Return of materials to appropriate official — Destruction of ballot stubs, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-7-33, Statement accounting for all ballots, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-7-34, Judges to endorse packages on return, Utah Code Annotated 1953;

Section 20-7-35, Return of ballot boxes, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-7-36, Return of packages to clerk or recorder, Utah Code Annotated 1953;

Section 20-7-37, Fees for carrying returns, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-7-38, Ballots kept for one year, then burned, Utah Code Annotated 1953;

Section 20-7-39, Disposition of ballots in event of contest, Utah Code Annotated 1953;

Section 20-7-40, Returns — Production before canvassers, Utah Code Annotated 1953;

Section 20-7-41, Filing after canvass, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992;

Section 20-7-43, Ballot security — Party watchers — Duties of clerk or recorder, Utah Code Annotated 1953, as enacted by Chapter 37, Laws of Utah 1971;

Section 20-8-1, Board of county canvassers — Time of meeting, Utah Code Annotated 1953;

Section 20-8-2, Substitutes for absent board members — County clerk — Duties, Utah Code Annotated 1953;

Section 20-8-3, Canvass — Time to commence — Delayed and missing returns, Utah Code Annotated 1953;

Section 20-8-4, Canvass to be public — Irregularities in returns, Utah Code Annotated 1953;

Section 20-8-5, Entry of result, Utah Code Annotated 1953;

Section 20-8-6, Highest number of votes elects, Utah Code Annotated 1953;

Section 20-8-7, Clerk to deliver certificate of election, Utah Code Annotated 1953;

Section 20-8-8, Abstract of canvasser's record, Utah Code Annotated 1953;

Section 20-8-9, Abstract transmitted to lieutenant governor, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984;

Section 20-8-9.5, County, municipal or school election returns filed with lieutenant governor, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984;

Section 20-8-10, Board of state canvassers — Time of meeting — Duties, Utah Code Annotated 1953;

Section 20-8-11, Delayed returns — Messenger sent to clerk of board of county canvassers, Utah Code Annotated 1953, as last amended by Chapter 320, Laws of Utah 1983;

Section 20-8-12, Defective returns not to cause delay, Utah Code Annotated 1953;

Section 20-13-1, Bribery in elections, Utah Code Annotated 1953;

Section 20-13-2, Receiving bribe, Utah Code Annotated 1953;

Section 20-13-3, Fraud, interference, disturbance — Tampering with ballots or records, Utah Code Annotated 1953;

Section 20-13-4, Penalties, Utah Code Annotated 1953;

Section 20-13-5, Fraudulent registration — Penalty, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986;

Section 20-13-6, Intimidation — Undue influence, Utah Code Annotated 1953;

Section 20-13-7, Influencing employee's vote, Utah Code Annotated 1953;

Section 20-13-8, Election returns — Forgery, Utah Code Annotated 1953;

Section 20-13-9, Altering vote count or returns, Utah Code Annotated 1953;

Section 20-13-10, Abetting forgery or alteration, Utah Code Annotated 1953;

Section 20-13-11, Violations — Penalties, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1987;

Section 20-13-12, Destroying instruction cards, sample ballots or election paraphernalia, Utah Code Annotated 1953;

Section 20-13-13, Mutilating certificate of nomination — Forging declination or resignation — Tampering with ballots, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986;

Section 20-13-14, Destroying or concealing ballots, Utah Code Annotated 1953;

Section 20-13-15, Failure or refusal to deliver ballots or returns, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986;

Section 20-13-16, Officer or watcher revealing vote, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986;

Section 20-13-17, Polling place — Prohibited activities, Utah Code Annotated 1953, as last amended by Chapter 309, Laws of Utah 1990;

Section 20-13-18, Refusing employees time to vote, Utah Code Annotated 1953;

Section 20-13-19, Omnibus penalties — Offenders as witnesses — Privilege, Utah Code Annotated 1953;

Section 20-13-20, Chapter applicable to all elections, Utah Code Annotated 1953;

Section 20-14-29, False impersonation — Double voting, Utah Code Annotated 1953;

Section 20-14-30, Wagering on elections forbidden, Utah Code Annotated 1953;

Section 20-14-31, Inducing attendance at polls — Payment of workers, Utah Code Annotated 1953;

Section 20-14-33, Promises of appointment to office forbidden, Utah Code Annotated 1953;

Section 20-14-39, Prosecutions — Venue, Utah Code Annotated 1953;

Section 20-14-40, Proceedings by private elector, Utah Code Annotated 1953;

Section 20-14-41, Pleadings — Procedure, Utah Code Annotated 1953;

Section 20-14-42, Judgment and findings — Appeal — Criminal prosecution not affected by judgment, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984;

Section 20-14-43, Special counsel on appeal, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984;

Section 20-14-44, Witnesses — Privilege, Utah Code Annotated 1953;

Section 20-14-45, Supplemental judgment after criminal conviction, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1984;

Section 20-14-46, Cost of defense of action no part of campaign expense, Utah Code Annotated 1953;

Section 20-14-47, Violation of chapter — Penalty — Forfeiture of right to office, Utah Code Annotated 1953;

Section 20-15-1, Grounds for contest, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1987;

Section 20-15-2, When misconduct of election officers avoids election, Utah Code Annotated 1953;

Section 20-15-3, Setting aside result of election — Costs of recount, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1987;

Section 20-15-4, Pleadings — Limitation of action, Utah Code Annotated 1953;

Section 20-15-5, Sufficiency of statement — Specification of illegal votes claimed, Utah Code Annotated 1953;

Section 20-15-6, Want of form disregarded, Utah Code Annotated 1953;

Section 20-15-7, Time for hearing, Utah Code Annotated 1953;

Section 20-15-8, Citation to opposing party — Service, Utah Code Annotated 1953;

Section 20-15-9, Hearing — Continuance on terms, Utah Code Annotated 1953;

Section 20-15-10, Judgment, Utah Code Annotated 1953;

Section 20-15-11, Inspection of ballots in court, Utah Code Annotated 1953;

Section 20-15-12, Person having highest vote declared elected, Utah Code Annotated 1953;

Section 20-15-13, Costs, Utah Code Annotated 1953;

Section 20-15-14, Appeal — Stay, Utah Code Annotated 1953;

Section 20-15-15, Time to appeal — Failure to appeal, Utah Code Annotated 1953;

Section 20-17-1, Intent and purpose of chapter, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-17-2, Construction of chapter, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-3, Co-operation in carrying out intent and purpose of chapter, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-4, Definitions, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1991;

Section 20-17-6, Power of state and county officers, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1991;

Section 20-17-7, Absence on election day, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1991;

Section 20-17-8, Registration of military voter or overseas citizen voter, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1991;

Section 20-17-8.5, Right of overseas citizen to vote by absentee ballot, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1991;

Section 20-17-9, Absentee ballots for military personnel and citizens living overseas — Federal postcard applications for ballot, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992;

Section 20-17-9.5, Special military write-in absentee ballots, Utah Code Annotated 1953, as enacted by Chapter 62, Laws of Utah 1987;

Section 20-17-10, Mailing of ballot to military voter, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-11, Ballot envelope — Contents, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-12, Voting of ballot by military voter, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-13, Disposition of ballot by county clerk, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-14, Delivery of ballot to election judges, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-15, Duty of election judges, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-16, Challenge of ballot, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-17, Conflict of statutes, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-17-18, State and county officials to carry out provisions of chapter — Violation a misdemeanor, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1981;

Section 20-20-1, Definition of terms, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-2, Use of system authorized — Act controlling use — Ballot characteristics, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-3, Required provisions of system, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-4, Ballot labels — Ballot cards — Sample ballots — Write-in ballots, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1975;

Section 20-20-5, Materials provided at election, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-6, Examination of voting devices — Voter instruction and assistance — Spoiled ballots — Preparation and delivery of ballots to counting center — Reports, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987;

Section 20-20-7, Test of automatic tabulating equipment — Proceedings at counting center — Official returns — Manual counting — Progress of count, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-7.5, Computerized ballots — Judges and officers may not count manually, Utah Code Annotated 1953, as enacted by Chapter 57, Laws of Utah 1987;

Section 20-20-8, Absentee ballots, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-9, Delivery of ballots to clerk — Retention of voting materials, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 20-20-10, Recount, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1971;

Section 78-5-131, Term of office for municipal court — Vacancy — Report to court administrator, Utah Code Annotated 1953, as enacted by Chapter 157, Laws of Utah 1989; and

Section 78-5-133, Vacancy in office of county court — Appointment — Report to court administrator, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, are repealed.

Section 165. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 2
H. B. No. 4
Passed January 29, 1993
Approved February 9, 1993
Effective May 3, 1993

FRANCHISE TAX AMENDMENT

By John L. Valentine

AN ACT RELATING TO REVENUE AND TAXATION; DELETING THE CORPORATE FRANCHISE TAX FROM PROVISIONS PROVIDING FOR THE ATTACHMENT OF LIENS AND PENALTIES FOR NONPAYMENT OF TAXES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-1-302, AS LAST AMENDED BY CHAPTER 249, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-1-302, Utah Code Annotated 1953, as last amended by Chapter 249, Laws of Utah 1992, is amended to read:

59-1-302. Lien for sales, use, withholding, or fuels taxes — Penalty for nonpayment — Jeopardy proceedings.

(1) The provisions of this section apply to the following taxes in this title:

(a) state and local sales and use tax under Chapter 12, Parts 1 and 2;

(b) transient room tax under Chapter 12, Part 3;

(c) resort communities tax under Chapter 12, Part 4;

(d) public transit tax under Chapter 12, Part 5;

(e) tourism, recreation, cultural, and convention facilities tax under Chapter 12, Part 6;

(f) motor fuel, clean fuel, special fuel, and aviation fuel taxes under Chapter 13, Parts 2, 3, and 4; and

(g) withholding tax under Chapter 10, Part 4[~~; and~~].

[~~(h) corporate franchise tax under Chapter 7, Part 1.~~]

(2) If any person liable to pay a tax listed in Subsection (1) neglects or refuses to pay that tax after demand, the amount, including any interest, additional amount, additional tax, or assessable penalty, together with any costs that may accrue, is a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to that person.

(3) Unless another date is specifically fixed by law, the lien imposed by this section for unpaid taxes arises at the time the assessment is made and continues until the liability for the assessed amount, or a judgment against the taxpayer arising from that liability, is satisfied or becomes unenforceable because of lapse of time.

(4) Any person required to collect, truthfully account for, and pay over any tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall[~~, in addition to other penalties provided by law,~~] be liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in addition to other penalties provided by law.

(5) The penalty provided in Subsection (4) is assessed as follows:

(a) If the commission determines in accordance with Subsection (4) that a person is liable for the penalty, the commission shall immediately assess the penalty and give notice and demand for payment.

(b) The notice of assessment of the penalty shall:

(i) set forth the basis of the assessment; and

(ii) be mailed by registered mail, postage prepaid, to the person's last-known address.

(6) Upon receipt of the notice of assessment, the person assessed may either:

(a) pay the amount of the penalty at the place and time stated in the notice; or

(b) proceed in accordance with the review procedures of Subsections (7) and (8).

(7) Any person against whom a penalty has been assessed in accordance with [~~Subsection~~] Subsections (4) and (5) may contest the assessment by filing a petition for an adjudicative proceeding with the commission.

(8) If the commission determines that the collection of the penalty is in jeopardy, nothing in this section may prevent the immediate collection of the penalty in accordance with the procedures and requirements for emergency proceedings in Title 63, Chapter 46b, Administrative Procedures Act.

(9) (a) In any hearing before the commission and in any judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over any tax listed in Subsection (1).

(b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over any of the taxes listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes:

(i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes;

(ii) recklessly disregarded obvious or known risks, which resulted in the failure to collect, account for, or pay over the tax; or

(iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.

(c) The commission or court need not find a bad motive or specific intent to defraud the government or deprive it of revenue to establish willfulness under this section.

CHAPTER 3
H. B. No. 11
Passed January 28, 1993
Approved February 9, 1993
Effective May 3, 1993

UNIFORM CHILD CUSTODY JURISDICTION

By J. Brent Haymond

AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR REQUIREMENT OF FILING OF CUSTODY DECREE ISSUED IN ANOTHER STATE; PROVIDING FOR NOTICE TO BOTH PARTIES OF FOREIGN DECREE; AND PROVIDING FOR HEARING TO CHALLENGE THE FOREIGN DECREE UPON REQUEST.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78–45C–15, AS ENACTED BY CHAPTER 41, LAWS OF UTAH 1980

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

Section 1. Section Amended.

Section 78–45c–15, Utah Code Annotated 1953, as enacted by Chapter 41, Laws of Utah 1980, is amended to read:

78–45c–15. Filing foreign decree — Effect — Enforcement — Award of expenses.

(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The parties to the action shall be notified of the filing and shall be given an opportunity to be heard on the jurisdiction of the other state's custody decree before enforcement of that decree. If the copy has not been filed, it shall not be considered a valid custody decree. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state as provided in Section 78–45c–12.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including [~~attorney's~~] attorney fees, incurred by the party entitled to the custody or his witnesses.

CHAPTER 4
H. B. No. 87
Passed January 26, 1993
Approved February 9, 1993
Effective May 3, 1993

REVISOR'S STATUTE

By Michael G. Waddoups
Jeff Alexander
Stephen M. Bodily
Afton B. Bradshaw
R. Lee Ellertson
R. Mont Evans
Christine R. Fox
Kevin S. Garn
Raymond W. Short
James F. Yardley
Gene Davis
Haynes R. Fuller
David M. Jones
Kurt E. Oscarson
Allan C. Rushton

AN ACT RELATING TO STATE GOVERNMENT; PROVIDING TECHNICAL CORRECTIONS TO THE UTAH CODE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
4-3-15, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
4-10-12, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
4-14-2, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987
4-24-4, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
4-26-4.1, AS LAST AMENDED BY CHAPTER 62, LAWS OF UTAH 1992
4-30-2, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1985
4-35-3, AS ENACTED BY CHAPTER 133, LAWS OF UTAH 1985
4-38-9, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-14, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
7-7-1, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992
7-8-2, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992
9-2-707, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-803, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-806, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
9-2-1306, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-3-202, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-3-301, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1992
9-3-311, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1992
9-4-303, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-701, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-912, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-914, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-917, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-923, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-5-207, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-6-302, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-6-403, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-502, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-503, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-8-204, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-8-704, AS ENACTED BY CHAPTER 121, LAWS OF UTAH 1991
9-8-803, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
10-1-108, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-1-110, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-2-110, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987
10-3-608, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-3-714, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-3-806, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-3-1107, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-6-152, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1979
10-6-154, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1979
10-6-159, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1979
10-8-8.5, AS ENACTED BY CHAPTER 14, LAWS OF UTAH 1955
11-2-2, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1959
11-13-6, AS LAST AMENDED BY CHAPTER 47, LAWS OF UTAH 1977
11-14-3, AS LAST AMENDED BY CHAPTER 346, LAWS OF UTAH 1983
11-17-17, AS LAST AMENDED BY CHAPTER 271, LAWS OF UTAH 1992
11-26-1, AS LAST AMENDED BY CHAPTER 96, LAWS OF UTAH 1992
11-37-101, AS ENACTED BY CHAPTER 32, LAWS OF UTAH 1992
13-1-2, AS LAST AMENDED BY CHAPTER 240, LAWS OF UTAH 1990
13-1-12, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987

13-5-3, UTAH CODE ANNOTATED 1953
13-5-8, UTAH CODE ANNOTATED 1953
13-9-1, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1985
13-11-17, AS LAST AMENDED BY CHAPTER 58, LAWS OF UTAH 1983
13-11-19, AS LAST AMENDED BY CHAPTER 58, LAWS OF UTAH 1983
13-20-2, AS LAST AMENDED BY CHAPTERS 1 AND 30, LAWS OF UTAH 1992
17A-1-601, AS ENACTED BY CHAPTER 22, LAWS OF UTAH 1992
19-6-102, AS LAST AMENDED BY CHAPTER 282, LAWS OF UTAH 1992
20-3-20, AS LAST AMENDED BY CHAPTERS 5 AND 70, LAWS OF UTAH 1991
21-1-4, AS LAST AMENDED BY CHAPTER 290, LAWS OF UTAH 1992
21-1-5, AS ENACTED BY CHAPTER 290, LAWS OF UTAH 1992
23-19-9.5, AS LAST AMENDED BY CHAPTER 260, LAWS OF UTAH 1992
23-19-38, AS LAST AMENDED BY CHAPTER 19, LAWS OF UTAH 1992
23-20-4, AS REPEALED AND REENACTED BY CHAPTER 27, LAWS OF UTAH 1992
23-25-10, AS ENACTED BY CHAPTER 260, LAWS OF UTAH 1992
26-18A-1, AS ENACTED BY CHAPTER 131, LAWS OF UTAH 1992
26-21-5, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
26-21-6, AS LAST AMENDED BY CHAPTER 202, LAWS OF UTAH 1991
30-3-5.1, AS ENACTED BY CHAPTER 11, LAWS OF UTAH 1985
31A-1-103, AS LAST AMENDED BY CHAPTER 203, LAWS OF UTAH 1992
31A-8-103, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992
31A-9-602, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992
31A-16-103, AS REPEALED AND REENACTED BY CHAPTER 258, LAWS OF UTAH 1992
32A-3-104, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
41-1A-102, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-3-108, AS RENUMBERED AND AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
41-3-210, AS RENUMBERED AND AMENDED BY CHAPTER 234 AND LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
47-1-5, UTAH CODE ANNOTATED 1953
51-5-1, AS ENACTED BY CHAPTER 132, LAWS OF UTAH 1965
51-5-8, AS LAST AMENDED BY CHAPTER 154, LAWS OF UTAH 1986
53A-1A-106, AS ENACTED BY CHAPTER 47, LAWS OF UTAH 1992
53A-2-113, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
53A-2-202, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1988
53A-17A-137, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-24-102, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-24-502, AS ENACTED BY CHAPTER 83, LAWS OF UTAH 1988
53A-24-503, AS ENACTED BY CHAPTER 83, LAWS OF UTAH 1988
53B-19-102, AS ENACTED BY CHAPTER 167, LAWS OF UTAH 1987
58-12-61, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-12-73, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-24A-112, AS ENACTED BY CHAPTER 237, LAWS OF UTAH 1991
58-28-2, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1992
58-28-8, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1992
58-37D-3, AS ENACTED BY CHAPTER 156, LAWS OF UTAH 1992
59-2-902, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-904, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1106, AS LAST AMENDED BY CHAPTER 74, LAWS OF UTAH 1990
59-2-1342, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-7-204, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-10-103, AS LAST AMENDED BY CHAPTER 38, LAWS OF UTAH 1992
59-10-509, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-10-512, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-10-603, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1991, FIRST SPECIAL SESSION
59-12-108, AS LAST AMENDED BY CHAPTER 298, LAWS OF UTAH 1992
59-12-117, AS RENUMBERED AND AMENDED BY CHAPTERS 3 AND 5, LAWS OF UTAH 1987
59-13-102, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1992
59-13-210, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
59-14-505, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-17A-102, AS LAST AMENDED BY CHAPTER 307, LAWS OF UTAH 1990
59-17A-111, AS ENACTED BY CHAPTER 222, LAWS OF UTAH 1989
62A-12-209, AS LAST AMENDED BY CHAPTER 189, LAWS OF UTAH 1992
63-55-241, AS LAST AMENDED BY CHAPTERS 7 AND 234, LAWS OF UTAH 1992
63-63A-4, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-85-10, AS ENACTED BY CHAPTER 304, LAWS OF UTAH 1992
63-86-10, AS ENACTED BY CHAPTER 304,

LAWS OF UTAH 1992
63-88-101, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992
63-88-102, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992
63-88-104, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992
63-88-105, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992
63-88-107, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992
73-10H-13, AS ENACTED BY CHAPTER 304, LAWS OF UTAH 1992
76-1-303, AS LAST AMENDED BY CHAPTER 175, LAWS OF UTAH 1991
76-9-301, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1992
78-30-4.1, AS ENACTED BY CHAPTER 245, LAWS OF UTAH 1990
78-30-4.8, AS ENACTED BY CHAPTER 245, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 4-3-15, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-3-15. Dairy Advisory Board created — Composition — Appointment — Removal — Responsibilities — Compensation.

(1) There is [~~hereby~~] created a Dairy Advisory Board composed of five members appointed to three-year terms of office by the commissioner. Three members shall be active dairy producers recommended by producer organizations and the remaining two members a grade A milk processor and a non-grade A milk processor, respectively. If a nominee is rejected by the commissioner, the recommending authority shall submit another nominee.

(2) A member may, at the commissioner's discretion, be removed upon the request of the organization that recommended the appointment. One member shall be designated by the commissioner to serve as chairman who is responsible for the call and conduct of meetings of the Dairy Advisory Board. Attendance of a simple majority of the members at a duly-called meeting shall constitute a quorum for the transaction of official business. Members are entitled to per diem and expenses [~~in accordance with section 63-2-15~~] as established in Sections 63-1-14.5 and 63-1-15.

(3) The Dairy Advisory Board shall confer with and advise the department concerning the planning and implementation of programs affecting the dairy industry and concerning the administration of this chapter.

Section 2. Section Amended.

Section 4-10-12, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-10-12. Advisory committee created — Composition — Terms of office — Compensation — Duties.

(1) There is [~~hereby~~] created a Bedding, Upholstered Furniture, and Clothing Advisory Committee composed of five members appointed to two year terms of office by the commissioner. Appointments shall be made from among persons who, on account of their vocations, employment, or affiliations, represent the manufacturing and distributing interests of the products and industries affected by this chapter.

(2) The commissioner shall serve as an ex officio member and chairman of the committee and is responsible for the call and conduct of meetings which shall be held semiannually and at such other times as the chairman directs. Attendance of a simple majority of the committee members at a duly called meeting shall constitute a quorum for the transaction of official business. The commissioner shall fill any vacancy which occurs on the committee for whatever reason for the unexpired term of the vacated member.

(3) Members, exclusive of the chairman, are entitled to per diem and expenses [~~in accordance with section 63-2-15~~] as established in Sections 63-1-14.5 and 63-1-15.

(4) The committee shall advise and consult with the department on all matters pertaining to the promulgation of rules and regulations, the qualification and duties of supervisors and inspectors, and the enforcement of this chapter.

Section 3. Section Amended.

Section 4-14-2, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

4-14-2. Definitions.

As used in this chapter:

(1) "Active ingredient" means any ingredient which prevents, destroys, repels, controls, or mitigates pests, or which acts as a plant regulator, defoliant, or desiccant.

(2) "Adulterated pesticide" means any pesticide the strength or purity of which is below the standard of quality expressed on the label under which it is offered for sale.

(3) "Animal" means all vertebrate or invertebrate species.

(4) "Beneficial insect" means any insect which is an effective pollinator of plants, or which is a parasite or predator of pests, or is otherwise beneficial.

(5) "Defoliant" means any substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Desiccant" means any substance or mixture intended to artificially accelerate the drying of plant or animal tissue.

(7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver pesticides in this state.

(8) "Environment" means all living plants and animals, water, air, land, and the interrelationships which exist between them.

(9)(a) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide[, but it].

(b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide[; nor] or any equipment or contrivance used to apply a pesticide which is dependent solely upon energy expelled by the person making the pesticide application.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(12) "Fungus" means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of an order lower than mosses and liverworts), for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other animals, and except those on or in processed food, beverages, or pharmaceuticals.

(13) "Insect" means any invertebrate animal generally having a more or less obviously segmented body, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms; for example, beetles, bugs, bees, flies, and allied classes of arthropods that are wingless usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.

(15) "Labeling" means all labels and all other written, printed, or graphic matter:

(a) accompanying a pesticide or equipment; or

(b) to which reference is made on the label or in literature accompanying a pesticide or equipment, except to current official publications of the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land, water, air, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling which is false or misleading or which does not strictly comport with the label and labeling requirements set forth in Section 4-14-4.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nemathelminthes and Class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism which is injurious to health or to the environment or which the commissioner declares to be a pest; except, viruses, bacteria, or other microorganisms on or in living man or other living animals, or protected wildlife species identified in [Subsection ~~23-13-2(27)~~] Section 23-13-2 which are regulated by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-4.

(21) "Pesticide" means any:

(a) substance or mixture of substances including a living organism which is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and

(d) any other substance designated by the commissioner by rule.

(22) "Pesticide dealer" means any person who distributes restricted use pesticides.

(23) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants, but it does not mean plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(24) "Restricted use pesticide" means any pesticide, including a highly toxic pesticide which is a serious hazard to beneficial insects, animals, or land; or any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

(25) "Weed" means any plant which grows where not wanted.

(26) "Wildlife" means all living things that are neither human, domesticated, nor pests.

Section 4. Section Amended.

Section 4-24-4, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-24-4. Livestock Brand Board created — Composition — Terms — Removal — Quorum for transaction of business — Compensation — Duties.

(1) There is created the Livestock Brand Board consisting of seven members appointed to three year terms of office by the governor as follows:

[~~(1)~~] (a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of whom shall be a feeder operator;

[~~(2)~~] (b) one dairyman recommended by the Utah Dairymen's Association;

[~~(3)~~] (c) one livestock market operator recommended jointly by the Utah Cattlemen's Association and the Utah Dairymen's Association and the Livestock Market Association; and

[~~(4)~~] (d) one horse breeder recommended by the Utah Horse Council.

(2) If a nominee is rejected by the governor, the recommending association shall submit another nominee.

(3) A member may, at the discretion of the governor, be removed at the request of the association that recommended the appointment. One member elected by the board shall serve as chairman for a term of one year and be responsible for the call and conduct of meetings of the livestock brand board. Attendance of a simple majority of the members at a duly called meeting shall constitute a quorum for the transaction of official business. Members are entitled to per diem and expenses [~~in accordance with section 63-2-15~~] as established in Sections 63-1-14.5 and 63-1-15.

(4) The Livestock Brand Board with the cooperation of the department shall direct the procedures and policies to be followed in administering and enforcing this chapter.

Section 5. Section Amended.

Section 4-26-4.1, Utah Code Annotated 1953, as last amended by Chapter 62, Laws of Utah 1992, is amended to read:

4-26-4.1. Release of fur-bearing animals — Penalty — Treble damages.

(1) Any person who intentionally and without permission of the owner releases any fur-bearing animal raised for commercial purposes is guilty of a class B misdemeanor.

(2) Any person[;] convicted of releasing a fur-bearing animal as set forth in Subsection (1) is liable for treble damages in a civil action.

Section 6. Section Amended.

Section 4-30-2, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1985, is amended to read:

4-30-2. Livestock Market Committee created — Composition — Terms — Removal — Compensation — Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the governor[.]:

[~~(1)~~] (a) the commissioner who serves as chairman;

[~~(2)~~] (b) one member recommended by the livestock market operators in the state;

[~~(3)~~] (c) one member recommended by the Utah Cattlemen's Association;

[~~(4)~~] (d) one member recommended by the Utah Dairymen's Association;

[~~(5)~~] (e) one member recommended by the Utah Woolgrowers' Association;

[~~(6)~~] (f) one member recommended by the horse industry; and

[~~(7)~~] (g) one member recommended by the Utah Farm Bureau Federation.

(2) No more than four members, exclusive of the commissioner, shall be members of the same political party.

(3) The governor may remove a member of the committee at the request of the association or group which recommended the member's appointment. The chairman is responsible for the call and conduct of meetings. Four members constitute a quorum for the transaction of official business. A member, other than the commissioner, is entitled to per diem and expenses [~~in accordance with Section 63-2-15~~] as established [~~by the director of the Division of Finance~~] in Sections 63-1-14.5 and 63-1-15.

(4) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Section 7. Section Amended.

Section 4-35-3, Utah Code Annotated 1953, as enacted by Chapter 133, Laws of Utah 1985, is amended to read:

4-35-3. Decision and Action Committee created — Members — How appointed — Duties of committee — Per diem and expenses allowed.

(1) There is created the Decision and Action Committee which consists of not fewer than six members. One member is the commissioner and one member is appointed to represent the department. The remaining members of the committee are appointed by the commissioner on an ad hoc basis as necessary from persons directly affected by and involved in the current insect infestation emergency.

(2) The committee shall:

(a) establish a system of priorities for any insect infestation emergency;

(b) certify to the commissioner any area which requires the establishment of an insect control district in areas of infestation and in which a simple majority of the landowners and lessees whose total production exceeds 50% of the production in that area has agreed to pay proportionate shares of the costs of controlling the insects infesting the area.

(3) Committee members, other than the commissioner and the member from the department, are entitled to per diem and expenses incurred in the performance of duties [~~in accordance with Section 63-2-15~~] as established [~~by the director of the Division of Finance~~] in Sections 63-1-14.5 and 63-1-15.

Section 8. Section Amended.

Section 4-38-9, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-9. Investigation — License denial and suspension — Grounds for revocation — Fines.

(1) The commission or its [~~boards~~] board of stewards of a recognized race meet, upon their own motion may, and upon verified complaint in writing of any person shall, investigate the activities of any licensee within the state or any licensed person upon the premises of a racetrack facility.

(2) The commission [~~or~~], board of stewards, or judges may fine, suspend a license, or deny an application for a license.

(3) The commission may revoke a license, if the licensee has committed any of the following violations:

(a) substantial or willful misrepresentation;

(b) disregard for or violation of any provisions of this chapter or of any rule promulgated by the commission;

(c) conviction of a felony under the laws of this or any other state or of the United States, a certified copy of the judgment of the court of conviction of which shall be presumptive evidence of the conviction in any hearing held under this section;

(d) fraud, willful misrepresentation, or deceit in racing;

(e) falsification, misrepresentation, or omission of required information in a license application to the commission;

(f) failure to disclose to the commission a complete ownership or beneficial interest in a horse entered to be raced;

(g) misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of racing animals;

(h) failure to comply with any order or rulings of the commission, the stewards, or a racing official pertaining to a racing matter;

(i) ownership of any interest in or participation by any manner in any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise;

(j) being unqualified by experience or competence to perform the activity permitted by the license possessed or being applied for;

(k) employment or harboring of any unlicensed person on the premises of a racetrack facility;

(l) discontinuance of or ineligibility for the activity for which the license was issued;

(m) being currently under suspension or revocation of a racing license in another racing jurisdiction;

(n) possession on the premises of a racetrack facility of:

(i) firearms; or

(ii) a battery, buzzer, electrical device, or other appliance other than a whip which could be used to alter the speed of a horse in a race or while working out or schooling;

(o) possession, on the premises of a racetrack facility, by a person other than a licensed veterinarian of:

(i) a hypodermic needle, hypodermic syringe, or other similar device;

(ii) any substance, compound items, or combination of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a horse unless specifically authorized by a commission-approved veterinarian;

(p) cruelty to or neglect of a horse;

(q) offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of such act immediately to the stewards, the judges, or the commission;

(r) causing, attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of such act immediately to the stewards, the judges, or the commission;

(s) entering, or aiding and abetting the entry of, a horse ineligible or unqualified for the race entered;

(t) willfully or unjustifiably entering or racing any horse in any race under any name or designation other than the name or designation assigned to the animal by and registered with the official recognized registry for that breed of animal, or willfully setting on foot, instigating, engaging in, or in any way furthering any act by which any horse is entered or raced in any race under any name or designation other than the name or designation duly assigned by and registered with the official recognized registry for the breed of animal;

(u) racing at a racetrack facility without having that horse registered to race at that racetrack facility; or

(v) being on the premises of a racetrack facility for which the applicant or licensee is required to be licensed without being able to show proof of gainful employment at that racetrack facility.

(4)(a) Any person who fails to pay in a timely manner any fine imposed pursuant to this chapter shall pay, in addition to the fine due, a penalty amount equal to the fine.

(b) Any person who submits to the commission a check in payment of a fine or license fee requirement

imposed pursuant to this chapter, which is not honored by the financial institution upon which it is drawn, shall pay, in addition to the fine or fee due, a penalty amount equal to the fine.

Section 9. Section Amended.

Section 4-38-14, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-14. Hearings.

(1) Except as otherwise provided in this section, all proceedings before the commission or its hearing officer with respect to the denial, suspension, or revocation of licenses or the imposition of fines shall be conducted pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(2) These proceedings shall be held in the county where the commission has its office or in any other place the commission designates. The commission shall notify the applicant or licensee by mailing, by first class mail, a copy of the written notice required to the last address furnished by the application or licensee to the commission at least seven days in advance of the hearing.

(3) The commission may delegate its authority to conduct hearings with respect to the denial or suspension of licenses or the imposition of a fine to a hearing officer.

(4) Proceedings before the [~~boards~~] board of stewards need not be governed by the procedural or other requirements of the Administrative Procedures Act, but rather shall be conducted in accordance with rules adopted by the commission.

(5) The commission and the board of stewards may administer oaths and affirmations, sign and issue subpoenas, order the production of documents and other evidence, and regulate the course of the hearing pursuant to rules adopted by it.

(6) Any person aggrieved by a final order or ruling issued by a board of stewards may appeal the order or ruling to the commission pursuant to procedural rules adopted by the commission. The aggrieved party may petition the commission for a stay of execution pending appeal to the commission.

Section 10. Section Amended.

Section 7-7-1, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

7-7-1. Citation of chapter — Application of Utah Revised Business Corporation Act.

This chapter is known as the "Savings and Loan Associations Act." Except for [~~the following sections~~] Sections 16-10a-122, 16-10a-820 through 16-10a-842, Title 16, Chapter 10a, Utah Revised Business Corporation Act, does not apply to or govern any association as defined in this chapter[~~: Sections 16-10a-122, 16-10a-820 through 16-10a-842~~].

Section 11. Section Amended.

Section 7-8-2, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

7-8-2. Increase of capital stock.

(1) The [~~lieutenant governor~~] Division of Corporations and Commercial Code may not issue a certificate of amendment to the articles of incorporation of any industrial loan corporation increasing its capital stock until the whole amount of the increase is paid in and:

(a) an affidavit of the president or a vice president and the secretary or cashier of the corporation specifying the amount of the increase and that the increase has been duly paid in as part of the capital is transmitted to the commissioner;

(b) the commissioner issues a certificate certifying the information contained in the affidavit and his approval of it; and

(c) the affidavit and certificate are delivered to the [~~lieutenant governor~~] Division of Corporations and Commercial Code.

(2) Notwithstanding Subsection (1), an industrial loan corporation may, with the approval of the commissioner, increase its capital stock by the declaration of a stock dividend as provided in Section 16-10a-640. The surplus of the industrial loan corporation, after the approval of the increase, shall be at least 20% of the capital stock as increased. Such increase shall be effective upon the delivery of an affidavit certifying such declaration of dividend by the president or a vice president and the secretary or cashier to the [~~lieutenant governor~~] Division of Corporations and Commercial Code and the issuance by [~~the lieutenant governor~~] that division of a certificate of amendment to the articles of incorporation of the industrial loan corporation.

Section 12. Section Amended.

Section 9-2-707, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-707. Confidentiality of information received by corporation — Availability of information.

(1) As used in this section, "proprietary information" means:

(a) trade secrets;

(b) commercial information or nonindividual financial information which, if disclosed, may result in unfair competitive injury to the person submitting the information to the corporation; and

(c) other information supplied to the corporation, if the person supplying the information requests that it not be disclosed and the corporation reasonably determines that disclosure is not in the public interest.

(2) Proprietary information obtained by the corporation under this chapter from applicants and awardees and from financial, governmental, educa-

tional, and other sources is protected and not available for public inspection except as provided in Subsection (3).

(3) The following records and information are open to the public:

(a) annual reports published by the corporation under this part;

(b) records that contain data on individuals and that are classified as public under Title 63, Chapter 2, [~~Archives and Records Services and Information Practices Act~~] Government Records Access and Management Act; and

(c) records that do not contain data on individuals or proprietary information and that are open to the public under [~~Sections 78-26-1 through 78-26-3~~] Title 63, Chapter 2, Government Records Access and Management Act.

Section 13. Section Amended.

Section 9-2-803, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-803. Fusion/Energy Advisory Council — Closed meetings — Staff and expenses.

(1) There is created the Fusion/Energy Advisory Council. The advisory council shall be adjunct to the governor's office and not part of any other executive branch agency. The advisory council shall consist of the following nine members appointed by the governor:

(a) a nuclear physicist with a Ph.D. or its equivalent in nuclear physics;

(b) a chemist with a Ph.D. or its equivalent in chemistry;

(c) a member of the scientific community at large;

(d) the state science adviser appointed under Title [~~63~~] 9, Chapter [~~45~~] 2, Part 5;

(e) a certified public accountant;

(f) two members from the business community, each with a background in technological research and development; and

(g) two members from the general public.

(2) The governor shall appoint the chairman of the advisory council. The members and the chairman shall serve at the pleasure of the governor.

(3)(a) The advisory council shall meet at the call of the chairman.

(b) A majority of the advisory council constitutes a quorum for conducting council business. A majority vote of those present is required for all council business.

(c) The advisory council shall invite to all of its meetings the members of the oversight committee and its staff. All members of the oversight committee and its staff may attend, participate in discussions, and review all materials presented in all meetings of the advisory council.

(d) The advisory council shall provide meeting notices, agendas, and minutes of open meetings to members of the oversight committee, the governor, the attorney general, the State Board of Regents, the University of Utah, the Office of Legislative Research and General Counsel, and the Office of the Legislative Fiscal Analyst.

(e)(i) In order to preserve the confidentiality of fusion/energy technology and related processes being developed by Utah institutions, and to protect the legal rights of the state in those technologies and processes, the meetings of the advisory council are subject to Title 52, Chapter 4, regarding open and public meetings. The advisory council may hold public meetings and public hearings if it considers them necessary and appropriate.

(ii) Notwithstanding Subsection (e)(i), and notwithstanding the requirements of Title 52, Chapter 4, the advisory council may hold a closed meeting to discuss:

(A) potential or existing proprietary information, patents, licenses, royalties, or other legal rights; or

(B) information that would allow others to obtain technical or other information useful in developing fusion/energy technology.

(iii) Any decision made in a closed meeting shall be recorded in the minutes of the advisory council. However, those minutes may not be released until such release would not compromise the University of Utah's or the state of Utah's legal rights in Subsection (e)(ii).

(iv) Public notice of advisory council meetings is required under Title 52, Chapter 4. However, no agenda is required of any meeting or parts of meeting that may be closed under Subsection (e).

(4) The governor shall provide staff to the advisory council from within his immediate staff.

(5) Each advisory council member shall receive per diem and travel expenses as established [~~by the Division of Finance~~] in Sections 63-1-14.5 and 63-1-15.

Section 14. Section Amended.

Section 9-2-806, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 30, Laws of Utah 1992, is amended to read:

9-2-806. Penalties for unauthorized disclosure of information.

No member of the advisory council, no person who serves as staff or legal counsel to the advisory council, and no person in attendance at any meeting of the advisory council that is not otherwise open to the general public may disclose any information obtained in a closed meeting under the confidentiality requirements of Subsection 9-2-803(3)(e), oral or written, to any person not authorized by the advisory council to receive it. Any person who violates this section is guilty of a class A misdemeanor and is considered to have waived any rights to defense, payment of defense costs or judgments, indemnity, or insurance under Title 63, Chapter 30, Utah Govern-

mental Immunity Act, in any civil action arising out of the violation of this section.

Section 15. Section Amended.

Section 9-2-1306, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1306. Premiums — Administrative costs — Transfers.

(1) When a participating lender makes a loan that qualifies it to be placed within a special loan portfolio, the premium charges payable to the fund reserve account by the participating lender and the borrower shall be prescribed by the participating lender. The amount paid by the borrower may not be less than 1.5% of the principal amount of the loan nor more than 3.5% of the principal amount of the loan. The amount paid by the participating lender shall be equal to the amount paid by the borrower. This amount shall then be deposited into the fund reserve account of the participating lender making the loan. The participating lender may recover from the borrower the cost of the participating lender's payment in any manner agreed to by the participating lender and the borrower.

(2) The state treasurer may withdraw up to 50% of all interest or income earned on money in the fund for costs incurred in administering the fund. Any interest remaining in the fund or in any fund reserve account shall remain in the fund or account.

(3) When enrolling a loan, the state treasurer shall transfer into the fund an amount determined as follows:

(a) If the amount of any loan made by a participating lender, plus the amount of loans previously enrolled by that participating lender, is less than $750,000, the state treasurer shall deposit into the fund in each case an amount equal to:

(i) 150% of the combined amounts paid into the fund by the borrower and the participating lender for each enrolled loan in all areas of the state except those designated as enterprise zones under [~~Title 59, Chapter 20~~] Title 9, Chapter 2, Part 4; or

(ii) 200% of the combined amounts paid into the fund by the borrower and the participating lender for each enrolled loan in areas designated as enterprise zones under Title 59, Chapter 20.

(b) If prior to the enrollment of the loan the amount of loans previously enrolled equals or exceeds $750,000, the state treasurer shall transfer into the fund an amount equal to the combined amounts paid into the fund by the borrower and the participating lender for each enrolled loan.

(c) If the amount of loans previously enrolled by a participating lender is less than $750,000 but the enrollment of a loan will cause the aggregate amount of all loans enrolled by that participating lender to exceed $750,000, the state treasurer shall transfer into the fund an amount equal to a percentage of the combined amount paid by the participating lender and the borrower, which percentage shall be determined:

(i) by multiplying by 150 that portion of the loan which when added to the amount of all previously enrolled loans totals $750,000;

(ii) by multiplying the balance of the loan by 100; and

(iii) by adding together the products of such computations and dividing the sum by the total amount of the loan.

(4) In any three-year period, the state treasurer may not transfer more than $50,000 from the fund into any fund reserve account for any one borrower.

Section 16. Section Amended.

Section 9-3-202, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-3-202. Members — Meetings — Expenses.

(1) The board shall consist of seven members appointed by the governor to four-year terms of office with the advice and consent of the Senate. The appointment shall be for four-year overlapping terms.

(2) The members may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

(3) Not more than four members of the board may be of the same political party.

(4) The members shall be representative of all areas of the state with not more than two members being appointed from each judicial district.

(5) Any vacancy that occurs on the board shall be filled for the unexpired term of the vacated member by appointment of the governor and shall be from the same judicial district as the member whose office was vacated.

(6) Four members of the board constitutes a quorum for conducting board business and exercising board powers.

(7) The governor shall select one of the board members as chairman for a two-year term.

(8) Each member of the board shall receive a per diem and [~~all actual and necessary~~] expenses incurred in carrying out [~~their~~] that member's official duties, as established [~~by the Division of Finance~~] in Sections 63-1-14.5 and 63-1-15.

Section 17. Section Amended.

Section 9-3-301, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1992, is amended to read:

9-3-301. Short title.

This [~~chapter~~] part is known as the "Heber Valley Historic Railroad Authority."

Section 18. Section Amended.

Section 9-3-311, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1992, is amended to read:

9-3-311. Sales tax exemption.

The authority and its operators [is] are exempt from sales and use tax imposed under Title 59, Chapter 12.

Section 19. Section Amended.

Section 9-4-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-303. Impact fund — Deposits and contents.

(1) There shall be deposited into the impact fund, and it shall consist of:

(a) all amounts appropriated to the impact fund under Section 59-21-2;

(b) 70% of the bonus payments in respect of the Department of the Interior oil shale prototype leases known as U-A and U-B;

(c) 70% of all other bonus payments;

(d) all amounts received by way of the repayment of loans made by the impact board under this chapter or from the Community Impact Account; and

(e) all other monies appropriated or otherwise made available to the impact fund by the Legislature.

(2) The impact fund shall be invested by the state treasurer in accordance with the State Money Management Act [~~of 1974~~], except that all interest or other earnings derived from the fund shall be returned to the impact fund rather than the General Fund.

(3) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.

Section 20. Section Amended.

Section 9-4-701, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-701. Definitions.

As used in this part:

(1) "Board" means the Housing Board created by this [~~chapter~~] part.

(2) "Fund" means the Housing Trust Fund in the General Fund created by this [~~chapter~~] part.

(3) "Rural" means any area in the state that is eligible for funding through Title V of the United States Housing Act of 1949, 42 U.S.C. Section 1490, as administered by the Farmer's Home Administration.

Section 21. Section Amended.

Section 9-4-912, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-912. Power to issue mortgage credit certificates — Impact of federal legislation on tax exempt status of agency bond.

(1) In order to accomplish the purposes of this part the agency may issue mortgage credit certificates pursuant to [~~Section 103A of the Internal Revenue Code of 1986~~] 26 U.S.C., Section 143, as amended, and the regulations issued under the code[;] and has the sole responsibility for issuing or approving the issuance of mortgage credit certificates allowable to the state.

(2) None of the powers granted to the agency by this part shall in any way be diminished by the enactment of any federal legislation which would cause the interest on any bonds, notes, or other obligations of the agency to be subject to taxation under federal law, nor shall the exemption from state taxation granted in this part be affected by any such federal legislation.

Section 22. Section Amended.

Section 9-4-914, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-914. Capital reserve funds — Capital reserve fund requirement — Establishment of other funds.

(1)(a) The agency may create and establish one or more reserve funds, herein referred to as "capital reserve funds", from: (i) any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the agency authorizing the issuance thereof; (ii) any monies appropriated and made available by the state for the purpose of the funds; (iii) any monies directed by the agency to be transferred to the funds; and (iv) any other monies which may be made available to the agency for the purpose of the funds from any other source or sources. All monies held in any capital reserve fund shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments hereinafter mentioned with respect to the bonds, the purchase or redemption of bonds, the payment of interest on bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(b) Monies in any such fund shall not be withdrawn therefrom at any time in an amount as would reduce the level of monies in such fund to less than the capital reserve fund requirement hereinafter defined except for the purpose of paying principal and redemption price of and interest on bonds and the sinking fund payments hereinafter mentioned, as the same become due and for the payment of which other monies of the agency are not available. Any income or interest earned by the investment of monies held in any such fund may be transferred by the agency to other funds or accounts of the agency to the extent that the transfer does not reduce the amount of the fund to below the said capital reserve fund requirement.

(c) The agency may provide by resolution or resolutions that it shall not issue bonds under a resolution or resolutions at any time if upon issuance the amount in the capital reserve fund which will secure the bonds shall be less than said capital reserve fund requirement, unless the agency at the time of issuance of the bonds shall deposit in the fund from

the proceeds of the bonds to be so issued, or other sources, an amount which, together with the amount then in the fund, shall not be less than said capital reserve fund requirement.

(d) In computing the amount of the capital reserve funds for the purpose of this part, securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or by other method of valuation as the agency may provide by resolution.

(e) "Capital reserve fund requirement" means, as of any particular date of computation, and with respect to any particular issue of bonds, such amount as the agency may provide, or may have heretofore provided, by resolution, which amount may be in the form of a sum certain or a formula. In establishing reserves and setting capital reserve fund requirements, the agency shall consider the following:

(i) the qualifications for obtaining an investment grade rating from one or more nationally recognized bond rating agencies;

(ii) the economic feasibility and marketability of the bonds being issued, taking into account all security for the bonds, including the capital reserve fund; and

(iii) applicable requirements pertaining to reserve funds under federal and state income tax laws and regulations.

(f) To assure the continued operation and solvency of the agency for the carrying out of its corporate purposes, provision is made in [~~subdivision~~] Subsection (b) [~~of this subsection~~] for the accumulation in the capital reserve funds of an amount equal to the maximum capital reserve fund requirement. The chairman of the agency shall annually, on or before December first, certify to the governor and to the director of finance the amount, if any, required to restore the capital reserve funds to the capital reserve fund requirement. The governor may request from the Legislature an appropriation of the amount so certified to restore the capital reserve funds to the capital reserve fund requirement.

(g) Amounts appropriated, if any, shall be repaid to the General Fund of the state, from any monies in excess of the amounts which the agency determines will keep it self-supporting.

(2) The agency may create and establish any other funds as may be necessary or desirable for its corporate purposes.

Section 23. Section Amended.

Section 9-4-917, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

~~9-4-917~~. Notes, bonds, other obligations — Not debt liability — Expenses payable from funds provided — Agency without authority to incur liability on behalf of state.

(1) Notes, bonds, and other obligations issued under this part shall not constitute a debt [of] or liability of this state or of any county, city, town, village, school district, or any other political subdivision of the state, nor shall the notes, bonds, or other obligations constitute the loaning of credit of the state or of any county, city, town, township, district, or any other political subdivision of the state, nor shall the notes, bonds, or other obligations be payable from funds other than those of the agency. All notes, bonds, or other obligations shall contain on the face thereof a statement to the effect that the agency is obligated to pay the same solely from the revenues or other funds of the agency and that neither this state nor any political subdivision of it is obligated to pay the same and that neither the faith and credit nor the taxing power of this state or any political subdivision of it is pledged to the payment of principal, or redemption price of, or the interest on such notes, bonds, or other obligations.

(2) All expenses incurred in carrying out this act shall be payable solely from funds provided under this part, and nothing in this part shall be construed to authorize the agency to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

Section 24. Section Amended.

Section 9-4-923, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

~~9-4-923~~. Allocation of mortgage bonds qualified under Internal Revenue Code to agency.

The entire amount of qualified mortgage bonds allowable to Utah pursuant to [~~Section 103A of the Internal Revenue Code of 1986~~] 26 U.S.C., Section 143, and the regulations issued under the code, is allocated to the Utah Housing Finance Agency which, for purposes of Section 103A and the regulations under that section, has sole responsibility for issuing or approving the issuance of qualified mortgage bonds allowable to Utah. The agency is not required to issue or approve the issuance of qualified mortgage bonds equal in amount to the amount allowed Utah. Housing authorities in counties, cities, and towns in Utah may apply under Section 103A to the agency for funding of housing programs within their respective jurisdictions.

Section 25. Section Amended.

Section 9-5-207, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

~~9-5-207~~. Purposes of division.

The purposes of the division [is] are to promote in the state [~~of Utah~~] livestock breeding, agriculture, horticulture, mining, manufacturing, mechanical arts, sciences, industry arts, and creative arts.

Section 26. Section Amended.

Section 9-6-302, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

~~9-6-302~~. Honorary life membership.

(1) Any person who submits to the board a work of art executed by himself which is accepted by the

board[,] shall, by the tender and acceptance of that work of art[,] and on receipt of a certificate of membership issued by the board, become an honorary member for life.

(2) The board may also confer an honorary life membership for outstanding achievement in art, literature, or music upon any resident of the state [of Utah].

Section 27. Section Amended.

Section 9-6-403, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-6-403. Definitions.

As used in this part:

(1) "Artist" means a practitioner in the visual arts, generally recognized by critics and the artist's peers as a professional who is committed to producing high quality work on a regular basis, and who is not the project architect or a member of the project's architectural firm.

(2) "Acquired or constructed" means acquired, constructed, reconstructed, restored, enlarged, improved, renovated, repaired, replaced, equipped, or furnished in whole or in part with state funds.

(3) "Contracting agency" means the state agency which is responsible for supervising the principal user of a state building or facility.

(4) "Principal user" means the department, board, commission, institution, or agency of the state for the principal use of which a state building or facility is acquired or constructed.

(5) "Program" means the Percent-for-Art Program created in this [~~chapter~~] part.

(6) "Project" means the project whereby state buildings or facilities are acquired or constructed.

(7) (a) "State building or facility" means a state building, permanent structure, facility, park, or appurtenant structure thereof, wholly or partially enclosed, which includes, but is not restricted to a space or facility used or to be used for carrying out the functions of a department, board, commission, institution, or agency of the state, including offices, hearing or meeting rooms, auditoriums, libraries, courtrooms, classrooms, workshops, laboratories, eating or sleeping facilities, or highway rest areas.

(b) "State building or facility" does not include motor pools, heating plants, sheds, sewers, parking lots, bridges, highways, or buildings used solely for storage or warehousing.

(8) "Work of art" or "works of art" means any form of original creation of visual art including, but not restricted to any sculpture, bas relief, high relief, mobile, fountain, painting, graphic, print, lithograph, etching, embossing, drawing, mural, mosaic, supergraphic, fresco, photograph, ceramic, fiber, mixed media, or combination of forms.

Section 28. Section Amended.

Section 9-7-502, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-502. Library board of directors — Expenses.

(1) When the county governing body decides to establish and maintain a county public library under the provisions of this part, it shall appoint a library board of five directors chosen from the citizens of the county and based upon their fitness for the office.

(2) Only one member of the county governing body may be, at any one time, a member of the board.

(3) Each director shall serve without compensation, but [their] the actual and necessary expenses incurred in the performance of [their] the director's official duties may be paid from library funds.

Section 29. Section Amended.

Section 9-7-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-503. Library board terms — Officers — Removal — Vacancies.

(1) Each director shall be appointed for a four-year term, or until [~~their successors are~~] the director's successor is appointed. Initially, appointments shall be made for one-, two-, three-, and four-year terms, and one member of the county governing body for the term of his elected office. Annually thereafter, the county governing body shall, before the first day of July of each year, appoint, for a four-year term, one director to take the place of the retiring director.

(2) Directors shall serve not more than two consecutive full terms.

(3) The governor shall annually select a chairman and other officers.

(4) The county governing body may remove any director for misconduct or neglect of duty.

(5) Vacancies in the board of directors shall be filled for the unexpired terms in the same manner as original appointments.

Section 30. Section Amended.

Section 9-8-204, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-8-204. Board of State History.

(1) There is created within the department the Board of State History.

(2) The board shall consist of 11 members appointed by the governor with the advice and consent of the Senate as follows:

(a) sufficient representatives to satisfy the federal requirements for an adequately qualified State Historic Preservation Review Board; and

(b) other persons with an interest in the subject matter of the division's responsibilities.

(3) The members shall be appointed for terms of four years and shall serve until their successors are appointed and qualified.

(4) Any vacancy that occurs on the board shall be filled for the unexpired term by appointment of the governor with the advice and consent of the Senate.

(5) Six members of the board are a quorum for the transaction of business.

(6) The governor shall select a chairman and vice-chairman from the board members.

(7) Each member shall serve without compensation, but may receive all actual and necessary expenses incurred in carrying out [their] the member's official duties, as established by the Division of Finance.

Section 31. Section Amended.

Section 9-8-704, Utah Code Annotated 1953, as enacted by Chapter 121, Laws of Utah 1991, is amended to read:

9-8-704. Division duties.

The division shall, according to policy established by the board:

(1) allocate monies from the state fund to the endowment fund created by a qualifying organization under Section 9-8-703;

(2) determine the eligibility of each qualifying organization to receive monies from the state fund into the endowment fund of the qualifying organization;

(3) determine the matching amount each qualifying organization must raise in order to qualify to receive monies from the state fund;

(4) establish a date by which each qualifying organization must provide its matching funds;

(5) verify that matching funds have been provided by each qualifying organization by the date determined in Subsection [(d)] (4); and

(6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establish criteria by rule not otherwise prescribed in this chapter for determining the eligibility of qualifying organizations to receive monies from the state fund.

Section 32. Section Amended.

Section 9-8-803, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-8-803. Ownership of reposited materials — Rebuttable presumption.

(1) There is established a rebuttable presumption that any reposited materials held by a collecting institution are the property of that collecting institution.

(2) Any person seeking to claim reposited materials from a collecting institution shall comply with the requirements of this [chapter] part.

Section 33. Section Amended.

Section 10-1-108, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-1-108. Cumulative powers — Powers not in derogation of state agencies.

The provisions of this act or any other act not expressly repealed by Section 10-1-114[;] shall be considered as an alternative or additional power and not as a limitation on any other power granted to or possessed by municipalities. The provisions of this act shall not be considered as impairing, altering, modifying or repealing any of the jurisdiction or powers possessed by any department, division, commission, board, or office of state government.

Section 34. Section Amended.

Section 10-1-110, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-1-110. Continuation of prior law.

The provisions of this act insofar as they are the same or substantially the same as those of any prior statute[;] shall be construed as a continuation of the prior statute and not as a new enactment. If any other statutory reference is made to an act of the Legislature or a section of such an act, which is continued in this act, the reference shall be held to refer to the act or section thereof so continued in this act.

Section 35. Section Amended.

Section 10-2-110, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

10-2-110. Appointment of town officials.

On approval of the petition provided for in Section 10-2-109, the board of county commissioners in the county in which the town is located[;] shall appoint the first mayor and council who shall hold office until the next regular municipal election and until their successors are elected and qualified.

Section 36. Section Amended.

Section 10-3-608, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-3-608. Rules of conduct for the public.

The governing body on a two-thirds vote may expel any person who is disorderly during the meeting of the governing body. This section or any action taken by the governing body pursuant hereto[;] shall not preclude prosecution under any other provision of law.

Section 37. Section Amended.

Section 10-3-714, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-3-714. Contents, dates, publication proved under seal.

The contents of all municipal ordinances, the dates of passage, and the date of publication or post-

ing[.] may be proved by the certification of the municipal recorder under the seal of the municipality.

Section 38. Section Amended.

Section 10-3-806, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-3-806. Designation of department head in cities of the second class.

The governing body shall at its first regular meeting after the first Monday in January following the municipal election[;] assign by a majority vote the department or departments each commissioner is to administer.

Section 39. Section Amended.

Section 10-3-1107, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-3-1107. Cost of living adjustment — Price index used.

(1) The governing body of each municipality may, in their discretion, adopt a plan to allow any person who qualifies under this part to receive a cost of living adjustment in [~~their~~] that person's monthly retirement allowance[~~; but the~~]. The adjustment allowed shall be a percentage, not to exceed [~~one hundred per cent~~] 100%, of the sum as would restore the full purchasing power of each person's original unmodified pension allowance as it was in the calendar year in which the retirement giving rise to the pension occurred.

(2) The amount necessary to restore the full purchasing power of the original unmodified pension allowance shall be computed from the consumers price index published by the United States Bureau of Labor Statistics.

(3) Adjustments may be effective as of the date of this act or at any subsequent date set by the governing body. A municipality may choose to pay any per cent to the maximum amount provided that such percentage be paid to all qualified persons equally.

Section 40. Section Amended.

Section 10-6-152, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1979, is amended to read:

10-6-152. Notice that audit completed and available for inspection.

Within ten days following the receipt of the audit report furnished by the independent auditor, the city auditor in cities having an auditor and the city recorder in all other cities[;] shall prepare and publish at least twice in a newspaper of general circulation published within the county, a notice to the public that the audit of the city has been completed and a copy thereof may be inspected at the office of the city auditor or recorder. If a newspaper of general circulation is not published within the county, the notice required by this section may be posted in three public places.

Section 41. Section Amended.

Section 10-6-154, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1979, is amended to read:

10-6-154. Duties of state auditor and committee — Adoption and expansion of uniform system.

(1) The state auditor[;] with the assistance, advice, and recommendations of the municipal government fiscal committee shall:

(a) prescribe uniform accounting and reporting procedures for cities, in conformity with generally accepted accounting principles;

(b) conduct a continuing review and modification of such procedures to improve them;

(c) prepare and supply each city with suitable budget and reporting forms; and

(d) prepare instructional materials, conduct training programs and render other services deemed necessary to assist cities in implementing the uniform accounting, budgeting and reporting procedures.

(2) The Uniform Accounting Manual for Utah Cities shall prescribe reasonable exceptions and modifications for smaller third class cities to the uniform system of accounting, budgeting, and reporting.

(3) The advisory committee shall establish and conduct a continuing review of suggested measurements and procedures for program and performance budgeting and reporting which may be evaluated on a statewide basis.

(4) Cities may expand the uniform accounting and reporting procedures to better serve their needs; however, no deviations from or alterations to the basic prescribed classification systems for the identity of funds and accounts shall be made.

Section 42. Section Amended.

Section 10-6-159, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1979, is amended to read:

10-6-159. Financial administration ordinance — Provisions.

The financial administration ordinances adopted pursuant to Section 10-6-158[;] shall provide for the following:

(1) a maximum sum over which all purchases may not be made without the approval of the mayor in the council-mayor optional form of government or the governing body in other cities; however, this section shall not prevent the mayor in the council-mayor optional form of government or the governing body in other cities from approving all or part of a list of verified claims, including a specific claim in an amount in excess of the stated maximum, where certified by the appropriate financial officer or officers of the city;

(2) that the financial officer be bonded for a reasonable amount; and

(3) such other provisions as the governing body may deem advisable.

Section 43. Section Amended.

Section 10-8-8.5, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1955, is amended to read:

10-8-8.5. Effect of vacation or narrowing of street or alley.

The action of the governing body vacating or narrowing a street or alley which has been dedicated to public use by the proprietor[,] shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance, as a revocation of the acceptance thereof, and the relinquishment of the city's fee therein by the governing body, but the right of way and easements therein, if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby.

Section 44. Section Amended.

Section 11-2-2, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1959, is amended to read:

11-2-2. Entertainment facilities for citizenry.

Such local authorities may organize and conduct plays, games, calisthenics, gymnastics, athletic sports and games, tournaments, meets and leagues, dramatics, picture shows, pageants, festivals and celebrations, community music, clubs, debating societies, public speaking, story telling, hikes, picnics, excursions, camping and handicraft activities, and in areas so remote from regular transmission points of the large television stations that television reception is impossible without special equipment, and adequate, economical and proper television is not available to the public by private sources, said local authorities[,] may equip and maintain television transmission and relay facilities and other forms of recreational activity[,] that may employ the leisure time of the people in a constructive and wholesome manner.

Section 45. Section Amended.

Section 11-13-6, Utah Code Annotated 1953, as last amended by Chapter 47, Laws of Utah 1977, is amended to read:

11-13-6. Agreements for joint or co-operative action — Required provisions.

Any such agreement shall specify the following:

(1) [~~Its~~] its duration[.];

(2) [~~The~~] the precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created. If a separate entity or administrative body is created to perform the joint functions, a majority of the governing body of such entity shall be constituted by appointments made by the governing bodies of the public agencies creating the entity and such appointees shall serve at the pleasure of the governing bodies of the creating public agencies[.];

(3) [~~Its~~] its purpose or purposes[.];

(4) [~~The~~] the manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget therefor[.];

(5) [~~The~~] the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination[.];

(6) [~~Any~~] any other necessary and proper matters[.]; and

(7) [~~The~~] the price of any product of the service or benefit to the consumer allocated to any buyer except the participating agencies within the state[,] shall include the amount necessary to provide for the payments of the in lieu fee provided for in Section 11-13-25.

Section 46. Section Amended.

Section 11-14-3, Utah Code Annotated 1953, as last amended by Chapter 346, Laws of Utah 1983, is amended to read:

11-14-3. Notice of election — Publication.

(1) Notice of the election shall be published once a week during three consecutive weeks in a newspaper designated in accordance with Section 11-14-21[;], the first publication to be not less than 21 nor more than 35 days before the election. If no official newspaper is designated, the notices shall be published in a newspaper published in the municipality, or if no newspaper is published in the municipality, the notices shall be published in a newspaper having general circulation in the municipality. [~~No election~~]

(2) Election notice given for any bond election held in this state need not be posted, either by registration agents or by any other person, except that in cities of the third class or towns where there is no newspaper published in such city or town, the governing body may provide that notice of a bond election therein may be given by posting in lieu of publication of such notice and in such event notice of the bond election shall be posted by the city recorder, town clerk, or other officer designated by the governing body in at least five public places in said city or town at least 21 days before the election.

Section 47. Section Amended.

Section 11-17-17, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1992, is amended to read:

11-17-17. State universities granted same powers as municipalities and counties.

(1) The State Board of Regents may, on behalf of the University of Utah and Utah State University [~~of Agriculture and Applied Science~~] exercise all powers granted to municipalities and counties pursuant to this chapter, except as provided in Subsection [~~(b)~~] (2).

(2) The board may not issue bonds in excess of $10,000,000 in any one year under this chapter on behalf of either institution as the borrower without prior approval from the Legislature.

Section 48. Section Amended.

Section 11-26-1, Utah Code Annotated 1953, as last amended by Chapter 96, Laws of Utah 1992, is amended to read:

11-26-1. Ceiling on taxes and charges based on gross revenue of utility — Sales and use taxes exempt.

(1) Counties and municipalities may not impose upon, charge, or collect from a public utility or other person or entity engaged in the business of supplying telephone service, or gas or electric energy service, any tax, license, fee, license fee, license tax, or similar charge, or any combination of any of these, based upon the gross revenues of the utility, person, or entity derived from sales or use or both sales and use of the service within the county or municipality, which charges total more than 6% of gross revenues. Sales of gas and electricity as special fuel for motor vehicles may not be included in the determination of gross revenues under this subsection.

(2) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under Title 59, Chapter 12, Part 2; or

(b) grant any county or municipality the power to impose a tax, license, fee, license fee, license tax, or similar charge not otherwise provided for by law.

(3) This section takes [~~precedent~~] precedence over any conflicting provision of law.

Section 49. Section Amended.

Section 11-37-101, Utah Code Annotated 1953, as enacted by Chapter 32, Laws of Utah 1992, is amended to read:

11-37-101. Definition — Procurement — Use of recycled goods.

(1) "Local government entity" means:

(a) municipalities, cities, and counties;

(b) special districts created under Title 17A;

(c) entities created under Title 26A, Chapter 1, Local Health Department Act; and

(d) political subdivisions created by cities or counties, including entities created under:

(i) Title 11, Chapter 13, Interlocal Co-operation Act;

(ii) [~~Title 63, Chapter 44a~~] Title 9, Chapter 4, Part 9, Utah Housing Finance Agency; and

(iii) [~~Title 63, Chapter 60~~] Title 9, Chapter 2, Part 7, Utah Technology and Innovation Act.

(2) The procurement officer or other person responsible for purchasing supplies for each local government entity shall:

(a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section 63-56-9; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

Section 50. Section Amended.

Section 13-1-2, Utah Code Annotated 1953, as last amended by Chapter 240, Laws of Utah 1990, is amended to read:

13-1-2. Creation and functions of department — Divisions created — Fees.

(1) (a) There is created the Department of Commerce.

(b) The department shall execute and administer state laws regulating business activities and occupations affecting the public interest.

(2) [~~There is created within~~] Within the department the following divisions are created:

(a) the Division of Occupational and Professional Licensing;

(b) the Division of Real Estate;

(c) the Division of Securities;

(d) the Division of Public Utilities;

(e) the Division of Consumer Protection; and

(f) the Division of Corporations and Commercial Code.

(3) (a) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Subsection 63-38-3 (2).

(b) The department shall submit each fee established in this manner to the Legislature for its approval as part of the department's annual appropriations request.

(c) (i) All fees collected by each division and by the department shall be deposited in a restricted account within the General Fund known as the Commerce Service Fund.

(ii) At the end of each fiscal year the director of the Division of Finance shall transfer into the General Fund any fee collections that are greater than the department's legislative appropriation for that year.

(d) The department may not charge or collect any fee[,] nor expend monies from this fund[,] without approval by the Legislature.

Section 51. Section Amended.

Section 13-1-12, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

13-1-12. Order by hearing officer or body — Appeal of order to the division director or the executive director.

(1) (a) At the close of an adjudicative proceeding, the administrative law judge or an occupational board or representative committee with assistance from the administrative law judge[,] shall issue an order.

(b) The order may be appealed to the executive director or the division director for review.

(2) If a division director is unable for any reason to fairly review or rule upon an order of the administrative law judge or a board or committee, the executive director shall review and rule upon the order.

Section 52. Section Amended.

Section 13-5-3, Utah Code Annotated 1953, is amended to read:

13-5-3. Unlawful discriminations — Burden of proof — Taking or offering commissions — Payments for benefit of customers — Discrimination among purchasers — Inducing discriminations.

(1) (a) [~~That it shall be~~] It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the state [of ~~Utah~~] and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them[~~; provided, that nothing herein contained~~].

(b) Nothing in this chapter shall prevent:

(i) differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purchasers sold or delivered; [~~and provided further, that nothing herein contained shall prevent~~]

(ii) persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and [~~provided further, that nothing herein contained shall prevent~~]

(iii) price changes from time to time [~~where~~] in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned. tf [~~Burden of Proof.~~]

[~~(b)~~] (2) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section[~~; provided, however, that~~]. However nothing [~~herein contained~~] in this chapter shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor. tf [~~Taking or Offering Commissions.~~]

[~~(c)~~] (3) [~~That it shall be~~] It is unlawful for any person engaged in commerce in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares, or merchandise. tf [~~Payments for Benefit of Customers.~~]

[~~(d)~~] (4) [~~That it shall be~~] It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products, or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities. tf [~~Discrimination Among Purchasers.~~]

[~~(e)~~] (5) [~~That it shall be~~] It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms. tf [~~Inducing Discriminations.~~]

[~~(f)~~] (6) [~~That it shall be~~] It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Section 53. Section Amended.

Section 13-5-8, Utah Code Annotated 1953, is amended to read:

13-5-8. Advertising goods not prepared to supply.

It shall be unlawful for any person[~~,~~] engaged in business within the state [~~of Utah~~] to advertise goods, wares, or merchandise [~~they~~ are] that person is not prepared to supply.

Section 54. Section Amended.

Section 13-9-1, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1985, is amended to read:

13-9-1. "Foreign-Trade Zones Act" defined.

As used in this act:

Foreign-Trade Zones Act[,] means the act passed by the United States Congress identified as the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998-1003; 19 U.S.C. 81a-81u), as amended by Pub-

lic Law 566, 81st Congress, approved June 17, 1950, together with any subsequent amendments to [said] that act and any rules and regulations promulgated pursuant to the authority granted by [said] the act.

Section 55. Section Amended.

Section 13-11-17, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1983, is amended to read:

13-11-17. Actions by enforcing authority.

(1) The enforcing authority may bring an action:

(a) to obtain a declaratory judgment that an act or practice violates this chapter;

(b) to enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter; and

(c) to recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter.

(2) (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under [~~section~~] Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under [~~section~~] Subsection 13-11-7(1)(c) by the enforcing authority ten days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.

(b) On motion of the enforcing authority and without bond in an action under this subsection, the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal or dispose of his property to the damage of persons for whom relief is requested, to reimburse consumers found to have been damaged, or to carry out a transaction in accordance with consumers' reasonable expectations, or to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against a supplier.

(c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to [the] Title 78, Chapter 44, Uniform [~~Disposition of~~] Unclaimed Property Act.

(d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this subsection is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(e) No action may be brought by the enforcing authority under this subsection more than two years after the occurrence of a violation of this chapter.

(3) The enforcing authority may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action. An assurance is not evidence of a prior violation of this chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.

Section 56. Section Amended.

Section 13-11-19, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1983, is amended to read:

13-11-19. Actions by consumer.

(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:

(a) obtain a declaratory judgment that an act or practice violates this chapter; and

(b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.

(2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or $2,000, whichever is greater, plus court costs.

(3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief against an act or practice that violates this chapter.

(4) (a) A consumer who suffers loss as a result of a violation of this chapter may bring a class action for the actual damages caused by an act or practice specified as violating this chapter by a rule adopted by the enforcing authority under [~~section~~] Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and appellate courts of this state that was either officially reported or made available for public dissemination under [~~section~~] Subsection 13-11-7(1)(c) by the enforcing authority ten days before the consumer transactions on which the action is based, or with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.

(b) If an act or practice that violates this chapter unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to [~~the~~] Title 78, Chapter 44, Uniform [~~Disposition of~~] Unclaimed Property Act.

(c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

(a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and

(b) an action under this section has been terminated by a judgment or required by the court to be settled under [~~section~~] Subsection 13-11-21(1)(a).

(6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.

(7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under [~~section~~] Subsection 13-11-7(1)(e).

(8) An action under this section must be brought within two years after occurrence of a violation of this chapter, or within one year after the termination of proceedings by the enforcing authority with respect to a violation of this chapter, whichever is later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising out of the transaction on which suit is brought.

Section 57. Section Amended.

Section 13-20-2, Utah Code Annotated 1953, as last amended by Chapters 1 and 30, Laws of Utah 1992, is amended to read:

13-20-2. Definitions.

As used in this chapter:

(1) "Consumer" means an individual who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle other than for purposes of resale, or sublease, during the duration of the period defined under Section 13-20-5.

(2) "Manufacturer" means manufacturer, importer, distributor, or anyone who is named as the warrantor on an express written warranty on a motor vehicle.

(3) (a) "Motor vehicle" includes:

(i) a motor home, as defined in Section 41-20-1, but only the self-propelled vehicle and chassis sold in this state; and

(ii) a motor vehicle, as defined in Section 41-1a-102, sold in this state.

(b) "Motor vehicle" does not include:

(i) those portions of a motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space;

(ii) farm tractor, motorcycle, road tractor, or truck tractor as defined in Section 41-1a-102;

(iii) mobile home as defined in Section [~~41-1-1~~] 41-1a-102; or

(iv) any motor vehicle with a gross laden weight of over 12,000 pounds.

Section 58. Section Amended.

Section 17A-1-601, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1992, is amended to read:

17A-1-601. Establishment of special district merit system.

(1) This [~~chapter shall be~~] part is known [~~and may be cited~~] as the "Special District Personnel Management Act."

(2) A merit system of personnel administration for the special districts of the state of Utah, their departments, offices, and agencies, except as otherwise specifically provided, is established.

(3) This part does not apply to special districts with annual revenues less than $50,000.

Section 59. Section Amended.

Section 19-6-102, Utah Code Annotated 1953, as last amended by Chapter 282, Laws of Utah 1992, is amended to read:

19-6-102. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:

[(a)] (i) receives waste for recycling;

[(b)] (ii) receives waste to be used as fuel, in compliance with federal and state requirements; or

[(c)] (iii) that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(5) "Executive secretary" means the executive secretary of the board.

(6) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

(7) "Hazardous waste" means a solid waste or combination of solid wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(8) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(9) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(10) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(11) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

(12) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(13) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan under Section 19-6-108 to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(14) (a) "Solid waste" means any garbage, refuse, sludge, [(]including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility[)], or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the [federal] Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;

(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(iv) solid wastes from the extraction, beneficiation, and processing of ores and minerals; or

(v) cement kiln dust.

(15) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

(16) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

(17) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

(18) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section [6991c] 6991, et seq.

Section 60. Section Amended.

Section 20-3-20, Utah Code Annotated 1953, as last amended by Chapters 5 and 70, Laws of Utah 1991, is amended to read:

20-3-20. Ballots — Arrangement of candidates' names.

(1) (a) All voting at primary elections shall be by ballot.

(b) The county clerk of each county shall provide official printed ballots.

(c) Official ballots shall be printed on official paper in the manner provided in general election laws.

(2) (a) The joint candidates for governor and lieutenant governor shall be arranged alphabetically according to the gubernatorial candidates' surnames, with one square for each set of joint candidates.

(b) The names of all other candidates shall be arranged alphabetically according to surnames, except as otherwise provided in Section [~~53A-3-101~~] 53A-1-103, under the appropriate title of the respective offices, and under the proper party designation upon the party ticket.

Section 61. Section Amended.

Section 21-1-4, Utah Code Annotated 1953, as last amended by Chapter 290, Laws of Utah 1992, is amended to read:

21-1-4. Fees for certificate of admission.

The appellate courts shall receive a $50 fee for a certificate of admission as attorney and counselor, [~~$50;~~] $30 of which shall be retained by the state treasurer as a special fund for the benefit of the state library, to be expended by the board of control.

Section 62. Section Amended.

Section 21-1-5, Utah Code Annotated 1953, as enacted by Chapter 290, Laws of Utah 1992, is amended to read:

21-1-5. Civil fees of the courts of record.

(1) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $80.

(2) The fee for filing a complaint, petition, or small claims affidavit is:

(a) $20 where the claim for damages exclusive of court costs, interest, and attorney fees is $2,000 or less;

(b) $40 where the claim for damages exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000; and

(c) $80 where the claim for damages is $10,000 or more.

(3) The fee for filing a counter claim, counter affidavit, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(a) $15 when the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(b) $30 when the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000; and

(c) $60 when the claim for relief is $10,000 or more.

(4) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (2) based on the amount deposited.

(5) The fee for filing a petition for trial de novo of an adjudication of the justice court or of the small claims department is $50.

(6) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $160.

(7) The fee for filing a complaint filed alone under Title 30, Chapter 6, Cohabitant Abuse Act, is $25. If the complaint is filed in conjunction with a petition for divorce, a separate fee may not be charged for filing the complaint under the Cohabitant Abuse Act.

(8) The fee for filing a petition for expungement is $50.

(9) (a) Fifteen dollars of the fees established by Subsections (1) through (8) shall be allocated to the Judges' Retirement Trust Fund, under Title 49, Chapter 6, Judges' Retirement Act.

(b) Two dollars of the fees established by Subsections (1) through (8) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 63-63a-8.

(10) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $25.

(11) The fee for filing probate or child custody documents from another state is $25.

(12) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions is $10.

(13) The fee for filing a judgment by confession without action under Section 78-22-3 is $25.

(14) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is $25.

(15) The fee for filing a petition to modify a decree of divorce is $30.

(16) The fee for filing any accounting required by law is $80.

(17) The fee for filing a demand for a civil jury is $50.

(18) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $25.

(19) The fee for filing documents that require judicial approval but are not part of an action before the court is $25.

(20) The fee for a petition to open a sealed record is $25.

(21) The fee for a writ of replevin, attachment, execution, or garnishment is $5 in addition to any fee for a complaint or petition.

(22) The fee for a certified copy of a document is $2 per document plus 50 cents per page.

(23) The fee for an exemplified copy of a document is $4 per document plus 50 cents per page.

(24) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under [~~the~~] Title 63, Chapter 2, Government Records Access and Management Act. Fees under this subsection shall be credited to the court as a reimbursement of expenditures.

(25) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(26) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(27) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

Section 63. Section Amended.

Section 23-19-9.5, Utah Code Annotated 1953, as last amended by Chapter 260, Laws of Utah 1992, is amended to read:

23-19-9.5. Warrant outstanding or failure to comply with citation — Person not entitled to license, permit, tag, or certificate.

(1) A person may not purchase a license, permit, tag, or certificate of registration if:

(a) there is an outstanding Utah warrant against him for failure to appear in answer to a summons for a violation of:

(i) a provision of this title; or

(ii) a rule, proclamation, or order of the Wildlife Board or Board of Big Game Control; or

(b) he has failed to comply with a wildlife citation in a state which is a party to the Wildlife Violator Compact set forth in Title 23, Chapter 25.

(2) The division may allow a person referred to in Subsection (1) to purchase a license, permit, tag, or certificate of registration[;] if satisfactory proof is given that:

(a) the warrant is no longer outstanding; or

(b) he has complied with the wildlife citation.

Section 64. Section Amended.

Section 23-19-38, Utah Code Annotated 1953, as last amended by Chapter 19, Laws of Utah 1992, is amended to read:

23-19-38. Sales of licenses, certificates, or permits final — Exceptions.

(1) Sales of all licenses, certificates, or permits are final, and no refunds may be made by the division except as provided in Subsection (2) [~~and Section 23-19-38.1~~].

(2) The division may refund the amount of the license, certificate, or permit if:

(a) the division, Wildlife Board, or Board of Big Game Control discontinues the activity for which the license, certificate, or permit was obtained; or

(b) the person to whom the license, certificate, or permit is issued dies prior to his being able to participate in the activity for which the license, certificate, or permit was obtained.

Section 65. Section Amended.

Section 23-20-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 27, Laws of Utah 1992, is amended to read:

23-20-4. Wanton destruction of protected wildlife — Penalties.

(1) A person is guilty of wanton destruction of protected wildlife if he:

(a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through 23-15-9, 23-16-5, or Subsection 23-20-3(1);

(b) captures, injures, or destroys protected wildlife; and

(c) (i) does so with intentional, knowing, or reckless conduct as defined in Section 76-2-103;

(ii) intentionally abandons protected wildlife or a carcass;

(iii) commits the offense at night with the use of a weapon;

(iv) is under a court or Wildlife Board revocation of a license, tag, permit, or certificate of registration; or

(v) acts for pecuniary gain.

(2) Subsection (1) does not apply to actions taken which are in accordance with the following:

(a) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act;

(b) Section 23-16-3; or

(c) Title 4, Chapter 14, Utah Pesticide Control Act.

(3) Wanton destruction of wildlife is punishable:

(a) as a third degree felony if the aggregate value of the protected wildlife determined by the values in Subsection 23-20-4(4) is more than $500;

(b) as a class A misdemeanor if the aggregate value of the protected wildlife determined by the values

established in Subsection 23-20-4(4) is more than $250, but does not exceed $500;

(c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection 23-20-4(4) is $250 or less.

[~~(3)~~] (4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the following values shall be assigned to protected wildlife for the purpose of determining the offense for wanton destruction of wildlife:

(a) $1,000 per animal for:

(i) bison;

(ii) bighorn sheep;

(iii) rocky mountain goat:

(iv) moose;

(v) bear;

(vi) cougar; or

(vii) endangered species;

(b) $750 per animal for:

(i) elk; or

(ii) threatened species;

(c) $500 per animal for:

(i) golden eagle; or

(ii) river otter;

(d) $400 per animal for:

(i) pronghorn antelope; or

(ii) deer;

(e) $350 per animal for bobcat;

(f) $100 per animal for:

(i) swan;

(ii) sandhill crane;

(iii) turkey;

(iv) pelican;

(v) loon;

(vi) egrets;

(vii) herons; or

(viii) raptors, except those that are threatened or endangered;

(g) $35 per animal for furbearers, except:

(i) bobcat;

(ii) river otter; and

(iii) threatened or endangered species;

(h) $15 per animal for game birds, except:

(i) turkey;

(ii) swan; and

(iii) sandhill crane;

(i) $10 per animal for game fish;

(j) $8 per pound dry weight of processed brine shrimp including eggs; and

(k) $5 per animal for protected wildlife not listed.

[~~(4)~~] (5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in [~~Section~~] Subsection 76-3-203(4).

Section 66. Section Amended.

Section 23-25-10, Utah Code Annotated 1953, as enacted by Chapter 260, Laws of Utah 1992, is amended to read:

23-25-10. Amendments to the compact.

(1) This compact may be amended from time to time. Amendments shall be presented [~~on~~] in resolution form to the chairman of the Board of Compact Administrators and shall be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(3) Failure of a participating state to respond to the compact chairman within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

Section 67. Section Amended.

Section 26-18a-1, Utah Code Annotated 1953, as enacted by Chapter 131, Laws of Utah 1992, is amended to read:

26-18a-1. Definitions.

As used in this chapter:

(1) "Children" or "child" means a person under the age of 18.

(2) "Committee" means the Children's Organ Transplant [~~Coordination~~] Coordinating Committee.

(3) "Trust account" means the restricted account within the General Fund created in Section 26-18a-4.

Section 68. Section Amended.

Section 26-21-5, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

26-21-5. Powers and responsibilities of committee.

(1) The committee has the following powers and responsibilities:

(a) to establish rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(i) for licensing and revoking licenses for health care facilities;

(ii) governing the entry of agents of the department into health care facilities for inspections;

(iii) governing public hearings conducted under this chapter;

(iv) governing appeals related to licensure decisions of the department; and

(v) requiring the submission of architectural plans and specifications for any proposed new health care facility or renovation to the department for review;

(b) to define the information which must be submitted to the department with an application for a license pursuant to Section 26-21-9;

(c) to establish fees for licenses issued to health care facilities under this chapter in accordance with Subsection 63-38-3 (2);

(d) to advise the department as requested concerning enforcement of the rules established under this chapter;

(e) to conduct hearings on appeals from enforcement actions of the department as provided in this chapter;

(f) to compel the attendance of witnesses and the production of documents and evidence, administer oaths and take testimony concerning appeals as provided in this chapter;

(g) to appoint a hearings officer who shall be empowered to act in its behalf in hearings and appeals as provided in this chapter; an appointed hearings officer shall have the same powers as the committee in the conduct of such hearings; and

(h) to advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, and other states and affected groups or persons in carrying out the purposes of this chapter.

(2) Rules made by the committee under Subsection (1)(a)(v) are subject to state fire marshal rules governing residential health care facilities established under Section [~~63-29-7~~] 63-27-109.

Section 69. Section Amended.

Section 26-21-6, Utah Code Annotated 1953, as last amended by Chapter 202, Laws of Utah 1991, is amended to read:

26-21-6. Powers and responsibilities of department.

(1) The department shall have the following powers and responsibilities:

(a) enforce rules established by the committee;

(b) authorize any agent of the department to conduct inspections of health care facilities pursuant to rules of the committee;

(c) collect information authorized by the committee which may be necessary to insure that adequate health care facilities are available to the public;

(d) collect and credit fees for licenses as free revenue;

(e) collect and credit fees for conducting plan reviews as dedicated credits;

(f) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities;

(g) provide necessary administrative and staff support to the committee;

(h) exercise all incidental powers necessary to carry out the purposes of this chapter; and

(i) review architectural plans and specifications of proposed health care facilities or renovations of health care facilities to insure that such plans and specifications conform to rules established by the committee.

(2) The rules established by the committee under Subsection (1)(h) are subject to the rules of the state fire marshal made pursuant to Section [~~63-29-7~~] 63-27-109.

Section 70. Section Amended.

Section 30-3-5.1, Utah Code Annotated 1953, as enacted by Chapter 11, Laws of Utah 1985, is amended to read:

30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title [~~78~~] 62A, Chapter [~~45d~~] 11, Part 4.

Section 71. Section Amended.

Section 31A-1-103, Utah Code Annotated 1953, as last amended by Chapter 203, Laws of Utah 1992, is amended to read:

31A-1-103. Scope and applicability of title.

(1) This title does not apply to:

(a) retainer contracts made by attorneys-at-law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters;

(b) arrangements for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;

(c) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship; or

(d) legal assistance by employee organizations to their members in matters relating to employment.

(2) This title restricts otherwise legitimate business activity. What this title does not prohibit is

permitted unless contrary to other provisions of Utah law.

(3) Except as otherwise expressly provided, this title does not apply to:

(a) those activities of an insurer where state jurisdiction is preempted by Section 514 of the Federal Employee Retirement Income Security Act of 1974, as amended;

(b) ocean marine insurance;

(c) death and disability benefits provided by an organization where the principal purpose is to achieve charitable, educational, social, or religious objectives rather than to provide death and disability benefits, if the organization does not incur a legal obligation to pay a specified amount and does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that the transaction of such business in this state does not require regulation for the protection of the interests of the residents of this state or on a finding that it would be impracticable to require compliance with this title;

(e) (i) transactions independently procured through negotiations under Section 31A-15-104;

(ii) however, the transactions described in Subsection (i) are subject to taxation under Section 31A-3-301;

(f) self-insurance;

(g) reinsurance;

(h) subject to Subsection (4), employee and labor union group or blanket insurance covering risks in this state if:

(i) the policyholder exists primarily for purposes other than to procure insurance;

(ii) the policyholder is not a resident of this state or a domestic corporation or does not have its principal office in this state;

(iii) no more than 25% of the certificate holders or insureds are residents of this state;

(iv) on request of the commissioner, the insurer files with the department a copy of the policy and a copy of each form [of] or certificate; and

(v) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state, and if the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers;

(i) manufacturer's warranties issued in the ordinary course of sale;

(j) manufacturer's warranties or service contracts paid for with separate or additional consideration; or

(k) service contracts paid for with separate or additional consideration, issued in the ordinary course of sale, that are for the repair or maintenance of goods, other than motor vehicles, having a purchase price of $3,000 or less.

(4) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer. If the commissioner finds that the conditions required for the exemption of a group or blanket insurer are not satisfied or that adequate protection to residents of this state is not provided, he may require the insurer to be authorized to do business in this state or require that any of the insurer's transactions be subject to this title.

Section 72. Section Amended.

Section 31A-8-103, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) Except for exemptions specifically granted under this title, organizations are subject to regulation under all of the provisions of this title. Notwithstanding any provision of this title, organizations licensed under this chapter are wholly exempt from the provisions of Chapters 6, 7, 9, 10, 11, 12, 13, 19, and 24. In addition, organizations are not subject to:

(a) Chapter 3, except for Part I [~~of Chapter 3~~];

(b) Section 31A-4-107;

(c) Chapter 5, except for provisions in Chapter 5 specifically made applicable by this chapter;

(d) Chapter 14, except for provisions in Chapter 14 specifically made applicable by this chapter;

(e) Chapters 17 and 18, except as made applicable by the commissioner by rule consistent with the provisions of this chapter;

(f) Chapter 22, except for Parts VI, VII, and XII; and

(g) Chapter 28, except for Part I.

(2) The commissioner may by rule waive other specific provisions of this title that he considers inapplicable to health maintenance organizations or limited health plans, upon a finding that such a waiver will not endanger the interests of enrollees, investors, or the public.

(3) Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to organizations except as specifically made applicable by:

(a) this chapter;

(b) a provision referenced under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations which are not settled under this chapter.

(4) Whenever in this chapter a section, subsection, or paragraph of Chapter 5 or 14 is made applicable to organizations, the application is of those provisions that apply to mutual corporations if the organization is nonprofit and of those that apply to stock corporations if the organization is for profit. Wherever a provision under Chapter 5 or 14 is made applicable to organizations under this chapter, "mutual" means [2]nonprofit organization.[2]

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with the provisions of this chapter and Chapter 23.

(6) Nothing in this title prohibits any health maintenance organization from meeting the requirements of any federal law which enables the health maintenance organization to receive federal funds, or to obtain or maintain federal qualification status.

(7) Notwithstanding any provision of this title, organizations are exempt from statutes or rules that restrict or limit their freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) Organizations are exempt from the assessment or payment of premium taxes imposed by Chapter 3.

Section 73. Section Amended.

Section 31A-9-602, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

31A-9-602. Fraternal expenditures and activities.

(1) Every fraternal shall report to the commissioner the information required by the commissioner concerning expenditures made by the fraternal and other activities and programs of the fraternal or its members in fulfillment of the purposes of Subsection 31A-9-101(1)(a) (ii) (B) or in maintaining its fraternal character.

(2) A fraternal may create, maintain, and operate social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious institutions for the benefit of its members or their families or dependents or for children insured by the fraternal. For that purpose, it may own, hold, or lease real or personal property within or outside of this state. All that property is reported in the annual statement or an appendix to it, but the property is given only a nominal value in the statement. No profit may be made on those institutions, but the income and expenditures [is] are reported separately in, or as an appendix to, the annual statement. Any of these institutions may be separately incorporated under Title 16, Chapter 10a, Utah Revised Business Corporation Act, and ownership of its stock shall be reported at a nominal value.

(3) The fraternal may not own or operate a funeral or undertaking establishment.

Section 74. Section Amended.

Section 31A-16-103, Utah Code Annotated 1953, as repealed and reenacted by Chapter 258 and last amended by Chapters 30 and 277, Laws of Utah 1992, is amended to read:

31A-16-103. Acquisition of control of or merger with domestic insurer — Required filings — Content of statement — Alternative filing materials — Approval by commissioner — Violations — Jurisdiction, consent to service of process.

(1) (a) Unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved, the person has filed with the commissioner, and also provided copies of the statement to the insurer, a statement containing the information required by this section and the commissioner has approved the offer, request, invitation, agreement or acquisition:

(i) A person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

(ii) A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer.

(b) (i) For purposes of this section a domestic insurer includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(ii) The controlling person described in Subsection (i) shall file with the commissioner a preacquisition notification containing the information required in Subsection 31A-16-104 (3)(a) 30 days prior to the proposed effective date of the acquisition. Failure to file the notification is subject to an order of the commissioner under Subsection 31A-16-104 (5).

(iii) For the purposes of this section, "person" does not include any securities broker holding less than 20% of the voting securities of an insurance company or of any person which controls an insurance company in the usual and customary brokers function.

(iv) This chapter applies to all domestic insurers and other entities licensed under Title 31A, Chapters 5, 6, 7, 8, and 9.

(c) No agreement for acquisition of control or merger as contemplated by this subsection is valid or enforceable unless the agreement is in writing and includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter. A written agreement for acquisition or control which includes such a provision satisfies the requirements of this Subsection (1).

(2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and

(i) if the person is an individual, his principal occupation and a listing of all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) (A) if the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser period as the person and any of its predecessors has been in existence;

(B) an informative description of the business intended to be done by the person and the person's subsidiaries;

(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and

(D) the list shall include for each such individual the information required by Subsection (a).

(b) (i) The source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control, a description of any transaction in which funds were or are to be obtained for that purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration.

(ii) If the source of the consideration under Subsection (i) is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(c) Fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period the acquiring party and any of its predecessors shall have been in existence, and similar unaudited information prepared within the 90 days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, merge or consolidate the insurer with any person, or to make any other material change in the insurer's business, corporate structure, or management.

(e) The number of shares of any security referred to in Subsection (1) which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1), and a statement as to the method by which the fairness of the proposal was arrived at. The commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each security's proportional interest in the capital and surplus of the insurer with adjustments which reflect market conditions, business in force, and other intangible assets or liabilities of the insurer.

(f) The amount of each class of any security referred to in Subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including the transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid for the purchase.

(i) A description of any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement or any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1), and, if distributed, of additional soliciting material relating to the same.

(k) The term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding.

(l) Any additional information the commissioner requires by rule, which he determines to be necessary or appropriate for the protection of policyholders of the insurer, or to be in the public interest.

(3) (a) If the person required to file the statement referred to in Subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that all the information called for by Subsection (2) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member.

(b) If any partner, member, or person referred to in Subsection (a) is a corporation, or if the person required to file the statement referred to in Subsec-

tion (1) is a corporation, the commissioner may require that the information called for by Subsection (2) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the filing person learns of such change.

(5) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may utilize copies of any registration or disclosure documents in furnishing the information called for by the statement.

(6) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, he finds that:

(a) after the change of control, the domestic insurer referred to in Subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in insurance;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders, or the interest of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer, but this offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e) are disclosed to the securityholders and determined by the commissioner to be reasonable;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest; or

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control.

(7) The public hearing referred to in Subsection (6) shall be held within 30 days after the statement required by Subsection (1) is filed. At least 20 days notice of the hearing shall be given by the commissioner to the person filing the statement. Affected parties may waive the notice required by this subsection. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the commissioner. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments; they may also conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(8) At the acquiring person's expense and consent, the commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(9)(a) If a domestic insurer proposes to merge into another insurer, any securityholder electing to exercise a right of dissent may file with the insurer a written request for payment of the adjusted book value given in the statement required by Subsection (1) and approved under Subsection (6), in return for the surrender of his securities. The request shall be filed not later than ten days after the securityholder's meeting where the corporate action is approved. The securityholder is entitled to and the insurer is required to pay to the dissenting securityholder the specified value within 60 days of receipt of the security. Persons electing under this subsection to receive cash for their securities waive the dissenting shareholder and appraisal rights otherwise applicable under Sections [~~16-10-75 and 16-10-76~~] 16-10a-1301 through 16-10a-1331.

(b) Subsection (9)(a) provides an elective procedure for dissenting securityholders to resolve their objections to the plan of merger. This section does not restrict the rights of dissenting securityholders under Title 16, Chapter 10, Business Corporations Act, unless this election is made under Subsection [~~(7)~~] (9)(a).

(10) All statements, amendments, or other material filed under Subsection (1), and all notices of public hearings held under Subsection (6), shall be mailed by the insurer to its securityholders within five business days after the insurer has received the statements, amendments, other material, or notices. Mailing expenses shall be paid by the person

making the filing. As security for the payment of these expenses, that person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

(11) This section does not apply to any offer, request, invitation, agreement, or acquisition which the commissioner by order exempts from the requirements of this section as:

(a) not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or

(b) as otherwise not comprehended within the purposes of this section.

(12) The following are violations of this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1) through (3); or

(b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval to the acquisition or merger.

(13) (a) The courts of this state are vested with jurisdiction over:

(i) every person who files a statement with the commissioner under this section, and who is not resident, domiciled, or authorized to do business in this state; and

(ii) overall actions involving persons described in Subsection (a)(i) arising out of violations of this section.

(b) Each person described in Subsection (a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be his lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section.

(c) Copies of all lawful process described in Subsection (b) shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last-known address.

Section 75. Section Amended.

Section 32A-3-104, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-3-104. Commission and department duties before establishing.

(1) Before a package agency may be established by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission to assure appropriate service to the general population of the state. This information shall be forwarded to the commission to aid in its determination.

(2) Before establishing a package agency, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a package agency as provided by Sections 32A-3-102 and [~~32-3-103~~] 32A-3-103, and that the application is complete;

(b) determine that the agency facility complies with all existing zoning ordinances of the locality where the agency will be located;

(c) consider the locality within which the proposed package agency will be located, including but not limited to:

(i) physical characteristics such as condition of the premises, square footage, parking, and delivery access; and

(ii) operational factors such as tourist traffic, proximity to and density of other state stores, package agencies, and outlets, access to the public, proximity to residential communities, demographics, population to be served, the nature of surrounding establishments, and the extent of and proximity to educational, religious, and recreational facilities;

(d) consider the applicant's ability to manage and operate a package agency, including but not limited to, management experience, past retail liquor experience, the type of establishment or business in which the agency may be located, hours of operation, and ability to maintain inventory levels as set by the department; and

(e) consider any other factors or circumstances it considers necessary.

Section 76. Section Amended.

Section 41-1a-102, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-102. Definitions.

As used in this chapter:

(1) "Actual miles" means the actual distance a vehicle has traveled while in operation.

(2) "Actual weight" means the actual unladen weight of a vehicle or combination of vehicles as operated and certified to by a weighmaster.

(3) "Affidavit of Mobile Home Affixture" means the affidavit of affixture described in Title 59, Chapter 2, Part 6, Mobile Homes.

(4) "All-terrain type I vehicle" has the same meaning provided in Section 41-22-2.

(5) "All-terrain type II vehicle" has the same meaning provided in Section 41-22-2.

(6) "Amateur radio operator" means any person licensed by the Federal Communications Commission to engage in private and experimental two-way radio operation on the amateur band radio frequencies.

(7) "Branded title" means a title certificate that is labeled:

(a) rebuilt and restored to operation;

(b) flooded and restored to operation; or

(c) not restored to operation.

(8) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(9) "Certificate of title" means a document issued by a jurisdiction to establish a record of ownership between an identified owner and the described vehicle, vessel, or outboard motor.

(10) "Certified scale weigh ticket" means a weigh ticket that has been issued by a weighmaster.

(11) "Commercial vehicle" means a motor vehicle, trailer, or semitrailer used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(12) "Commission" means the State Tax Commission.

(13) "Dealer" means a person engaged or licensed to engage in the business of buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.

(14) "Division" means the Motor Vehicle Division of the commission, created in Section 41-1a-106.

(15) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered in this state, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(16) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(17)(a) "Farm truck" means a truck registered to and used by the owner or operator of a farm solely for his own use in the transportation of:

(i) farm products, including livestock and its products, poultry and its products, floricultural and horticultural products;

(ii) farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production; and

(iii) livestock, poultry, and other animals and things used for breeding, feeding, or other purposes connected with the operation of a farm.

(b) "Farm truck" does not include the operation of trucks by commercial processors of agricultural products.

(18)(a) "Fleet" means one or more commercial vehicles that supply motive power and contain a compartment for the driver.

(b) "Fleet" also means not less than ten commercial vehicles that are trailers or semitrailers.

(19) "Foreign vehicle" means a vehicle of a type required to be registered, brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this state.

(20) "Gross laden weight" means the actual weight of a vehicle or combination of vehicles, equipped for operation, to which shall be added the maximum load to be carried.

(21) "Highway" or "street" means the entire width between property lines of every way or place of whatever nature when any part of it is open to the public, as a matter of right, for purposes of vehicular traffic.

(22)(a) "Identification number" means the identifying number assigned by the manufacturer or by the division for the purpose of identifying the vehicle, vessel, or outboard motor.

(b) "Identification number" includes a vehicle identification number, state assigned identification number, hull identification number, and motor serial number.

(23) "Implement of husbandry" means every vehicle exclusively used by the owner in the conduct of his agricultural operations.

(24)(a) "In-state miles" means the total number of miles operated in this state during the preceding year by fleet power units.

(b) If fleets are composed entirely of trailers or semitrailers, "in-state miles" means the total number of miles that those vehicles were towed on Utah highways during the preceding year.

(25) "Interstate commercial vehicles" means vehicles used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and operated in more than one jurisdiction.

(26) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(27) "Lienholder" means a person with a security interest in particular property.

(28) "Manufactured home" means a structure that is built on a permanent chassis, transportable in one or more sections, and is designed to be used as a dwelling with or without a permanent foundation when connected to required utilities.

(29) "Manufacturer" means a person engaged in the business of constructing, manufacturing, assembling, producing, or importing new or unused vehicles, vessels, or outboard motors for the purpose of sale or trade.

(30) "Mobile home" means a structure transportable in one or more sections with the plumbing,

heating, and electrical systems contained intact within the structure.

(31) "Motorboat" has the same meaning as provided in Section 73-18-2.

[~~(33)~~] (32) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

[~~(32)~~] (33) (a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(b) "Motor vehicle" does not include an off-highway vehicle.

(34)(a) "Nonresident" means a person who is not a resident of this state and who does not engage in intrastate business within this state and operate in that business any motor vehicle, trailer, or semitrailer within this state.

(b) A person who engages in intrastate business within this state and operates in that business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in interstate commerce, maintains any vehicle in this state as the home station of that vehicle is considered a resident of this state, insofar as that vehicle is concerned in administering this chapter.

(35) "Odometer" means a device for measuring and recording the actual distance a vehicle travels while in operation, but does not include any auxiliary odometer designed to be periodically reset.

(36) "Off-highway implement of husbandry" has the same meaning as provided in Section 41-22-2.

(37) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

(38) "Operate" means to drive or be in actual physical control of a vehicle or to navigate a vessel.

(39) "Outboard motor" means a detachable self-contained propulsion unit, excluding fuel supply, used to propel a vessel.

(40) (a) "Owner" means a person, other than a lienholder, holding title to a vehicle, vessel, or outboard motor whether or not the vehicle, vessel, or outboard motor is subject to a security interest.

(b) If a vehicle is the subject of an agreement for the conditional sale or installment sale or mortgage of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this chapter.

(c) If a vehicle is the subject of an agreement to lease, the lessor is considered the owner until the lessee exercises his option to purchase the vehicle.

(41) "Personalized license plate" means a license plate that has displayed on it a combination of letters, numbers, or both as requested by the owner of the vehicle and assigned to the vehicle by the division.

(42) (a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable top, or similar structure.

(43) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(44) "Preceding year" means a period of 12 consecutive months fixed by the division that is within 16 months immediately preceding the commencement of the registration or license year in which proportional registration is sought. The division in fixing the period shall conform it to the terms, conditions, and requirements of any applicable agreement or arrangement for the proportional registration of vehicles.

(45) "Public garage" means every building or other place where vehicles or vessels are kept and stored and where a charge is made for the storage and keeping of vehicles and vessels.

(46) "Reconstructed vehicle" means every vehicle of a type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(47) "Registration" means a document issued by a jurisdiction that allows operation of a vehicle or vessel on the highways or waters of this state for the time period for which the registration is valid and that is evidence of compliance with the registration requirements of the jurisdiction.

(48) (a) "Registration year" means a 12 consecutive month period commencing with the completion of all applicable registration criteria.

(b) For administration of a multistate agreement for proportional registration the division may prescribe a different 12-month period.

(49) "Repair or replacement" means the restoration of vehicles, vessels, or outboard motors to a sound working condition by substituting any inoperative part of the vehicle, vessel, or outboard motor, or by correcting the inoperative part.

(50) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry any load either independently or any part of the weight of a vehicle or load that is drawn.

(51) "Sailboat" has the same meaning as provided in Section 73-18-2.

(52) "Security interest" means an interest that is reserved or created by a security agreement to secure the payment or performance of an obligation and that is valid against third parties.

(53) "Semitrailer" means every vehicle without motive power designed for carrying persons or prop-

erty and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(54) "Special group license plate" means a type of license plate designed for a particular group of people or a license plate authorized and issued by the division in accordance with Section 41-1a-408.

(55)(a) "Special interest vehicle" means a vehicle used for general transportation purposes and that is:

(i) 20 years or older from the current year; or

(ii) a make or model of motor vehicle recognized by the division director as having unique interest or historic value.

(b) In making his determination under Subsection (a), the division director shall give special consideration to:

(i) a make of motor vehicle that is no longer manufactured;

(ii) a make or model of motor vehicle produced in limited or token quantities;

(iii) a make or model of motor vehicle produced as an experimental vehicle or one designed exclusively for educational purposes or museum display; or

(iv) a motor vehicle of any age or make that has not been substantially altered or modified from original specifications of the manufacturer and because of its significance is being collected, preserved, restored, maintained, or operated by a collector or hobbyist as a leisure pursuit.

(56) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers.

(57) "Specially constructed vehicle" means every vehicle of a type required to be registered in this state, not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles, and not materially altered from its original construction.

(58) "Title" means the right to or ownership of a vehicle, vessel, or outboard motor.

(59)(a) "Total fleet miles" means the total number of miles operated in all jurisdictions during the preceding year by power units.

(b) If fleets are composed entirely of trailers or semitrailers, "total fleet miles" means the number of miles that those vehicles were towed on the highways of all jurisdictions during the preceding year.

(60) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(61) "Transferee" means a person to whom the ownership of property is conveyed by sale, gift, or any other means except by the creation of a security interest.

(62) "Transferor" means a person who transfers his ownership in property by sale, gift, or any other means except by creation of a security interest.

(63) "Travel trailer" means a trailer designed as a temporary dwelling for travel, recreational, and vacation use that does not require special highway movement permits when drawn by a motor vehicle.

(64) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(65) "Vehicle" includes a motor vehicle, trailer, semitrailer, off-highway vehicle, manufactured home, and mobile home.

(66) "Vessel" has the same meaning as provided in Section 73-18-2.

(67) "Vintage vehicle" has the same meaning as provided in Section 41-21-1.

(68) "Waters of this state" has the same meaning as provided in Section 73-18-2.

(69) "Weighmaster" means a person, association of persons, or corporation permitted to weigh vehicles under this chapter.

Section 77. Section Amended.

Section 41-3-108, Utah Code Annotated 1953, as renumbered and amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-3-108. Copies of records and papers — Admissibility in evidence.

Certified copies of all records and papers prepared in the office of the administrator under seal of the administrator[,] are admissible in evidence in any case in the same manner as the original.

Section 78. Section Amended.

Section 41-3-210, Utah Code Annotated 1953, as renumbered and amended by Chapter 234 and last amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-3-210. License holders — Prohibitions.

(1) The holder of any license issued under this chapter may not:

(a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, or furnished by a licensee;

(b) intentionally publish, display, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

(c) violate this chapter or the rules made by the administrator;

(d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state:

(e) engage in business as a new motor vehicle dealer, used motor vehicle dealer, motor vehicle crusher, or body shop without having in effect a bond as required in this chapter;

(f) act as a dealer, dismantler, crusher, manufacturer, transporter, remanufacturer, or body shop without maintaining a principal place of business;

(g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle for which the licensee does not have a franchise;

(h) dismantle or transport to a crusher for crushing or other disposition any motor vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;

(i) as a new motor vehicle dealer or used motor vehicle dealer fail to give notice of sales or transfers as required in Section 41-3-301;

(j) advertise or otherwise represent, or knowingly allow to be advertised or represented on his behalf or at his place of business, that no down payment is required in connection with the sale of a motor vehicle when a down payment is required and the buyer is advised or induced to finance a down payment by a loan in addition to any other loan financing the remainder of the purchase price of the motor vehicle;

(k) as a crusher, crush or shred a motor vehicle brought to the crusher without obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is a certificate of title endorsed according to law or a dismantling or junk permit issued under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;

(l) as a manufacturer or remanufacturer assemble a motor vehicle that does not comply with construction, safety, or vehicle identification number standards fixed by law or rule of any licensing or regulating authority;

(m) as anyone other than a salesperson licensed under this chapter, be present on a dealer or auction display space and contact prospective customers to promote the sale of the dealer's or auction's vehicles;

(n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership or auction from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations;

(o) (i) as a dealer, dismantler, body shop, or manufacturer, maintain a principal place of business or additional place of business that shares any common area with a business or activity not directly related to motor vehicle commerce; or

(ii) maintain any places of business that share any common area with another dealer, dismantler, body shop, or manufacturer;

(p) withhold delivery of license plates obtained by the licensee on behalf of a customer for any reason, including nonpayment of any portion of the vehicle purchase price or down payment;

(q) issue a temporary permit for any vehicle that has not been sold by the licensee;

(r) alter a temporary permit in any manner;

(s) operate any principal place of business or additional place of business in a location that does not comply with local ordinances, including zoning ordinances; or

(t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the licensee does not:

(i) have a new motor vehicle dealer's license under Section 41-3-202; and

(ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed for sale, offered for sale, or exchanged by the licensee.

(2) (a) If a new motor vehicle is constructed in more than one stage, such as a motor home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange the vehicle as the make designated by the final stage manufacturer, except in those specific situations where the licensee possesses a franchise from the initial or first stage manufacturer, presumably the manufacturer of the motor vehicle's chassis.

(b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer under Section 41-3-301.

(3) Each licensee, except salespersons, shall maintain and make available for inspection by peace officers and employees of the division:

(a) a record of every motor vehicle bought, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(b) a record of every used part or used accessory bought or otherwise acquired;

(c) a record of every motor vehicle bought or otherwise acquired and wrecked or dismantled by the licensee;

(d) all buyers' orders, contracts, odometer statements, temporary permit records, financing records, and all other documents related to the purchase, sale, or consignment of motor vehicles; and

(e) a record of the name and address of the person to whom any motor vehicle or motor vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a description of the motor vehicle by year, make, and vehicle identification number.

(4) Each licensee required by this chapter to keep records shall furnish copies of those records upon request to any peace officer or employee of the division during reasonable business hours.

(5) A manufacturer, distributor, distributor representative, or factory representative may not induce or attempt to induce by means of coercion, intimidation, or discrimination any dealer to:

(a) accept delivery of any motor vehicle, parts, or accessories or any other commodity or commodities, including advertising material not ordered by the dealer;

(b) order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer;

(c) order from any person any parts, accessories, equipment, machinery, tools, appliances, or any other commodity;

(d) enter into an agreement with the manufacturer, distributor, distributor representative, or factory representative of any of them, or to do any other act unfair to the dealer by threatening to cancel any franchise or contractual agreement between the manufacturer, distributor, distributor branch, or factory branch and the dealer;

(e) refuse to deliver to any dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or factory branch, any motor vehicle, publicly advertised for immediate delivery within 60 days after the dealer's order is received; or

(f) unfairly, without regard to the equities of the dealer, cancel the franchise of any motor vehicle dealer; the nonrenewal of a franchise or selling agreement without cause is a violation of this subsection and is an unfair cancellation.

(6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, or by allowing use of his facilities or dealer license number, or by any other means.

(7) The holder of any new motor vehicle dealer license issued under this chapter may not sell any new motor vehicle to:

(a) another dealer licensed under this chapter who does not hold a valid franchise for the make of new motor vehicles sold, unless the selling [~~new motor vehicle~~] dealer licenses and titles the new motor vehicle to the purchasing dealer; or

(b) any motor vehicle leasing or rental company located within this state, or who has any branch office within this state, unless the dealer licenses and titles the new motor vehicle to the purchasing, leasing, or rental company.

(8) A dealer licensed under this chapter may not take on consignment any new motor vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is licensed and franchised to distribute or sell that make of motor vehicle in this or any other state.

(9) A body shop licensed under this chapter may not assist an unlicensed body shop in unlawful activity through active or passive means or by allowing use of its facilities, name, body shop number, or by any other means.

Section 79. Section Amended.

Section 47-1-5, Utah Code Annotated 1953, is amended to read:

47-1-5. Order of abatement — Execution — Sale of personal property — Padlocking.

If the existence of the nuisance is established in an action as provided in this chapter, an order of abatement shall be entered as a part of the judgment in the case[~~, which~~]. The order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, and movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and shall further direct the effective closing of the building or place against its use for any purpose, and the keeping of it so closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, structure, or place so directed to be closed, he shall be punished as for contempt as provided in [~~the preceding section~~] Section 47-1-4. For removing and selling the movable property the officer shall be entitled to charge and receive the same fees as for levying upon and selling like property on execution; and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

Section 80. Section Amended.

Section 51-5-1, Utah Code Annotated 1953, as enacted by Chapter 132, Laws of Utah 1965, is amended to read:

51-5-1. Short title.

This [~~act shall be~~] chapter is known [~~and may be cited~~] as the "Funds Consolidation Act."

Section 81. Section Amended.

Section 51-5-8, Utah Code Annotated 1953, as last amended by Chapter 154, Laws of Utah 1986, is amended to read:

51-5-8. Construction of terms and provisions relating to funds in other statutes.

(1) Direct or indirect references to the word "fund," or any other synonymous word contained in the Utah Code Annotated 1953, that is used to identify a separate accounting entity, shall mean fund account or subfund except where that fund meets the definition of a major fund type according to generally accepted accounting principles.

(2) The following terms and all other terms similar in meaning, except when they meet the definition of a fund in accordance with generally accepted accounting principles, shall mean a subfund or account within the funds established by this [~~act~~] chapter: "special funds"; "separate funds"; "permanent funds"; "departmental funds"; "association funds"; "trust", such as "in trust" or "held in trust"; "deposits", such as "security deposits" or "certificates of deposit"; "reserves", such as "special reserves", "contingent reserves", and "reserve funds"; "accounts", such as "special accounts" or "clearing

accounts"; and "collections", such as "departmental collections" or "dedicated credits".

(3) Provisions of law governing the assessment and collection of the state's various taxes, licenses, permits, fees, and other charges and provisions controlling the expenditures of those revenues remain in force and are undisturbed by the provisions of this chapter.

(4) Provisions of law that specify that the balance in a fund reverts or is closed out to another fund shall mean that the balance in that fund reverts to the unappropriated surplus account of the governmental fund in which that fund is placed.

(5) Provisions of law that specify that the balance in a fund shall not lapse or otherwise become part of the state General Fund shall mean that the balance in that fund shall not lapse or otherwise become part of the unappropriated surplus account of the fund in which that fund is placed.

Section 82. Section Amended.

Section 53A-1a-106, Utah Code Annotated 1953, as enacted by Chapter 47, Laws of Utah 1992, is amended to read:

53A-1a-106. School district and individual school powers.

(1) In order to acquire and develop the characteristics listed in Section 53A-1a-104, each school district and each public school within its respective district shall implement a comprehensive system of accountability in which students advance through public schools by demonstrating competency in required skills and mastery of required knowledge through the use of diverse assessment instruments such as authentic and criterion referenced tests, projects, and portfolios.

(2) Each school district and public school is authorized and encouraged to do the following:

(a) develop and implement programs integrating technology into the curriculum, instruction, and student assessment;

(b) increase teacher and parent involvement in decision-making at the school site;

(c) implement a public school choice program to give parents, students, and teachers greater flexibility in designing and choosing among programs with different focuses between schools within the same district and between different districts, subject to space availability, demographics, and legal and performance criteria;

(d) establish strategic planning at both the district and school level and site-based decision making programs at the school level;

(e) provide opportunities for each student to acquire and develop academic and occupational knowledge, skills, and abilities;

(f) participate in ongoing research and development projects primarily at the school level aimed at improving the quality of education within the system; and

(g) involve business and industry in the education process through the establishment of partnerships with the business community at the district and school level.

(3) A school district or public school may submit proposals to modify or waive rules or policies of a supervisory authority within the public education system in order to acquire or develop the characteristics listed in Section 53A-1a-104.

(4)(a) Each school district and public school shall make an annual report to its patrons on its activities under this section.

(b) The reporting process shall involve participation from teachers, parents, and the community [~~at-large~~] at large in determining how well the district or school is performing.

(c) The State Board of Education shall receive a copy of each report and make a summary report to the strategic planning committee referred to in Section 53A-1a-102.

Section 83. Section Amended.

Section 53A-2-113, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

53A-2-113. School district consolidation — State funding of consolidated districts.

When districts consolidate, payments made by the state under Title 53A, Chapter [~~17~~] 17a, Minimum School Program Act, shall continue for a period of five years from the date of consolidation on the same basis as if no consolidation had occurred. At the end of the five-year period, the consolidated district shall receive funding as a single district.

Section 84. Section Amended.

Section 53A-2-202, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-2-202. Guardianship for residency purposes by responsible adult — Procedure to obtain — Termination.

(1) For purposes of this chapter, "responsible adult" means a resident of this state who is willing and able to provide reasonably adequate food, clothing, shelter, and supervision for a minor child.

(2) A responsible adult may obtain guardianship of a child upon compliance with the following requirements:

(a) submission to the school district of a signed and notarized statement by the child's parent or guardian having legal custody of the child that it is [their] that person's intent that the child become a permanent resident of the state and reside with and be under the supervision of the named responsible adult;

(b) submission to the school district of a signed and notarized statement by the responsible adult acknowledging acceptance of the responsibilities of guardianship for the child;

(c) submission to the school district of a signed and notarized statement by the child that the child de-

sires to become a permanent resident of Utah and reside with and be responsible to the named responsible adult; and

(d) if the child's parent or guardian cannot be found in order to execute the statement required under Subsection (2) (a), the responsible adult must submit an affidavit to that effect to the district. A copy of the statement shall also be submitted to the child find services.

(3) The district, under guidelines established by the State Board of Education, may require the responsible adult, in addition to the documents set forth in Subsection (2), to also submit any other documents similar to those required by an appropriate state court that relate to the appointment of a guardian of a minor. The preparation and submission of those documents does not require any formal action by the court.

(4) A responsible adult obtaining guardianship under this section has the same rights, authority, and responsibilities as a guardian appointed under Section 75-5-201.

(5) The authority and responsibility of a parent or guardian submitting the statement required by Subsection (2) (a) are restored, and the guardianship obtained under this section is terminated, upon submission to the school district in which guardianship was obtained of a signed and notarized statement by the person who consented to guardianship under Subsection (2) (a) withdrawing that consent, or by the person accepting guardianship under Subsection (2) (b) withdrawing that acceptance.

(6) The school district shall retain all documents required by this section for not less than 20 years unless directed to surrender the documents by a court of competent jurisdiction.

Section 85. Section Amended.

Section 53A-17a-137, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-137. Classified employees' salaries.

(1) In view of the fact that instructional salary money is supported by both the value of the weighted pupil unit and by a line item appropriation for reform measures, other educational personnel, including classified employees, shall be given added consideration in the division of the weighted pupil unit.

(2) Local school boards shall provide higher salary adjustments to classified [~~employees~~] employee groups in comparison to other district [~~employees~~] employee groups when dividing the weighted pupil unit for salary adjustment purposes.

Section 86. Section Amended.

Section 53A-24-102, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-24-102. Definitions.

As used in this chapter:

(1) "Board" means the Utah State Board for Applied Technology Education.

(2) "[DDS] DDDS" means the Division of Disability Determination Services.

(3) "DRS" means the Division of Rehabilitation Services.

(4) "DSDHH" means the Division of Services to the Deaf and Hard of Hearing.

(5) "DSVH" means the Division of Services for the Visually Handicapped.

(6) "Eligible individual" means an individual determined to be eligible to receive services under laws or rules governing eligibility for the program in question.

(7) "Executive director" means the executive director of the Utah State Office of Rehabilitation.

(8) "Handicap" means a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in materially limiting an individual's activities or functioning.

(9) "Independent living rehabilitation services" means goods and services reasonably necessary to enable an individual with a severe handicap to maintain or increase functional independence.

(10) "Office" means the Utah State Office of Rehabilitation.

(11) "Vocational rehabilitation services" means goods and services reasonably necessary to enable an individual with a handicap to obtain and retain employment.

Section 87. Section Amended.

Section 53A-24-502, Utah Code Annotated 1953, as enacted by Chapter 83, Laws of Utah 1988, is amended to read:

53A-24-502. Appointment of administrator for the division.

(1) The executive director shall appoint an administrator for [~~DDS~~] DDDS with the approval of the board.

(2) The administrator of [~~DDS~~] DDDS shall administer the division in accordance with the direction of the executive director, board policies, and applicable state and federal laws and regulations.

Section 88. Section Amended.

Section 53A-24-503, Utah Code Annotated 1953, as enacted by Chapter 83, Laws of Utah 1988, is amended to read:

53A-24-503. Division responsibilities.

[~~DDS~~] DDDS may perform disability determination services authorized under state or federal law or regulation.

Section 89. Section Amended.

Section 53B-19-102, Utah Code Annotated 1953, as enacted by Chapter 167, Laws of Utah 1987, is amended to read:

53B-19-102. Establishment of state arboreta at University of Utah and Utah State University.

[There is] State arboreta are created and established at the University of Utah and Utah State University [state arboreta]. The universities may, on behalf of the people of this state, cultivate a greater knowledge and public appreciation for the trees and plants around us, as well as those growing in remote sections of the country and world.

Section 90. Section Amended.

Section 58-12-61, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

58-12-61. Acupuncture license — Educational requirements.

(1) Notwithstanding Title 58, Chapter 1, the training required under Section 58-12-60[;] shall require completion of the following subjects:

(a) anatomy and physiology;

(b) hygiene and sanitation;

(c) equipment sterilization techniques;

(d) oriental principles of life therapy;

(e) theory and techniques of traditional and modern acupuncture;

(f) theory and application of pulse evaluation and point location;

(g) traditional methods of life energy evaluation;

(h) precautions and contraindications of acupuncture therapy;

(i) care and management of needling devices; and

(j) emergency acupuncture care.

(2) The examination of all qualified applicants shall include but is not limited to the following subjects:

(a) anatomy and physiology;

(b) hygiene and sanitation;

(c) equipment sterilization techniques;

(d) acupuncture principles, practices and techniques; and

(e) emergency acupuncture care.

(3) In addition to the written examination, the division may examine each applicant in the practical application of acupuncture techniques in such a manner so as to determine the applicant's skill and knowledge.

Section 91. Section Amended.

Section 58-12-73, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990, is amended to read:

58-12-73. License — Unlawful practice — Penalty — Exceptions from licensure.

(1) The division shall issue a license as a physician assistant to any individual who meets the qualifications for licensure under this chapter.

(2) It is unlawful for any person to:

(a) engage in practice as a physician assistant, whether supervised by a physician or not, when not currently licensed under this chapter as a physician assistant or when that person's license has been suspended;

(b) represent himself to be a licensed physician assistant qualified to practice as a physician assistant in the state of Utah when not currently licensed under this chapter; and

(c) engage in practice as a physician assistant, while licensed under this chapter, while not under the supervision of a supervising physician approved by the division in collaboration with the board.

(3) Any person engaging in practice as a physician assistant in violation of Subsection (2)(a) is guilty of a third degree felony.

(4) Any person in violation of Subsections (2)(b) or (2)(c) is guilty of a class A misdemeanor.

(5) Nothing in this chapter precludes the lawful activities of any individual licensed under the laws of [the] this state [of Utah] when acting within the scope of [their] his license.

(6) The following are exempt from licensure under this act:

(a) a student enrolled in an approved physician assistant education program while engaged in activities as a physician assistant that are a part of the education program under the direct supervision of a physician associated with the program and for which the program accepts in writing the responsibility for the student; and

(b) a person acting in the role typically defined as a "medical assistant" who is working under the direct supervision of a physician, and who does not diagnose, advise, independently treat, or prescribe to or in behalf of any person, and for whom the supervising physician accepts responsibility.

(7) Any physician assistant who is also a pharmacist licensed under Chapter 17 on January 1, 1990, may continue to fully practice as both a physician assistant and a pharmacist, except that as a pharmacist he may not fill any prescriptions that:

(a) he has written as a physician assistant;

(b) any of his supervising or substitute supervising physicians have written; or

(c) any other physician assistants in his practice have written.

Section 92. Section Amended.

Section 58-24a-112, Utah Code Annotated 1953, as enacted by Chapter 237, Laws of Utah 1991, is amended to read:

58-24a-112. Physical therapist supervisory authority and responsibility.

(1) A physical therapist may not delegate to a person not licensed under this [part] chapter any activity that requires the skill, knowledge, and judgment of a physical therapist.

(2) A physical therapist assistant or aide may perform activities related to physical therapy only when:

(a) the activity is directed and approved by the supervising physical therapist; and

(b) he is under the supervision of the supervising therapist.

(3) The supervising physical therapist is responsible for any physical therapy service performed by an assistant or aide.

Section 93. Section Amended.

Section 58-28-2, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1992, is amended to read:

58-28-2. Definitions.

As used in this chapter:

[~~(2)~~] (1) "Abandonment" means to forsake entirely or refuse to provide care and support for an animal placed in the custody of a licensed veterinarian.

[~~(1)~~] (2) "Administer" means:

(a) the direct application by a person of a prescription drug or device by injection, inhalation, ingestion, or by any other means, to the body of an animal that is a patient or is a research subject; or

(b) a veterinarian providing to the owner or caretaker of an animal a prescription drug for application by injection, inhalation, ingestion, or any other means to the body of the animal by the owner or caretaker in accordance with the veterinarian's written directions.

(3) "Board" means the Veterinary Board established under this chapter.

(4) "Director" means the director of the Division of Occupational and Professional Licensing.

(5) "Division" means the Division of Occupational and Professional Licensing.

(6) "Practice of veterinary medicine, surgery, and dentistry" means to:

(a) diagnose, prognose, or treat any disease, defect, deformity, wound, injury, or physical condition of any animal;

(b) administer or prescribe any drug, medicine, treatment, method, or practice, or perform any operation or manipulation, or apply any apparatus or appliance for the cure, relief, or correction of any animal disease, deformity, defect, wound, or injury, or otherwise practice any veterinary medicine, dentistry, or surgery on any animal;

(c) represent by verbal or written claim, sign, word, title, letterhead, card, or in any other manner that one is a licensed veterinarian, or one qualified to practice veterinary medicine, surgery, or dentistry, or hold oneself out as able to practice veterinary medicine, surgery, or dentistry;

(d) solicit, sell, or furnish any parenterally administered animal disease cures, preventions, or treatments, with or without the necessary instruments for the administration of them, or any and all worm and other internal parasitic remedies, upon any agreement, express or implied, to administer these cures, preventions, treatments, or remedies; or

(e) assume or use the title or designation, "veterinary," "veterinarian," "animal doctor," "animal surgeon," or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person is qualified to practice veterinary medicine, surgery, or dentistry.

(7) "Unprofessional conduct" includes:

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

(b) using intoxicants or drugs to such an extent as to render the user unfit to practice veterinary medicine, surgery, or dentistry;

(c) soliciting patronage by employing directly or indirectly solicitors;

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

(e) advertising in a manner which is false or misleading or which has as its object deception or fraud;

(f) lending one's name to be used as a veterinarian by another person who is not licensed to practice in this state;

(g) rendering professional service in association with a person who is not licensed and does not hold a temporary permit;

(h) sharing fees with any person, except a licensed veterinarian, for services actually performed;

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

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

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

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

(m) violating the Utah Controlled Substances Act.

Section 94. Section Amended.

Section 58-28-8, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1992, is amended to read:

58-28-8. Exemptions from chapter.

This chapter does not apply to:

(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except that this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter;

(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;

(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;

(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;

(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;

(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;

(8) except as otherwise provided in Subsection 58-28-2 [~~(5)~~] (6) (d), any person in this state engaged in the sale of veterinary supplies, instruments, and medicines (except prescription drugs which must be sold in compliance with state and federal regulations), if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;

(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;

(10) any person performing or teaching nonsurgical bovine artificial insemination; and

(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah.

Section 95. Section Amended.

Section 58-37d-3, Utah Code Annotated 1953, as enacted by Chapter 156, Laws of Utah 1992, is amended to read:

58-37d-3. Definitions.

As used in this chapter:

(1) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. This term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.

(2) "Clandestine laboratory operation" means the:

(a) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of the above specified controlled substances specified in this act;

(b) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of specified controlled substances specified in this act;

(c) setting up of equipment or supplies in preparation for the illegal manufacture of the above specified controlled substances specified in this act;

(d) illegal manufacture of the above specified controlled substances specified in this act; or

(e) distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances specified in this act.

(3) "Controlled substance precursor" means those chemicals designated in Title 58, Chapter 37c, Controlled Substances Precursor Act, except those substances designated in Subsections [~~(3)(gg) and (3)(hh) of that act~~] 58-37c-3(2)(gg) and (2)(hh).

(4) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or dangerous material into or on any property, land or water so that the material may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.

(5) "Hazardous or dangerous material" means any substance which because of its quantity, concentration, physical characteristics, or chemical characteristics may cause or significantly contribute to an increase in mortality, an increase in serious illness, or may pose a substantial present or potential future hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise improperly managed.

(6) "Illegal manufacture of specified controlled substances" means in violation of Title 58, Chapter 37, Utah Controlled Substances Act, the:

(a) compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing for the purpose of producing methamphetamine, other amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act, phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled Substances Act, lysergic acid diethylamide, mescaline;

(b) conversion of cocaine or methamphetamine to their base forms; or

(c) extraction, concentration, or synthesis of marijuana as that drug is defined in Subsection 58-37-2(19) of the Utah Controlled Substances Act.

Section 96. Section Amended.

Section 59-2-902, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-902. Minimum basic tax levy for school districts.

(1) If any county fails to comply with Section 59-2-704, then this section determines the adjustment of the basic school levy for school districts within the county. Before June 15, the commission shall ascertain from the State Board of Education the number of weighted pupil units in each school district in the state for the school year commencing July 1 of the current calendar year, estimated according to the Minimum School [~~Finance~~] Program Act, and the money necessary for the cost of the operation and maintenance of the minimum school program of the state for the school fiscal year beginning July 1 of the current calendar year. The commission shall then estimate the amounts of all surpluses in the Uniform School Fund, as of July 1 of the current calendar year, available for the operation and maintenance of the program, and shall estimate the anticipated income to the fund available for those purposes for the current school year from all sources, including revenues from taxes on income or from taxes on intangible property pursuant to Article XIII, Sec. 12, Utah Constitution.

(2) The commission shall then determine for each school district the amount to be raised by the minimum basic tax levy as its contribution toward the cost of the basic state-supported program, as required by the Minimum School [~~Finance~~] Program Act.

(3) Each county auditor shall be notified by the commission that the minimum basic tax levy shall be imposed by the school district, to which shall be added an additional amount, if any, due to local undervaluation as provided in this section. The auditor shall inform the county governing body as to the amount of the levy. The county governing body shall at the time and in the manner provided by law make the levy upon the taxable property in the school district together with further levies for school purposes as may be required by each school district to pay the costs of programs in excess of the basic state-supported school program.

(4) If the levy applied under this section raises an amount in excess of the total basic state-supported school program for a school district, the excess amount shall be remitted by the school district to the State Board of Education to be credited to the Uniform School Fund for allocation to school districts to support the basic state-supported school program. The availability of money shall be considered by the commission in fixing the state property levy as provided in the Minimum School [~~Finance~~] Program Act.

(5) If the levy does not raise an amount in excess of the total basic state-supported school program for a district, then the difference between the amount which the local levy will raise within the district, and the total cost of the basic state-supported school program within the district shall be computed. This difference, if any, shall be apportioned from the Uniform School Fund to each school district as the contribution of the state to the basic state-supported school program for the district, subject to the following conditions:

(a) Before the apportionment is made, the commission shall determine if the local taxable valuation of any school district is undervalued according to law and if so, the dollar amount of the undervaluation. The dollar amount of the undervaluation shall be multiplied by the district basic uniform school levy at 98%. The resulting dollar amount shall be divided by the current year estimated yield of .0002 per dollar of taxable value at 98% based on the district's taxable valuation prior to adjusting for undervaluation.

(b) The resulting levy amount shall be added to the required district basic uniform levy to determine the combined district basic school levy adjusted for undervaluation. The combined rate of levy shall be certified to the county auditor and employed by the auditor and the county governing body in lieu of the required basic school local levy.

Section 97. Section Amended.

Section 59-2-904, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-904. Participation by district in state's contributions to state-supported leeway program.

In addition to the basic state contribution provided in Section 59-2-902, each school district may participate in the state's contributions to the state-supported leeway program by conforming to the requirements of the Minimum School [~~Finance~~] Program Act and by making the required additional levy. Each district shall participate in the state-supported leeway program, and certify to the State Board of Education the results of its determination and the amount of additional levy which the district will impose.

Section 98. Section Amended.

Section 59-2-1106, Utah Code Annotated 1953, as last amended by Chapter 74, Laws of Utah 1990, is amended to read:

59-2-1106. Exemption of property owned by blind persons or their unremarried surviving spouses or minor orphans — Amount — Application.

(1) The first $11,500 of taxable value of real and tangible personal property in this state owned by blind persons, their unremarried surviving spouses, or their minor orphans[,] is exempt from taxation, subject to Subsections (2) and (3).

(2) Every person applying for the exemption for the blind shall, on or before July 1 in each year, file an application with the county governing body of the county in which the person resides.

(3) The first year's application shall be accompanied by a statement signed by a licensed ophthalmologist verifying that the person:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision no greater than 20 degrees.

Section 99. Section Amended.

Section 59-2-1342, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1342. Assessment and sale of property after preliminary tax sale.

(1) If property assessed for taxes is sold to the county at the preliminary tax sale, it shall be assessed in subsequent years for taxes in the same manner as if it has not been sold. While the property is held by the county under preliminary sale, the property may not be considered sold at preliminary sale for taxes subsequently assessed. The amount of taxes, penalty, and interest accruing on property shall be maintained in a separate record by the county treasurer.

(2) The rights of any person purchasing the property from the county at final tax sale provided under Section 59-2-1351 [is] are subject to the right of the county under any subsequent assessment.

Section 100. Section Amended.

Section 59-7-204, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-204. Income attributed to sources within the state.

For the purposes of the tax imposed by Section 59-7-201, the portion of net income derived from or attributable to sources within this state[.] shall be determined in accordance with the rules set forth in the Uniform Division of Income for Tax Purposes Act.

Section 101. Section Amended.

Section 59-10-103, Utah Code Annotated 1953, as last amended by Chapter 38, Laws of Utah 1992, is amended to read:

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Corporation" includes associations, joint stock companies, and insurance companies.

(b) "Employer," "employee," and "wages[,]" are defined as provided in Section 59-10-401.

(c) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any individual.

(d) "Handicapped adult" means a person over 21 years of age who is eligible for services under Title 62A, Chapter 5, Services to People with Disabilities.

(e) "Handicapped child" means a person 21 years of age or younger who is diagnosed by a local school district under guidelines adopted by the State Board of Education as being intellectually handicapped, severely intellectually handicapped, deaf, orthopedically handicapped, visually impaired, severe multiple handicapped, deaf and blind, or autistic, and who is enrolled in a local school district special education program funded under Section 53A-17a-111, or in the schools for the deaf and blind, or identified under guidelines of the Department of Health as qualified for Early Intervention or Infant Development Services, and who does not receive residential services from the Division of Services for People with Disabilities or the schools for the deaf and blind.

(f) "Individual" means a natural person and includes aliens and minors.

(g) "Nonresident individual" means an individual who is not a resident of this state.

(h) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(i) (a) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a trust or estate or a corporation. [It]

(b) "Partnership" does not include any organization not included under the definition of "partnership" contained in Section 761 of the Internal Revenue Code.

(c) "Partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(j) "Resident individual" means:

(i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or

(ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this

state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (ii), a fraction of a calendar day shall be counted as a whole day.

(k)(i) "Resident estate" or "resident trust" means:

(A) an estate of a decedent who at his death was domiciled in this state;

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or

(C) a trust administered in this state.

(ii) For purposes of this chapter, a trust shall be considered to be administered in this state if:

(A) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state; or

(B) the usual place of business of the fiduciary is in this state.

(iii) Where there are two or more fiduciaries, the residency status of the trust shall be determined by the situs of the corporate or professional fiduciary with primary responsibility for the administration of the trust as defined in the trust instrument.

(iv) The commission may, by rule, provide additional guidelines to determine the residency status of a trust.

(l) "Taxable income" and "state taxable income" are defined as provided in Sections 59-10-111, 59-10-112, and 59-10-116.

(m) "Taxpayer" means any individual, estate, or trust or beneficiary of a trust, whose income is subject in whole or part to the tax imposed by this chapter.

(2) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code of 1954, as amended, or other provisions of the laws of the United States relating to federal income taxes which are in effect for the taxable year. Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or reenacted.

Section 102. Section Amended.

Section 59-10-509, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-10-509. Notice of qualification as fiduciary.

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary[,] shall give [to] the commission such notice of qualification in such capacity as the commission may by rule require.

Section 103. Section Amended.

Section 59-10-512, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-10-512. Signing of returns and other documents.

(1) Except as otherwise provided by Subsection (2), any return, statement, or other document required to be made under any provision of this chapter shall be signed in accordance with forms or rules prescribed by the commission.

(2) The return of a partnership made under Section 59-10-507 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(3) The fact that an individual's name is signed on a return, statement, or other document[,] shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

Section 104. Section Amended.

Section 59-10-603, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1991, First Special Session, is amended to read:

59-10-603. Business tax credit — Limitations.

(1) Any business entity subject to the provisions of Title 59[,] that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and situated in Utah is entitled to tax credits as provided in this section.

(2) (a) Except as provided in this subsection, the business entity is entitled to a tax credit equal to 25% of the costs of the residential energy system installed with respect to each residential unit it owns, including installation costs, against any income tax or franchise tax liability of the business entity under Title 59 for the taxable year in which the energy system is completed and placed in service. The total amount of the credit may not exceed $1,500. This credit is allowed for any residential energy system completed and placed in service after January 1, 1986, but prior to December 31, 1995. For any residential energy system completed and placed in service prior to the 1986 taxable year, the claim regarding it shall be filed not later than when returns are due for the 1985 taxable year. The credit for residential energy systems completed and installed prior to July 1, 1985, is equal to 10% of the cost of the system, including installation costs. The total amount of the credit for residential energy systems completed and installed prior to July 1, 1985, may not exceed $1,000 per residential unit.

(b) If the business entity sells a residential unit to an individual taxpayer prior to making a claim for

the tax credit provided for in Subsection (2)(a), the business entity may assign its right to this tax credit to the individual taxpayer. The individual taxpayer is then entitled to the amount of this tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under Section 59-10-602.

(3) (a) Any business entity subject to the provisions of Title 59[;] that purchases or participates in the financing of a commercial energy system is entitled to the tax credits provided in this chapter if it:

(i) supplies all or part of the energy required to commercial units owned or used by the business entity; or

(ii) sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(b) The business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any income tax or franchise tax liability of the business entity under Title 59 for the taxable year in which the commercial energy system is completed and placed in service. The total amount of the credits may not exceed $25,000 per commercial unit. This credit is allowed for any commercial energy system completed and placed in service after January 1, 1986, but prior to December 31, 1995. For any commercial energy system completed and placed in service prior to the 1986 taxable year, the claim regarding it shall be filed no later than when returns are due for the 1985 taxable year. The credit for any commercial energy system completed and placed in service prior to July 1, 1985, is equal to 10% of the costs of the commercial energy system installed on each of the business entity's commercial units only, including installation costs. The total amount of the credit for any commercial energy system completed and placed in service prior to July 1, 1985, may not exceed $3,000 per commercial unit.

(4) (a) Business entities who lease a commercial energy system installed on a commercial unit are eligible for the commercial energy tax credits described in this part if the lessee can confirm that the lessor irrevocably elects not to claim the state tax credits.

(b) Only the principal recovery portion of the lease payments, which is the cost incurred by the taxpayer in acquiring the commercial energy system excluding interest charges and maintenance expenses, is eligible for the tax credits.

(c) Business entities who lease commercial energy systems are eligible to use the tax credits for a period no greater than seven years from the initiation of the lease.

(5) The tax credits provided for in this section can be claimed by either the business entity, or if assigned as provided in Subsection (2)(b), the individual taxpayer, in the return for the taxable year in which the energy system is completed and placed in service except as provided in Subsection (2). Additional energy systems or parts of energy systems may be claimed in returns for subsequent years as long as the total amount claimed does not exceed the maximum credit allowed for in Subsection (2). If the amount of the tax credit exceeds the income tax liability of the business entity for that taxable year, or individual taxpayer if assigned as provided in Subsection (2)(b), then the amount not used as a credit may be carried over for a period which does not exceed the next four taxable years.

Section 105. Section Amended.

Section 59-12-108, Utah Code Annotated 1953, as last amended by Chapter 298, Laws of Utah 1992, is amended to read:

59-12-108. Monthly payment — Penalty.

(1) Any person whose tax liability under this part and Part 2[;] was $50,000 or more for the previous year[;] shall, on or before the last day of the month next succeeding each calendar month, file with the commission a return for the preceding monthly period. The vendor shall remit with the return the amount of the state and local tax required under Parts 1, 2, and 5 of this chapter to be collected or paid for the period covered by the return. The commission shall establish by rule the procedures and guidelines in determining the tax liability under this section.

(2) Any person whose tax liability under this part, Part 2, and Part 5 was $96,000 or more for the previous year[;] shall transmit the monthly amount of state and local tax payment due under this section to the tax commission by electronic funds transfer.

(3) (a) A vendor who is required to remit taxes monthly under this section may retain an amount not to exceed 1.5% of the total monthly sales tax collected under Part 1 of this chapter, and 1% of the total monthly sales tax collected under Parts 2 and 5 of this chapter for the cost to it of collecting and remitting sales and use taxes to the commission on a monthly basis.

(b) The commission shall, on a one-time basis, retain the first $125,000 in local sales tax proceeds collected under Parts 1, 2, and 5 of this chapter to pay the costs incurred by the commission in implementing the reimbursement rates under this subsection.

(4) Penalties for late payment shall be as provided in Section 59-1-401.

Section 106. Section Amended.

Section 59-12-117, Utah Code Annotated 1953, as renumbered and amended by Chapters 3 and 5, Laws of Utah 1987, is amended to read:

59-12-117. Refusal to make or falsifying returns — Penalties — Criminal violations.

(1) It is unlawful for any vendor to refuse to make any return provided to be made in this chapter or to make any false or fraudulent return or false statement on any return or to evade the payment of the tax, or any part thereof imposed by this chapter or for any person to aid or abet another in any attempt to evade the payment of the tax or any part imposed by this chapter. Any person violating any of the pro-

visions of this chapter, except as provided in Section 59-12-107, shall be guilty of a criminal violation as provided in Section 59-1-401. In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement is guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. Any company making a false return or a return containing a false statement as aforesaid, is guilty of a criminal violation as provided in Section 59-1-401.

(2) Any person failing or refusing to furnish any return required to be made, failing or refusing to furnish a supplemental return or other data required by the commission, or rendering a false or fraudulent return shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(3) Any person required to make, render, sign, or verify any report under this chapter, who makes any false or fraudulent return with intent to defeat or evade the assessment or determination of amount due required by law to be made shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(4) Any violation of the provisions of this chapter, except as otherwise provided, shall be a criminal violation as provided in Section 59-1-401.

Section 107. Section Amended.

Section 59-13-102, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1992, is amended to read:

59-13-102. Definitions.

As used in this chapter:

(1) "Commission" means the State Tax Commission.

(2) "Distributor" means any person in this state who:

(a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at retail or wholesale;

(b) produces, refines, manufactures, or compounds motor fuel in this state for use, distribution, or sale in this state; or

(c) is engaged in the business of purchasing motor fuel for resale in wholesale quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability.

(3) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is generally used in an engine or motor for the generation of power. For purposes of this chapter fuels are separated into [~~three~~] four categories as follows:

(a) "Clean fuel" means:

(i) the following special fuels:

(A) propane;

(B) compressed natural gas; or

(C) electricity; or

(ii) any motor or special fuel that meets the clean fuel vehicle standards in the federal clean Air Act Amendments of 1990, Title II.

(b) "Aviation fuel" means fuel that is sold at airports and used exclusively for the operation of aircraft.

(c) "Motor fuel" means fuel that is commonly or commercially known or sold as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

(d) "Special fuel" means any fuel regardless of name or character that:

(i) is usable as fuel to operate or propel a motor vehicle upon the public highways of the state; and

(ii) is not taxed under the category of aviation or motor fuel. Special fuel includes those fuels that are not conveniently measurable on a gallonage basis.

(4) "Highway" means every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel not withstanding that the way or place may be temporarily closed for the purpose of construction, maintenance, or repair.

(5) "Motor fuels received" means:

(a) motor fuels that have been loaded at the refinery or other place into tank cars, placed in any tank at the refinery from which any withdrawals are made directly into tank trucks, tank wagons, or other types of transportation equipment, containers, or facilities other than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not involving transportation are made directly; or

(b) motor fuels that have been imported by any person into the state from any other state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when, and the place where, the interstate transportation of the motor fuel is completed within the state by the person who at the time of the delivery is the owner of the motor fuel.

(6) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used, designed, or maintained for transportation of persons or property which:

(i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds;

(ii) has three or more axles regardless of weight; or

(iii) is used in a combination of vehicles when the weight of the combination of vehicles exceeds 26,000 pounds gross vehicle weight.

(b) "Qualified motor vehicle" does not include a recreational vehicle not used in connection with any business activity.

(7) "Use," as used in Part 3, means the consumption of special fuel for the operation or propulsion of a motor vehicle upon the public highways of the

state and includes the reception of special fuel into the fuel supply tank of a motor vehicle.

(8) "User," as used in Part 3, means any person who uses special fuel within this state in an engine or motor for the generation of power to operate or propel a motor vehicle upon the public highways of the state.

(9) "User-dealer," as used in Part 3, means any person who delivers special fuel into the fuel supply tank of any motor vehicle operated or propelled upon the public highways of the state.

Section 108. Section Amended.

Section 59-13-210, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

59-13-210. Rules to be adopted by commission — Examination of monthly reports — Estimations of amount due — Judicial review — Overpayments — Interest — Collection procedures.

(1) The commission may promulgate rules to administer and enforce this part.

(2) The commission may examine the monthly reports of sales, recompute the tax due on them, or, if no monthly report is filed, estimate the amount of tax due. The estimate may be based upon information either in its possession or that comes into its possession, and is prima facie correct for purposes of this part.

(3) If the amount determined due is greater than the amount paid, the difference, together with penalty and interest, as provided under Sections 59-1-401 and 59-1-402, shall be due and payable 30 days after notice by the commission. Any distributor aggrieved by the tax adjustment may petition for redetermination, hearing, and review by the commission. A taxpayer who is dissatisfied with a final decision received from the commission[,] may seek judicial review.

(4) If the commission finds an overpayment has been made, the amount of overpayment shall be credited or refunded to the person who made the overpayment, or the person's successors, administrators, executors, or assigns.

(5) Interest at the rate prescribed in Section 59-1-402 shall be added from the due date of the return to any delinquency or refund determined by the commission.

(6) No proceedings to collect the tax may begin more than three years after the filing of any monthly report; but in case of fraud, proceedings to collect the tax may begin without assessment at any time. No refund may be made unless a claim has been filed within three years of the date of overpayment.

Section 109. Section Amended.

Section 59-14-505, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-14-505. Separate offenses — Evidence of intended sale of products.

Each article, package, or container not having a warning label affixed, as required by Section 59-14-501, is considered a separate offense. The presence of any article, package, or container of smokeless tobacco products in the place of business of any person required by this chapter to affix warning labels[,] is prima facie evidence that those articles, packages, or containers are intended for sale and are subject to this part.

Section 110. Section Amended.

Section 59-17a-102, Utah Code Annotated 1953, as last amended by Chapter 307, Laws of Utah 1990, is amended to read:

59-17a-102. Purpose of chapter — Limitations on state mandated property tax, state appropriations, and state debt.

(1) It is the purpose of this chapter to place a limitation on the state mandated property tax rate under the Minimum School [Finance] Program Act, Title 53A, Chapter [~~17~~] 17a, to place limitations on state government appropriations based upon the average of changes in personal income and the combined changes in population and inflation, and to place a limitation on the state's outstanding general obligation debt. The limitations imposed by this chapter shall be in addition to limitations on tax levies, rates, and revenues otherwise provided for by law.

(2) This chapter may not be construed as requiring the state to collect the full amount of tax revenues permitted to be appropriated by this chapter. The intent of this chapter is to provide a ceiling, not a floor, limitation on the appropriations of state government.

Section 111. Section Amended.

Section 59-17a-111, Utah Code Annotated 1953, as enacted by Chapter 222, Laws of Utah 1989, is amended to read:

59-17a-111. State mandated property tax limitation — Vote requirement needed to exceed limitation.

The state mandated property tax rate in the Minimum School [Finance] Program Act, Title 53A, Chapter [~~17~~] 17a, as of July 1, 1989, may not be increased without more than a two-thirds vote of both houses of the Legislature.

Section 112. Section Amended.

Section 62A-12-209, Utah Code Annotated 1953, as last amended by Chapter 189, Laws of Utah 1992, is amended to read:

62A-12-209. Objectives of state hospital and other facilities — Persons who may be admitted to state hospital.

(1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this part; and to furnish them with the proper attendance, medical treatment, seclusion, rest,

restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.

(2) Only the following persons may be admitted to the state hospital:

(a) patients 18 years of age and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available:

(b) patients under 18 years of age who meet the criteria necessary for commitment under Part 2A and for whom no less restrictive alternative is available;

(c) persons adjudicated and found to be guilty and mentally ill under Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill[~~Mentally Retarded Examination~~] Persons;

(d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they are mentally ill and a danger to themselves or others, under Section [~~77-14-5~~] 77-16a-302;

(e) persons found incompetent to proceed under Section 77-15-6;

(f) persons who require an examination under Title 77; and

(g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-12-204.5, giving priority to those persons with severe mental disorders.

Section 113. Section Amended.

Section 63-55-241, Utah Code Annotated 1953, as last amended by Chapters 7 and 234, Laws of Utah 1992, is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Chapter [~~1~~] 1a, the Motor Vehicle Division, is repealed July 1, 1999.

(2) The Driver License Medical Advisory Board, created in Section 41-2-202, is repealed July 1, 1997.

(3) Chapter 3, the Motor Vehicle Enforcement Division, is repealed July 1, 1997.

(4) The hearing board for motor vehicle inspection station licensing, created in Section 41-6-160.5, is repealed July 1, 1993.

(5) Section 41-6-163.6, the emissions inspection program for motor vehicles, is repealed July 1, 1999.

(6) Chapter 13, the Department of Public Safety, is repealed July 1, 1993.

(7) Chapter 13a, the Security Personnel Licensing and Regulation Act, is repealed July 1, 1995.

(8) The Off-highway Vehicle Advisory Council, created in Section 41-22-10, is repealed July 1, 1997.

(9) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.

Section 114. Section Amended.

Section 63-63a-4, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-63a-4. Reparation fund — Victim reparation and specific appropriations.

(1) (a) There is created an expendable trust fund known as the Crime Victim Reparation Trust Fund, referred to in this chapter as the reparation fund, to be administered and distributed as provided in this chapter by the Reparations Office under Title 63, Chapter 63, in cooperation with the Division of Finance.

(b) Monies deposited in this fund are for victim reparations and, as appropriated, administrative costs of the Reparations Office under Title 63, Chapter 63.

(2) (a) There is created a restricted revenue fund in the General Fund known as the Public Safety Support Fund, referred to in this chapter as the safety fund, to be administered and distributed by the Department of Public Safety in cooperation with the Division of Finance as provided in this chapter.

(b) Monies deposited in this fund shall be appropriated to:

(i) Division of Peace Officer Standards and Training [~~(P.O.S.T.)~~] as described in Title 67, Chapter 15; and

(ii) the Office of the Attorney General for the support of the Utah Prosecution Council established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

(3) The funds created under this section shall be funded by the surcharge imposed under Section 63-63a-1, as provided under this chapter.

(4) After the amount is recorded for the EMS account under Section 63-63a-3, the Division of Finance shall allocate the remainder of the $3.8 million or 40% of the surcharge monies referred to in Subsection 63-63a-2 (3), 60% to the reparation fund, and 40% to the safety fund.

(5) When adequate funding is available, P.O.S.T. and the Office of the Attorney General may not receive less funding from the safety fund than in the previous fiscal year.

(6) In addition to the funding provided by the other provisions of this chapter, any funds earned by inmates working for correctional industries under Title 64, Chapter 13a, for the purpose of victim reparations in Utah shall also be deposited in the reparation fund.

(7) Proceeds received under Section 78-11-12.5 shall be deposited in the reparation fund.

(8)(a) In addition to the money collected from the surcharge, judges are encouraged to, and may in their discretion, impose additional reparations to be paid into the reparation fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by [the] Title 76, Utah Criminal Code, for that offense.

Section 115. Section Amended.

Section 63-85-10, Utah Code Annotated 1953, as enacted by Chapter 304, Laws of Utah 1992, is amended to read:

63-85-10. Investment of sinking fund money.

The state treasurer may invest any money in the sinking fund in accordance with Title 51, Chapter 7, State Money Management Act [~~of 1974~~], until it is needed for the purposes for which the fund is created. All income from the investment of sinking fund money shall be retained in the sinking fund and used for the payment of debt service on the bonds, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 116. Section Amended.

Section 63-86-10, Utah Code Annotated 1953, as enacted by Chapter 304, Laws of Utah 1992, is amended to read:

63-86-10. Investment of sinking fund money.

The state treasurer may invest any money in the sinking fund in accordance with Title 51, Chapter 7, State Money Management Act [~~of 1974~~], until it is needed for the purposes for which the fund is created. All income from the investment of sinking fund money shall be retained in the sinking fund and used for the payment of debt service on the bonds, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 117. Section Amended.

Section 63-88-101, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-101 (Repealed 07/01/95). Definitions.

As used in this [~~part~~] chapter:

(1) "Administrative expenditures" means:

(a) expenditures for professional services;

(b) expense reimbursement for the Dineh Committee; and

(c) expense reimbursement, salaries, and benefits for the trust administrator and his staff.

(2) "Assessment" means either:

(a) a survey of San Juan County Navajos that includes:

(i) a random sample large enough to secure an accurate representation of their needs; and

(ii) a response rate large enough to provide an accurate representation of those needs; or

(b) at least three public hearings held to survey and solicit Navajo needs that are advertised for two weeks before the hearing by:

(i) announcements by the chapters, if allowed by the chapter;

(ii) notice posted in the chapter buildings and other public locations, if allowed by the chapter;

(iii) notice of the meeting announced on the radio or television; and

(iv) notice of the meeting published at least once per week for two consecutive weeks in any newspapers of general circulation within the Navajo community.

(3) "Business enterprise" means a sole proprietorship, partnership, corporation, or other private entity organized to provide goods or services for a profit.

(4) "Dineh Committee" means the Dineh Committee created in Section 63-88-107.

(5) "Income" means all revenues from investments made by the state treasurer of the trust fund principal.

(6) "Principal" means the balance of the trust fund as of February 26, 1992, and all revenue to the trust fund from whatever source except income as defined in Subsection (5).

(7) "Navajos" means San Juan County, Utah Navajos.

(8) "Prioritized list of needs" means the list created by the Dineh Committee and the trust administrator that is required by Section 63-88-104.

(9) "Service provider" means any business enterprise, private nonprofit organization, or government entity that provides goods or services to Navajos.

(10) "Trust administrator" means the professional trust administrator appointed as provided in this part.

(11) "Trust fund" or "fund" means the Navajo Trust Fund created by Section 63-88-102.

Section 118. Section Amended.

Section 63-88-102, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-102 (Repealed 07/01/95). Trust Fund — Creation — Oversight.

(1) There is created an expendable trust fund entitled the "Navajo Trust Fund."

(2) The fund consists of:

(a) revenues received by the state that represent the 37-1/2% of the net oil royalties from the Aneth Extension of the Navajo Indian Reservation required by Public Law 403, 47 Stat. 1418, to be paid to the state;

(b) monies received by the trust administrator or Dineh Committee from any contracts executed by the trust administrator, the board, or the Dineh Committee;

(c) appropriations made to the fund by the Legislature, if any;

(d) income as defined in Subsection 63-88-101(5); and

(e) other revenues received from other sources.

(3) The Division of Finance shall account for the receipt and expenditures of fund monies.

(4) (a) The state treasurer shall invest fund monies by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act [~~of 1974~~].

(b) (i) The fund shall earn interest.

(ii) The state treasurer shall deposit all interest or other revenue earned from investment of the fund back into the fund.

(5) The state auditor shall:

(a) conduct an annual audit of the fund's finances, internal controls, and compliance with statutes, rules, policies, and regulations according to the procedures and requirements of Title 67, Chapter 3, Auditor; and

(b) deliver a copy of that audit report to the:

(i) board;

(ii) trust administrator;

(iii) Dineh Committee;

(iv) Office of Legislative Research and General Counsel for presentation to the Legislature's State and Local Affairs Interim Committee;

(v) governor's office;

(vi) Division of Indian Affairs;

(vii) U.S. Bureau of Indian Affairs;

(viii) Navajo nation; and

(ix) U.S. Secretary of the Interior.

Section 119. Section Amended.

Section 63-88-104, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-104 (Repealed 07/01/95). Office of Trust administrator — Creation.

(1) If the board appoints a trust administrator under Subsection 63-88-103(2)(a)(ii), there is created an Office of Trust Administrator in the Department of Administrative Services.

(2) (a) The trust administrator appointed as provided in Section 63-88-103(2)(a)(ii) shall administer the office.

(b) The Department of Administrative Services shall provide physical space and logistical and administrative support to the office but may not direct the activities of the office or the trust administrator.

(c) The Board of Trustees and the Office of Trust Administrator shall assume all of the functions, powers, duties, rights, and responsibilities of:

(i) the Commission of State Indian Affairs;

(ii) the Board of Indian Affairs;

(iii) the Dineh Committee, except as provided in this [part] chapter; and

(iv) the Division of Indian Affairs, on all matters connected with the trust fund or its proceeds.

Section 120. Section Amended.

Section 63-88-105, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-105 (Repealed 07/01/95). Trust administrator — Duties.

(1) Under the direction of the board, the trust administrator shall:

(a) review the documents and decisions highlighting the history of the trust fund, including:

(i) the Nelson report, prepared as part of the Bigman v. Utah Navajo Development Council Inc. C77-0031;

(ii) the November 1991 performance audit of the Utah Navajo Trust Fund by the legislative auditor general;

(iii) Sakezzie v. Utah Indian Affairs Commission, 198 F. Supp. 218 (1961);

(iv) Sakezzie v. Utah Indian Affairs Commission, 215 F. Supp. 12 (1963); and

(v) the September 8, 1977, consent decree, the stipulation dated November 29, 1984, modifying the consent decree, and the court's memorandum opinion dated September 25, 1978, in Bigman v. Utah Navajo Development Council, Inc., C77-0031;

(b) review all potential sources of trust fund revenues and prepare annual projections of monies that will be available for Navajo programs;

(c) identify all property owned by the trust and establish and maintain a record system to retain records relating to the trust's property;

(d) review all existing and proposed programs financed by the trust fund and evaluate whether or not they are the most practical and cost-efficient means to provide the desired benefit to Utah Navajos;

(e) consult regularly with the administrators of all programs financed by the trust fund to obtain at least quarterly progress reports on all programs;

(f) attend all meetings of the Dineh Committee;

(g) establish written policies identifying expenses payable from the fund for Dineh Committee members;

(h) certify that all expenditures from the trust fund comply with the state's fiduciary respon-

sibilities as trustee of the fund and are consistent with this section;

(i) make an annual report to the board, the governor, and the State and Local Affairs Interim Committee that:

(i) identifies the source and amount of all revenue received by the fund;

(ii) identifies the recipient, purpose, and amount of all expenditures from the fund;

(iii) identifies specifically each of the fund's investments and the actual return and the rate of return from each investment; and

(iv) recommends any necessary statutory changes to improve administration of the fund or to protect the state from liability as trustee;

(j) establish, in conjunction with the state treasurer, the state auditor, and the Division of Finance, appropriate accounting practices for all trust fund receipts, expenditures, and investments according to generally accepted accounting principles;

(k) provide summary records of trust fund receipts, expenditures, and investments to the board and to the Dineh Committee at each of their meetings;

(l) pay administrative expenses from the fund;

(m) report monthly to the board about his activities and the status of the trust fund; and

(n) call additional meetings of the Dineh Committee when necessary.

(2) In conjunction with the Dineh Committee and under the direction of the board, the trust administrator shall:

(a) before the beginning of each fiscal year, conduct an annual assessment of the needs of Navajos in the areas of health, education, and general welfare;

(b) based upon the annual assessment, develop, before the beginning of each fiscal year, a prioritized list of the needs of Navajos for that year;

(c) before the beginning of each fiscal year, develop and approve an annual budget for the trust fund;

(d) develop an ethics and conflict of interest policy for the trust administrator, his employees, and the Dineh Committee that emphasizes the need to avoid even the appearance of conflict of interest or impropriety;

(e) require the trust administrator, each of his employees, and each Dineh Committee member to sign and keep on file written documentation that acknowledges their receipt of the ethics and conflict of interest policy and their willingness to abide by its provisions; and

(f) make expenditures from the fund "for the health, education, and general welfare of the Navajo Indians, residing in San Juan County" as required by:

(i) Public Law 72-403, 47 Stat. 1418 (1933);

(ii) Public Law 90-306, 82 Stat. 121 (1968); and

(iii) this [~~part~~] chapter.

(3) The trust administrator, under direction of the board, may:

(a) contract with public and private entities; and

(b) unless prohibited by law or the requirements of this [~~part~~] chapter, acquire and hold monies and other property received in the administration of the trust fund.

Section 121. Section Amended.

Section 63-88-107, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-107 (Repealed 07/01/95). Utah Dineh Committee.

(1) There is created the Dineh Committee.

(2) (a) The governor, with the advice and consent of the Senate, shall appoint nine members to the committee.

(b) The governor shall ensure that the committee includes:

(i) two enrolled members of the Aneth Chapter of the Navajo tribe who reside in Utah;

(ii) one enrolled member of the Blue Mountain Dine', an off-reservation chapter, who resides in Utah;

(iii) one enrolled member of the Mexican Water Chapter of the Navajo tribe who resides in Utah;

(iv) one enrolled member of the Navajo Mountain Chapter of the Navajo tribe who resides in Utah;

(v) two enrolled members of the Oljato Chapter of the Navajo tribe who reside in Utah;

(vi) one enrolled member of the Red Mesa Chapter of the Navajo tribe who resides in Utah; and

(vii) one enrolled member of the Teec Nos Pos Chapter of the Navajo tribe who resides in Utah.

(3) (a) (i) Each of the Navajo chapters identified in this subsection, except the Aneth and Oljato chapters shall submit to the governor the names of three nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select one of those three persons as that chapter's representative on the Dineh Committee.

(b) (i) The Aneth and Oljato Navajo chapters shall each submit to the governor the names of six nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select two of the six persons submitted by each chapter to be that chapter's representatives on the Dineh Committee.

(4) The governor may not appoint any person who is currently, or who, within the last 12 months, has been an officer, director, employee, or contractor of any business enterprise or service provider that so-

licits, accepts, or receives monies from the Division of Indian Affairs or from the trust fund established in this [part] chapter.

(5) Other than the amount authorized by this section for Dineh Committee member expenses, a person appointed to the Dineh Committee may not solicit, accept, or receive any monies from:

(a) the Division of Indian Affairs;

(b) the trust fund; or

(c) as an officer, director, employee, or contractor of any business enterprise or service provider that solicits, accepts, or receives expenditures from the Division of Indian Affairs or the trust fund.

(6) (a) (i) Except as provided in Subsection (a)(ii), the governor shall appoint committee members to serve four-year terms.

(ii) In making the initial appointments to the committee, the governor shall appoint six members to two-year terms and five members to four-year terms.

(b) Except as provided in Subsection (c), committee members shall serve until their successors are appointed and qualified.

(c) (i) If a committee member is absent from three consecutive committee meetings, or if the committee member has violated the ethical or conflict of interest policies established by statute or by the committee, that member's appointment is terminated, the position is vacant, and the governor shall appoint a replacement.

(ii) The governor shall fill any vacancy that occurs on the committee for any reason by appointing a person according to the procedures of this section for the unexpired term of the vacated member.

(7) (a) The committee shall select a chairperson from its membership.

(b) Five members of the committee are a quorum for the transaction of business.

(c) The committee shall:

(i) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings;

(ii) ensure that all of its meetings are held on the Utah portion of the Navajo nation; and

(iii) ensure that all of its meeting are public hearings at which any resident of San Juan County may appear and speak.

(8) Members of the committee shall serve without compensation, but may be reimbursed for expenses incurred in performance of their official duties by the trust administrator from the trust fund.

(9) The Office of Trust Administrator is staff to the committee.

(10) The committee shall advise the trust administrator about the expenditure of trust fund monies.

Section 122. Section Amended.

Section 73-10h-13, Utah Code Annotated 1953, as enacted by Chapter 304, Laws of Utah 1992, is amended to read:

73-10h-13. Investment of sinking fund money.

The state treasurer may invest any money in the sinking fund in accordance with Title 51, Chapter 7, State Money Management Act [of 1974], until it is needed for the purposes for which the fund is created. All income from the investment of sinking fund money shall be retained in the sinking fund and used for the payment of debt service on the bonds, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 123. Section Amended.

Section 76-1-303, Utah Code Annotated 1953, as last amended by Chapter 175, Laws of Utah 1991, is amended to read:

76-1-303. Fraud or breach of fiduciary obligation — Misconduct of public officer or employee — Sexual offense against a child.

If the period prescribed in Subsection 76-1-302 (1) has expired, a prosecution may nevertheless be commenced for:

(1) any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; [and]

(2) any offense based upon misconduct in office by a public officer or employee at any time during the term of defendant's public office or the period of his public employment or within two years thereafter, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years[.]; and

(3) rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child within four years after the report of the offense to a law enforcement agency.

Section 124. Section Amended.

Section 76-9-301, Utah Code Annotated 1953, as last amended by Chapter 147, Laws of Utah 1992, is amended to read:

76-9-301. Cruelty to animals.

(1) A person commits cruelty to animals if he intentionally, knowingly, or with criminal negligence:

(a) tortures or seriously overworks an animal;

(b) fails to provide necessary food, care, or shelter for an animal in his custody;

(c) abandons an animal in his custody;

(d) transports or confines an animal in a cruel manner;

(e) kills, injures, or administers poison to an animal without legal privilege; or

(f) causes any animal, not including a dog, to fight with another animal or creature of like kind for amusement or gain; or causes any animal, including a dog, to fight with a different kind of animal or creature for amusement or gain.

(2) It is a defense to prosecution under this section that the conduct of the actor towards the animal was by a licensed veterinarian using accepted veterinary practice, or directly related to bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

(3) This section does not effect or prohibit the training and instruction of animals, so long as the methods used are in accordance with accepted husbandry practices.

(4) This section does not effect or prohibit the use of an electronic locating collar by the owner of an animal for the purpose of protecting against loss of that animal. County and local governments may not prohibit that practice.

(5) As used in this section:

(a) "Abandons" means to intentionally deposit, leave, or drop off any live animal:

(i) without providing for the care of that animal; or

(ii) in a situation where conditions present an immediate, direct, and serious threat to the life, safety, or health of the animal.

(b) (i) "Animal" means a live, nonhuman vertebrate creature.

(ii) "Animal" does not include animals kept or owned for agricultural purposes in accordance with accepted husbandry practices, and does not include protected wildlife as defined in [~~Subsection~~] Section 23-13-2 [~~(27)~~].

(c) "Custody" means ownership or control over an animal.

(d) "Legal privilege" means an act authorized by law, done in conformance with local ordinances, and not otherwise prohibited by law.

(e) "Necessary food, care, and shelter" means appropriate and essential food and other needs of the animal, including veterinary care.

(6) Violation of this section is a class C misdemeanor.

Section 125. Section Amended.

Section 78-30-4.1, Utah Code Annotated 1953, as enacted by Chapter 245, Laws of Utah 1990, is amended to read:

78-30-4.1. Consent or relinquishment required.

[~~(1)~~] Except as provided in Section 78-30-5, either consent to adoption or relinquishment for adoption to a licensed child placing agency is required from:

[~~(a)~~] (1) the adoptee, if he is over the age of 12 years, unless the adoptee does not have the mental capacity to consent;

[~~(b)~~] (2) the parents of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

[~~(c)~~] (3) the mother of an adoptee born outside of marriage;

[~~(d)~~] (4) the biological father of an adoptee born outside of marriage who, in a contested hearing pursuant to Section 78-30-4.10 proves that after the adoptee's birth he has:

[~~(i)~~] (a) developed a substantial relationship with the adoptee and has taken some measure of responsibility for the adoptee and for the adoptee's future, and demonstrated a full commitment to the responsibilities of parenthood by participating in raising the adoptee; or

[~~(ii)~~] (b) received the adoptee into his home, openly held out the adoptee as his own child, and otherwise treated the child as if it were his legitimate child; and

[~~(e)~~] (5) the licensed child placing agency to whom an adoptee has been relinquished and that is placing the adoptee for adoption.

Section 126. Section Amended.

Section 78-30-4.8, Utah Code Annotated 1953, as enacted by Chapter 245, Laws of Utah 1990, is amended to read:

78-30-4.8. Filing requirements — Children born outside of marriage.

(1)(a) Any person who is the father or claims to be the father of a child born outside of marriage may file notice of his claim of paternity and of his willingness and intent to support the child to the best of his ability with the state registrar of vital statistics in the Department of Health.

(b) The Department of Health shall provide forms for the purpose of filing the notices of paternity described in this section. Forms shall be made available by the department, in the office of the county clerk in each county, in every hospital, as defined in Subsection 26-21-2 (9), and in every licensed child placing agency.

(2) The notice may be filed prior to the birth of the child but must be filed prior to the time the child is relinquished to a licensed child placing agency or prior to the filing of a petition by a person with whom the mother has placed the child for adoption. The notice shall be signed by the person filing and shall include his name and address, the name and last-known address of the birth mother, and either the birthdate of the child or the probable month and year of the expected birth of the child. The person who files a notice under this section shall notify the registrar of vital statistics of any change of his address. The Department of Health shall maintain a confidential registry for this purpose.

(3) The Legislature finds that a certain degree of finality is necessary in order to facilitate the state's interest in expediting the adoption of young children and in protecting the rights and interests of the child, the birth mother, and the adoptive parents. Therefore, any putative father who fails to file his notice of paternity is barred from thereafter bringing or maintaining any action to assert any interest in the child unless he proves by clear and convincing evidence that:

(a) it was not possible for him to file a notice of paternity within the period of time specified in Subsection (2);

(b) his failure to file a notice of paternity was through no fault of his own; and

(c) he filed a notice of paternity within 10 days after it became possible for him to file.

(4) Except as provided in Subsection 78-30-4.1 [~~(d)~~] (4), failure to file a timely notice of paternity shall be deemed to be a waiver and surrender of any right to notice of any hearing in any judicial proceeding for adoption of the child, and the consent of that person to the adoption of the child is not required.

(5) In any adoption proceeding pertaining to a child born outside of marriage, if there is no showing that a putative father has consented to or waived his rights regarding the proposed adoption, it shall be necessary to file with the court, prior to its entering a final decree of adoption, a certificate from the Department of Health, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers of children born outside of marriage and that no filing has been found pertaining to the father of the child in question.

CHAPTER 5
H. B. No. 10
Passed February 8, 1993
Approved February 24, 1993
Effective May 3, 1993

JUSTICE COURT JUDGE AMENDMENTS

By Stephen M. Bodily

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING ELIGIBILITY REQUIREMENTS FOR JUSTICE COURT JUDGES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-5-107, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1991
78-5-137, AS ENACTED BY CHAPTER 157, LAWS OF UTAH 1989

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

Section 1. Section Amended.

Section 78-5-107, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1991, is amended to read:

78-5-107. Place of holding court.

(1) (a) County justice court judges may [~~reside in and~~] hold court in any municipality within the precinct but may exercise only the jurisdiction provided by law for county justice courts.

(b) County justice court judges may also, at the direction of the county commission, hold court anywhere in the county as needed but may only hear cases arising within the precinct.

(2) A municipal justice court judge shall[~~: (a) reside in the county where the municipality is located or in an adjacent county; and (b)~~] hold court in the municipality where the court is located [~~except he may hold court~~] and, as directed by the municipal governing body, at the county jail or municipal prison [~~as directed by the municipal governing body~~].

Section 2. Section Amended.

Section 78-5-137, Utah Code Annotated 1953, as enacted by Chapter 157, Laws of Utah 1989, is amended to read:

78-5-137. Justice court judge eligibility — Retirement — Service after retirement.

(1) A county justice court judge shall be:

(a) a citizen of the United States;

(b) 25 years of age or older;

(c) a resident of Utah for at least three years immediately preceding his appointment;

(d) a resident of the precinct [~~or municipality from~~] for which chosen for at least six months immediately preceding [his] appointment; and

(e) a qualified voter of the precinct [~~or municipality from~~] for which chosen.

(2) A municipal justice court judge shall be:

(a) a citizen of the United States;

(b) 25 years of age or older;

(c) a resident of Utah for at least three years immediately preceding appointment;

(d) a resident of the county in which the municipality is located or an adjacent county for at least six months immediately preceding appointment; and

(e) a qualified voter of the county of residence.

[~~(2)~~] (3) Justice court judges are not required to be admitted to practice law in the state as a qualification to hold office but shall have at the minimum a diploma of graduation from high school or its equivalent. This requirement does not apply to justice court judges holding office on July 1, 1989, who successfully complete continuing education requirements under Section 78-5-127.

[~~(3)~~] (4) A justice court judge shall be a person who has demonstrated maturity of judgment, integrity, and the ability to understand and apply appropriate law with impartiality.

[~~(4)~~] (5) (a) A justice court judge whose tenure in office has terminated due to retirement and who is physically and mentally able to perform the duties of the office may hear a case as prescribed by rule of the Supreme Court.

(b) The retired justice court judge shall take and subscribe an oath of office only upon [his] the first appointment. [~~For services, he~~] The retired justice court judge shall receive reasonable compensation for services as set by local ordinance of the municipality or county [~~where he serves~~].

CHAPTER 6
H. B. No. 14
Passed February 4, 1993
Approved February 24, 1993
Effective May 3, 1993

JUSTICE COURT AMENDMENTS

By R. Lee Ellertson

AN ACT RELATING TO JUSTICE COURTS; CREATING ALTERNATIVE OF ONE COUNTY PRECINCT; PERMITTING THE APPOINTMENT OF MORE THAN ONE JUSTICE COURT JUDGE PER PRECINCT; AND PROVIDING FOR ASSIGNMENT OF MATTERS TO JUSTICE COURT JUDGES AT RANDOM.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-5-102, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 78-5-102, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-5-102. Offices of justice court judges.

(1) Justice court judges holding office in:

(a) county precincts are county justice court judges; and

(b) cities or towns are municipal justice court judges.

(2) With the concurrence of the governing bodies of both the county and municipality, a justice court judge may hold both the offices of county and municipal justice court judge.

(3) As an executive function, the [~~board of~~] county [~~commissioners~~] governing body may [~~for public convenience~~] establish a single precinct or divide the county into multiple precincts to create county justice courts for public convenience. [~~Each precinct shall have one justice court judge.~~]

(4) (a) The county governing body may assign as many justice court judges to a precinct as required for efficient judicial administration.

(b) If more than one judge is assigned to a precinct, any citations, informations, or complaints within that precinct shall be assigned to the judges at random.

[~~(4)~~] (5) A municipality or county may contract with any other municipality or municipalities within the county under Title 11, Chapter 13, Interlocal Cooperation Act, to establish a justice court. A justice court established under [~~the Interlocal Co-operation Act~~] Title 11, Chapter 13, shall meet the requirements for certification under Section 78-5-139. A justice court established under [~~the Interlocal Co-operation Act~~] Title 11, Chapter 13, shall have territorial jurisdiction as if established separately.

[~~(5)~~] (6) Counties have the same rights and restraints as provided for municipalities with respect to assuming responsibility for the jurisdiction of justice courts provided in Section 10-3-923.

CHAPTER 7
H. B. No. 17
Passed February 5, 1993
Approved February 24, 1993
Effective February 24, 1993

ALCOHOLIC BEVERAGES - ELECTION DAY HOURS

By Afton B. Bradshaw

AN ACT RELATING TO ALCOHOLIC BEVERAGES; CLARIFYING THE PROHIBITION AGAINST SALES OF LIQUOR DURING CERTAIN HOURS ON ELECTION DAYS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
32A-2-103, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-3-106, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-4-106, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-4-206, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-5-107, AS LAST AMENDED BY CHAPTER 60, LAWS OF UTAH 1992
32A-7-106, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 32A-2-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-2-103. Operational restrictions.

(1) Liquor may not be sold from a state store except in a sealed package. The package may not be opened on the premises of any state store.

(2) (a) An officer, agent, clerk, or employee of a state store may not consume or allow to be consumed by any person any alcoholic beverage on the premises of a state store.

(b) Violation of this subsection is a class B misdemeanor.

(3) All liquor sold shall be in packages that are properly marked and labeled in accordance with the rules adopted under this title.

(4) Liquor may not be sold except at prices fixed by the commission.

(5) Liquor may not be sold to a retail purchaser unless paid for in cash.

(6) Liquor may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(7) Sale or delivery of liquor may not be made on or from the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on Sunday;

(b) on any state or federal legal holiday;

(c) on any day on which any [~~national or~~] regular general election, [~~state~~] regular primary election, or statewide special election is held;

(d) on any day on which any [~~local~~] municipal, special district, or school election is held, but only within the boundaries of the municipality, special district, or school district holding the election and only if the [~~local government entity~~] municipality, special district, or school district in which the election is being held notifies the department at least 30 days prior to the date of the election; or

(e) except on days and during hours as the commission may direct by rule or order.

(8) Each state store shall display in a prominent place in the store a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

Section 2. Section Amended.

Section 32A-3-106, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-3-106. Operational restrictions.

(1)(a) A package agency may not be operated until a package agency agreement has been entered into by the package agent and the department.

(b) The agreement shall state the conditions of operation by which the package agent and the department are bound.

(c) If the package agent violates the conditions, terms, or covenants contained in the agreement, or violates any provisions of this title, the department may take whatever action against the agent that is allowed by the package agency agreement.

(d) Actions against the package agent are governed solely by the agreement and may include suspension or revocation of the agency.

(2) The department shall provide all liquor sold by package agencies.

(3) The department may pay or otherwise remunerate a package agent on any basis other than sales or volume of business done by the agency.

(4) Liquor may not be sold from any package agency except in a sealed package. The package may not be opened on the premises of a package agency.

(5) All liquor sold shall be in packages that are properly marked and labeled in accordance with the rules adopted under this title.

(6) A package agency may not display liquor or price lists in windows or showcases visible to passersby.

(7) (a) An officer, agent, clerk, or employee of a package agency may not consume or allow to be consumed by any person any alcoholic beverage on the premises of a package agency.

(b) Violation of this subsection is a class B misdemeanor.

(8) Liquor may not be sold except at prices fixed by the commission.

(9) Liquor may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(10) Sale or delivery of liquor may not be made on or from the premises of any package agency nor may any package agency be kept open for the sale of liquor:

(a) on Sunday;

(b) on any state or federal legal holiday;

(c) on any day on which any [~~national~~] regular general election, [~~or state~~] regular primary election, or statewide special election is held until after the polls are closed;

(d) on any day on which any [~~local~~] municipal, special district, or school election is held until after the polls are closed, but only within the boundaries of the municipality, special district, or school district holding the election and only if the [~~local government entity~~] municipality, special district, or school district in which the election is being held notifies the department at least 30 days prior to the date of the election; or

(e) except on days and during hours as the commission may direct by rule or order.

(11) The package agency certificate issued by the commission shall be permanently posted in a conspicuous place in the package agency.

(12) Each package agent shall display in a prominent place in the package agency a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(13) (a) A package agency may not close or cease operation for a period longer than 72 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the package agency and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Each notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the agency will reopen or resume operation.

(e) Failure of the agency to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic termination of the package agency contract effective immediately.

(f) Failure of the agency to reopen or resume operation by the approved date shall result in an automatic termination of the package agency contract effective on that date.

(14) (a) All liquor shall be stored and sold from the location designated in the package agent's application as approved by the commission.

(b) A package agency may not transfer its operations from one location to another without prior written approval of the commission.

(15) (a) A person, having been granted a package agency, may not sell, exchange, barter, give, or attempt in any way to dispose of the agency, whether for monetary gain or not.

(b) A package agency has no monetary value for the purpose of any type of disposition.

Section 3. Section Amended.

Section 32A-4-106, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-4-106. Operational restrictions.

Each person granted a restaurant liquor license and the employees and management personnel of the restaurant shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by a restaurant liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(2) Beginning July 1, 1991, a restaurant liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(d) heavy beer may be served in original containers not exceeding one liter.

(3)(a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the commission.

(b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (a) shall comply with all appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(c) Failure to comply with the operational restrictions under Chapter 10 as set forth in Subsection (b) may result in a suspension or revocation of the restaurant's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5)(a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the restaurant.

(b) A patron or guest may only make purchases in the restaurant from a server designated and trained by the licensee.

(c) Any alcoholic beverage may only be consumed at the patron's or guest's table.

(d) Liquor may not be stored where it is visible to patrons of the restaurant.

(6) Alcoholic beverages may not be dispensed directly to a patron or guest from the storage area but shall be delivered by a server to the patron.

(7) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(8)(a) Liquor may not be sold or offered for sale at a restaurant during the following days or hours:

(i) on the day of any [~~state~~] regular general election, regular primary election, or [~~national~~] statewide special election until after the polls are closed;

(ii) on the day of any [~~local~~] municipal, special district, or school election, but only within the boundaries of the municipality, special district, or school district, and only if closure is required by local ordinance;

(iii) on Saturday, Sunday, and any state or federal legal holiday after 12 midnight and before 12 noon; and

(iv) on any other day after 12 midnight and before 1 p.m.

(b) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

(9) Alcoholic beverages may not be sold except in connection with an order for food prepared, sold, and served at the restaurant.

(10) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(11) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(12) A restaurant patron or guest may have only one alcoholic beverage at a time before him on his table.

(13) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a patron or guest at a time, except wine as provided in Subsection (2)(c) and heavy beer as provided in Subsection (2)(d).

(14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons or guests of the restaurant.

(15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any location where they are stored or dispensed.

(16) A wine service may be performed and a service charge assessed by the restaurant as authorized by commission rule for wine purchased at the restaurant or carried in by a patron. If wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(17)(a) Beginning January 1, 1991, a person may not bring onto the premises of a restaurant liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee and consume wine pursuant to Subsection (16).

(b) Beginning January 1, 1991, a restaurant, licensed or unlicensed under this title, or its officers, managers, employees, or agents may not allow a person to bring onto the restaurant premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises, except cork-finished wine under Subsection (a).

(c) Beginning January 1, 1991, if any restaurant licensee, or any of its officers, managers, employees, or agents violates this subsection:

(i) the commission may immediately suspend or revoke the restaurant's liquor license and the restaurant licensee is subject to possible criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the restaurant's local liquor license, local consent under Subsection 32A-4-102(1)(c), or local business license.

(18) Alcoholic beverages purchased from the restaurant may not be removed from the restaurant premises.

(19) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic beverages.

(20) An employee of a restaurant liquor licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a food menu except that a statement of availability of a liquor and wine menu on request, the content and form of which is approved by the department, may be attached to or carried on a food menu. The context of both food and liquor and wine menus may not in any manner attempt to promote or increase the sale of alcoholic beverages.

(b) A server, employee, or agent of a licensee may not draw attention to the availability of alcoholic beverages for sale, unless a patron or guest first inquires about it.

(c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic beverage menus.

(22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(23) The following acts or conduct in a restaurant licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(24) Nothing in Subsection (23) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (23).

(25) (a) Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (a).

(26) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, set-ups, liquor, food, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, set-ups, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(27) Each restaurant liquor licensee shall maintain accounting and other records and documents as the department may require. Any restaurant or person acting for the restaurant, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the restaurant required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the restaurant's liquor license and possible criminal prosecution under Chapter 12.

(28) (a) A restaurant liquor licensee may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the restaurant licensee and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year.

(29) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges.

(30) There shall be no transfer of a restaurant liquor license from one location to another, without prior written approval of the commission.

(31) (a) A person, having been granted a restaurant liquor license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) A restaurant liquor license has no monetary value for the purpose of any type of disposition.

(32) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(33) A person's willingness to serve alcoholic beverages may not be made a condition of employment as a server with a restaurant that has a restaurant liquor license.

Section 4. Section Amended.

Section 32A-4-206, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-4-206. Operational restrictions.

Each person granted an airport lounge liquor license and the employees and management personnel of the airport lounge shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by an airport lounge liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with the rules established by the commission.

(2) An airport lounge liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(c) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Airport lounges may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(b) Airport lounges that sell beer pursuant to Subsection (a) shall comply with all appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter that apply to airport lounges.

(c) Failure to comply with the operational restrictions under Chapter 10 as set forth in Subsection (b) may result in a suspension or revocation of the airport lounge's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the airport lounge.

(b) A patron or guest may only make purchases in the airport lounge from a server designated and trained by the licensee.

(c) Alcoholic beverages may not be stored where they are visible to persons outside the airport lounge.

(6) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(7) (a) Liquor may not be sold or offered for sale at an airport lounge during the following days or hours:

(i) on the day of any [~~state~~] regular general election, regular primary election, or [~~national~~] statewide special election until after the polls are closed; and

(ii) on any other day after 10 p.m. and before 10 a.m.

(b) The hours of beer sales are those specified in Chapter 10 for on-premise beer licenses.

(8) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(9) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any day or at any time.

(10) An airport lounge patron or guest may have only one alcoholic beverage at a time before him.

(11) No more than one ounce of primary liquor may be served to a patron or guest at a time, except wine as provided in Subsection (2)(b) and heavy beer as provided in Subsection (2)(c).

(12) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons or guests of the airport lounge.

(13) (a) Beginning January 1, 1991, a person may not bring onto the premises of an airport lounge licensee any alcoholic beverage for on-premise consumption.

(b) Beginning January 1, 1991, an airport lounge or its officers, managers, employees, or agents may not allow a person to bring onto the airport lounge premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

(c) Beginning January 1, 1991, if any airport lounge liquor licensee or any of its officers, managers, employees, or agents violates this subsection:

(i) the commission may immediately suspend or revoke the airport lounge's liquor license and the airport lounge liquor licensee is subject to criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the airport lounge's local liquor license, local consent under Subsection 32A-4-202 (1)(c), or local business license.

(14) Alcoholic beverages purchased from the airport lounge may not be removed from the airport lounge premises.

(15) Minors may not be employed by an airport lounge licensee to sell or dispense alcoholic beverages.

(16) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(17) Each airport lounge liquor licensee shall display in a prominent place in the airport lounge:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(18) (a) Each airport lounge liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, liquor, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(19) Each airport lounge liquor licensee shall maintain accounting and other records and documents as the department may require. Any airport lounge or person acting for the airport lounge, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the airport lounge required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the airport lounge's liquor license and possible criminal prosecution under Chapter 12.

(20) There shall be no transfer of an airport lounge liquor license from one location to another, without prior written approval of the commission.

(21) (a) A person, having been granted an airport lounge liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An airport lounge liquor license has no monetary value for the purpose of any type of disposition.

(22) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(23) An airport lounge liquor licensee's premises may not be leased for private functions.

Section 5. Section Amended.

Section 32A-5-107, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1992, is amended to read:

32A-5-107. Operational restrictions.

Each corporation or association granted a private club liquor license and its employees, officers, managing agent, and members shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Each private club shall hold regular meetings as required by its articles or bylaws and conduct its business through regularly elected officers. Within ten days following the election of any officer, the department shall be notified in writing of the officer's name, address, and office to which the officer has been elected, and the term of that office.

(2) Each private club may admit members only on written application signed by the applicant, following investigation and approval of the governing body. Admissions shall be recorded in the official minutes of a regular meeting of the governing body and the application, whether approved or disapproved, shall be filed as a part of the official records of the licensee. An applicant may not be accorded the privileges of a member until a quorum of the governing body has formally voted upon and approved the applicant as a member. An applicant may not be admitted to membership until seven days after the application is submitted.

(3) Each private club shall maintain a current and complete membership record showing the date of application of each proposed member, the member's address, the date of admission following application, and the date initiation fees and dues were assessed and paid. The record shall also show the serial number of the membership card issued to each member. A current record shall also be kept indicating when members were dropped or resigned.

(4) Each private club shall establish in the club bylaws initial fees and monthly dues, as established by commission rules, which are collected from all members.

(5) Each private club may allow guests or visitors to use the premises only when previously authorized by a member. A member is responsible for all services extended to guests and visitors. If the guest or visitor is a member of the same fraternal organization as the private club liquor licensee, no previous authorization is required.

(6) Each private club shall limit the issuance of visitor cards for a period not to exceed two weeks and assess and collect a fee from each visitor of not less than $5 for each two-week period the visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to the department for the administration of this title. A current record of the issuance of each card shall be maintained and shall contain the name of the member sponsoring the visitor.

(7) A private club may not sell alcoholic beverages to any person other than a member, guest, or visitor who holds a valid visitor card issued under Subsection (6).

(8) A person who is under 21 years of age may not be a member, officer, director, or trustee of a private club.

(9) An employee of a club, while on duty, may not consume an alcoholic beverage, be under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host for a guest.

(10) A visitor to a club may not host more than five guests at one time.

(11) Each private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, utilities, supplies, and all other expenditures. This record shall be kept in a form approved by the department and balanced each month. Each expen-

diture shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal year documenting purchases made by officers of the club for the benefit of the club shall also be maintained.

(12) Each private club shall maintain a bank account that shows all income and expenditures as a control on the income and disbursements records. This account shall be balanced each month under the direction of the treasurer or other officer of the licensee.

(13) Each private club shall maintain a minute book that is posted currently by the secretary. This record shall contain the minutes of all regular and special meetings of the governing body and all committee meetings held to conduct club business. Membership lists shall also be maintained.

(14) Each private club shall maintain current copies of the club's articles of incorporation, current bylaws, and current house rules. Changes in the bylaws are not effective unless submitted to the department within ten days after adoption, and become effective 15 days after received by the department unless rejected by the department before the expiration of the 15-day period.

(15) Each private club shall maintain accounting and other records and documents as the department may require.

(16) Any club or person acting for the club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the club required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the club's license and possible criminal prosecution under Chapter 12.

(17) Each private club shall maintain and keep all the records required by this section and all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the department requires, for a minimum period of three years. All records, books, receipts, and disbursements are subject to inspection by authorized representatives of the commission, department, and council. The club shall allow the department, through its auditors or examiners, to audit all records of the club at times the department considers advisable. The department shall audit the records of the licensee at least once annually.

(18) Each private club shall make available to the department, upon request, verified copies of any returns filed with the United States Treasury Department, Internal Revenue Service, under the federal Internal Revenue Code. Failure to provide any returns and supporting documents upon reasonable request by the department or, alternatively, to provide evidence of an extension granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to suspend or revoke a license. Any return or copy of a return so filed with the department is confidential and may not be used in any manner not directly connected with the enforcement of this title, nor may it be disclosed to any person or any department or agency of government, whether federal, state, or local.

(19) Each private club shall own or lease premises suitable for its activities in its own name. A copy of the lease shall be filed with the department.

(20) Each private club shall operate the club under the supervision of a manager or house committee, appointed by the governing body of the club.

(21) A private club may not maintain facilities in any manner that barricades or conceals the club operation. Any member of the commission, authorized department personnel, member of the council, or any peace officer shall, upon presentation of credentials, be admitted immediately to the club and permitted without hindrance or delay to inspect completely the entire club premises and all books and records of the licensee, at any time during which the same are open for the transaction of business to its members.

(22) A private club may not pay any person or entity any fee, salary, rent, or other payment of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities or equipment rented. It is the intention of this subsection to insure that no officer, managing agent, employee, or other person derives a principal economic benefit from the operation of a club.

(23) A private club may not engage in any public solicitation or public advertising calculated to increase its membership.

(24) Each private club shall abide by the following operational restrictions:

(a) The liquor storage and sales area shall remain locked at all times when it is not open for business.

(b) Liquor may not be purchased by a private club liquor licensee except from state stores or package agencies. Liquor so purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(i) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(A) the beverage shall contain liquor from a lawfully purchased container;

(B) the secondary ingredient is not the only liquor in the beverage;

(C) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(ii) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(iv) heavy beer may be served in standard containers not exceeding one liter.

(d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (i) shall comply with all appropriate operational restrictions under Title 32A, Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(iii) Failure to comply with the operational restrictions under Title 32A, Chapter 10, as set forth in Subsection (ii) may result in a suspension or revocation of the private club's state liquor license and its alcoholic beverage license issued by the local authority.

(e) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(f) A private club may not charge for the service or supply of glasses, ice, or mixers unless the charges are fixed in the house rules of the club and a copy of the rules is kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic beverage.

(h) An officer, director, managing agent, employee, and any other person employed by or acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be sold, delivered, or furnished any liquor to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(i) (i) Liquor may not be sold or offered for sale at any private club during the following days or hours:

(A) on the day of any [state] regular general election, regular primary election, or [national] statewide special election until after the polls are closed;

(B) on the day of any [local] municipal, special district, or school election, but only within the boundaries of the municipality, special district, or school district, and only if closure is required by local ordinance; and

(C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

(ii) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

(j) On all other days the liquor storage and sales area in the club shall be closed from 1 a.m. until 10 a.m.

(k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a member, guest, or visitor at a time, except wine as provided in Subsection (c)(iii) and heavy beer as provided in Subsection (c)(iv).

(m) (i) Beginning January 1, 1991, a person may not bring onto the premises of a private club liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private club liquor licensee and consume wine pursuant to Subsection (n).

(ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or agents may not allow a person to bring onto the private club premises any alcoholic beverage for on-premise consumption, except cork-finished wine under Subsection (i).

(iii) Beginning January 1, 1991, if any private club licensee or any of its officers, managers, employees, or agents violates this subsection:

(A) the commission may immediately suspend or revoke the private club's liquor license and the private club licensee is subject to criminal prosecution under Chapter 12; and

(B) the local authority may immediately suspend or revoke the private club's local liquor license, local consent under Subsection 32A-5-102 (1)(c), or local business license.

(n) A wine service may be performed and a service charge assessed by the private club as authorized by commission rule for wine purchased at the private club or carried in by a member, guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(o) A member, guest, or visitor to a club may not carry from a club premises an open container used primarily for drinking purposes containing any alcoholic beverage.

(p) Each private club liquor licensee shall display in a prominent place in the private club:

(i) the private club liquor license that is issued by the department;

(ii) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(iii) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(q) The following acts or conduct in a private club licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(i) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(ii) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (i);

(iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(iv) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(v) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(vi) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(vii) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(D) scenes wherein a person displays the vulva or the anus or the genitals.

(r) Nothing in Subsection (q) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (q).

(s)(i) Although live entertainment is permitted on the premises of a club liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(ii) Nothing in Subsection (i) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (i).

(25)(a) A private club may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the private club and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's license fee for the remainder of the license year.

(26) Each private club shall conduct its affairs so that it is not operated for a pecuniary profit.

(27) A private club may not transfer a private club liquor license from one location to another, without prior written approval of the commission.

(28) A person, having been granted a private club liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A private club liquor license has no monetary value for the purpose of any type of disposition.

Section 6. Section Amended.

Section 32A-7-106, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-7-106. Operational restrictions.

(1) Any organization granted a single event permit and any person involved in the storage, sale, or service of liquor at the event for which the permit is issued, shall abide by this title, the rules of the commission, and the special conditions and requirements provided in this section. Failure to do so may

result in an immediate revocation of the permit, forfeiture of the surety bond, immediate seizure of all liquor present at the event, and disqualifies the organization from applying for a single event permit for a period of three years from the date of revocation of the permit. Any liquor seized under this subsection shall be returned to the organization after the event if forfeiture proceedings are not instituted under Section 32A-13-103.

(2) Special conditions and requirements for single event permittees include, but are not limited to, the following:

(a) All persons involved in the storage, sale, or service of liquor at the event do so under the supervision and direction of the permittee.

(b) All liquor stored, sold, served, and consumed at the event shall be purchased by the permittee from a state store or package agency, and is considered under the control of the permittee during the event. Attendees of the event may not bring any liquor other than that furnished by the permittee onto the premises of the event.

(c) A permittee may not charge more than the maximum amount set forth in the permit for any alcoholic beverage.

(d) Each permittee shall post in a prominent place in the area in which liquor is being sold, served, and consumed, a copy of the permit, together with a list of the operational restrictions and requirements of single event permittees set forth in this section.

(e) Liquor purchased for the event may not be stored in any place other than that described in the application and designated on the permit.

(f) Liquor purchased for the event may not be sold or served in any place other than the site described in the application and designated on the permit.

(g) Liquor purchased for the event may not be consumed in any area other than that described in the application and designated on the permit.

(h) (i) A single event permittee may not provide any primary liquor except in one ounce quantities, except that:

(A) additional liquor may be used in a beverage if used as a secondary flavoring ingredient, but only in conjunction with the primary liquor and only if the secondary ingredient is not the only liquor in the beverage;

(B) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(C) heavy beer may be served in original containers not exceeding one liter.

(ii) Liquor otherwise need not be dispensed through a calibrated metered dispensing system.

(i) Hours of sale, service, and consumption shall be in accordance with any local ordinance restrictions.

(j) Liquor may not be sold, served, or otherwise furnished on the day of any [state] regular general election, regular primary election, or [national] statewide special election until after the polls are closed.

(k) Liquor may not be sold, served, delivered, or furnished to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(l) Minors may not sell, serve, dispense, or handle any alcoholic beverage at the event.

(m) Public advertising of the event may not include reference to the availability of any alcoholic beverage at the event.

(3) The following acts or conduct at an event for which a permit is issued under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus;

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(4) Nothing in Subsection (3) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (3).

(5) (a) Although live entertainment is permitted at the event for which a permit has been issued under this chapter, a permittee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (a).

(6) The permittee shall maintain an expense and revenue ledger or record showing:

(a) expenditures made for liquor, set-ups, and other ingredients and components of alcoholic beverages; and

(b) the revenue from sale of alcoholic beverages.

(7) Single event permits are not transferable.

Section 7. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 8
H. B. No. 20
Passed February 8, 1993
Approved February 24, 1993
Effective February 24, 1993

ECONOMIC DEVELOPMENT - CHILD CARE OFFICE TRUST FUND

By Kim R. Burningham

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CREATING THE OFFICE OF CHILD CARE EXPENDABLE TRUST FUND WITHIN THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; PROVIDING FOR ITS USE AND CARE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
9-1-406, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-1-406, Utah Code Annotated 1953, is enacted to read:

9-1-406. Expendable trust fund — Use of monies — Committee and director duties — Restrictions.

(1) There is created an expendable trust fund known as the Office of Child Care Expendable Trust Fund.

(2) The director shall administer the trust fund under the direction of the committee.

(3) The Office of Child Care shall be the trustee of the fund.

(4) The trust fund shall be used to accept monies designated for child care initiatives improving the quality, affordability, or accessibility of child care.

(5) The monies in the trust fund may not be expended without approval of the committee.

(6) There shall be deposited into the trust fund money from numerous sources including grants, private foundations, or individual donors.

(7) The monies in the trust fund shall be invested by the state treasurer pursuant to Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from the trust fund monies shall be deposited in the trust fund.

(8) The monies in the trust fund may not be used for administrative expenses of the Office of Child Care normally provided for by legislative appropriation.

(9) The committee shall:

(a) advise the director on child care needs in the state and on relevant operational aspects of any grant, loan, or revenue collection program established under this part;

(b) recommend specific projects to the director;

(c) set policy and procedures for administering the trust fund;

(d) make grants, loans, or contracts from the trust fund for any of the activities authorized under this part;

(e) establish the criteria by which loans and grants will be made;

(f) determine the order in which approved projects will be funded; and

(g) distribute all money from the trust fund in accordance with the procedures, conditions, and restrictions placed upon the monies by the donors.

(10) Trust fund monies may be used for any of the following activities:

(a) training of child care providers;

(b) scholarships and grants for child care providers' professional development;

(c) public awareness and consumer education services;

(d) child care provider recruitment;

(e) Office of Child Care sponsored activities;

(f) activities specified by a donor;

(g) matching money for obtaining grants; or

(h) other activities that will assist in the improvement of child care quality, affordability, or accessibility.

(11) The director, with the consent of the committee, may grant, lend, or contract trust fund money to:

(a) local governments;

(b) nonprofit community, charitable, or neighborhood-based organizations;

(c) regional or statewide nonprofit organizations; or

(d) child care providers.

(12) Preference may be given but not limited to applicants for trust fund monies that demonstrate any of the following:

(a) programatic or financial need;

(b) diversity of clientele or geographic location; and

(c) coordination with or enhancement of existing services.

(13) The director shall monitor the activities of the recipients of grants, loans, or contracts issued from the trust fund on an annual basis to ensure compliance with the terms and conditions imposed on the recipient by the trust fund.

(14) The entities receiving grants, loans, or contracts shall provide the director with an annual accounting of how the monies they received from the trust fund have been spent.

(15) The director shall report to the committee regarding the programs and the services funded by the trust fund.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 9
H. B. No. 22
Passed February 9, 1993
Approved February 24, 1993
Effective May 3, 1993

CONSTRUCTION TRADES LICENSING AMENDMENTS

By Ray Short

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING THE UTAH CONSTRUCTION TRADES LICENSING ACT; AMENDING PROVISIONS RELATING TO A CONTRACTOR'S MONETARY LIMIT; AMENDING DEFINITIONS; PROHIBITING CERTAIN CONDUCT; PROVIDING TIME LIMITS FOR PROCESSING CERTAIN REQUESTS; MAKING TECHNICAL CORRECTIONS; AMENDING LICENSURE EXEMPTIONS; AND PROVIDING A COORDINATION CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-55-2, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-6, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-10, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-11, AS ENACTED BY CHAPTER 128, LAWS OF UTAH 1989
58-55-19, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992

ENACTS:
58-55-21, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 58-55-2, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-2. Definitions.

The definitions in Section 58-1-2 apply to this chapter. As used in this chapter:

(1) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under approved supervision of a master electrician or a journeyman electrician.

(2) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

(3) "Approved supervision" means the immediate supervision of apprentices by qualified licensed electricians or plumbers as a part of a planned program of training.

(4) "Board" means the Contractors Licensing Board, Electrician Licensing Board, or Plumbers Licensing Board created in Section 58-55-3, as its use is applied in context in this chapter.

(5) "Construction trade" means any trade or occupation involving construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property.

(6) "Contractor" means any person, firm, partnership, corporation, association, or other organization or any combination of them who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(a) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

(b) any person who represents himself to be a contractor by advertising or any other means;

(c) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(d) any person engaged in any construction trade for which licensure is required under this chapter; or

(e) a construction manager who performs management and counseling services on a construction project for a fee.

(7) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(a) "Electrical trade" does not include such activities as:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

(iii) work commonly done by unskilled labor or any installations under the exclusive control of electrical utilities.

(b) For purposes of Subsection (a):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) no shop may so employ unlicensed persons in excess of the five-to-one ratio permitted by this subsection.

(8) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Industrial Commission of Utah.

(9) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(10) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(11) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(12) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any or all of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works. However, a general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(13) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with applicable standards.

(14) "Individual" means a natural person.

(15) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(16) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(17) (a) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

(b) "Master residential electrician" means a person licensed under this chapter as a master residential electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of [~~electricial~~] electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

(18) "Monetary limit [~~on the combined amount of work which a licensee may undertake~~]" means the [~~maximum value of work in process which a licensee may undertake at any one time, while engaged in any work requiring licensure under this chapter~~] limit established by the division under Section 58-55-21.

(19) "Percentage of completion on a contract" is the percentage obtained by dividing costs to date by total estimated costs and multiplying by 100. Unless otherwise specified by rule, specific application of this definition shall be based upon the "cost-to-cost method" provided in the 1990 edition of the "Audit and Accounting Guide for Construction Contractors", Appendix D, published by the American Institute of Certified Public Accountants. The division may, upon request or upon its own action, establish an alternate generally recognized method of calculation to determine percentage of completion, if the method is appropriate to the licensee's or applicant's accounting procedures.

(20) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the water supply, discharge of liquid and water carried waste, or the building drainage system within the walls of the building. It includes that work pertaining to the water supply, distribution pipes, fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

(21) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements

for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work. All on-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

(22) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multi-family residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical, and mechanical, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(23) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(24) "Residential project" as it relates to an electrician or electrical contractor means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

(25) "Residential trainee electrician" means a person licensed under this chapter as a residential trainee electrician who is learning the residential electrician trade under approved supervision of a master electrician, journeyman electrician, or a residential journeyman electrician.

(26) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

(27) "Wages" means all amounts due an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

(28) "Work in process" means all unfinished work under verbal or written contract, whether in or out of Utah, regardless of whether licensure is required under this chapter, for which costs have accrued or been realized. The value of unfinished work on a contract shall be determined by expressing the current percentage of completion as a decimal fraction, subtracting it from 1.00 and multiplying the difference by the total dollar amount of the contract.

Section 2. Section Amended.

Section 58-55-6, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-6. License required — Unlawful activity — Penalty — Exceptions from licensure.

(1) Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, must apply for and be licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under this section. The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a construction trade or as a contractor within the state. The state or any political subdivision of the state shall not require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensed contractor to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies or the payment of any fee for [~~such~~] any license, registration, or certification established as a condition to do business in that local jurisdiction.

(2) It is unlawful for any person:

(a) not licensed or excepted from licensure under this chapter to engage in a construction trade, to act as a contractor, to represent himself to be engaged in a construction trade, or to be acting as a contractor in a construction trade requiring licensure;

(b) licensed under this chapter to act in a construction trade beyond the scope of the license held;

(c) to hire or employ in any manner, other than an employee for wages a person who is not required to be licensed under this chapter or any other person to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure, unless that person is licensed under this chapter;

(d) to apply for or obtain a building permit either for himself or another when not licensed or excepted from licensure as a contractor under this chapter;

(e) to issue a building permit to any person for whom there is no evidence of a current license or ex-

ception from licensure as a contractor under this chapter;

(f) to apply for or obtain a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(g) to fail to obtain a building permit when required by law or rule;

(h) to submit a bid for any work for which a license is required under this chapter by a person not licensed or excepted from licensure as a contractor under this chapter;

(i) as an applicant or licensee to willfully or deliberately misrepresent or omit a material fact in connection with an application to obtain or renew a license under this chapter;

(j) licensed under this chapter to allow his license to be used by another except as provided by statute or rule;

(k) licensed under this chapter to do business under a name other than that set forth upon the license;

(l) licensed as a contractor, to exceed his monetary limit as defined by statute or rule;

(m) licensed as a contractor, to submit a bid on a single project in an amount exceeding his monetary limit, unless he first files with the division a notice of intent to request an increase of the monetary limit in compliance with Subsection 58-55-21(5);

[~~(m)~~] (n) licensed as a journeyman plumber, journeyman electrician, master electrician, or residential electrician, to fail to directly supervise an apprentice under his supervision or to exceed the number of apprentices he may have under his supervision;

[~~(n)~~] (o) licensed as a contractor or representing himself as a contractor to receive any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and thereafter to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

[~~(o)~~] (p) licensed under this chapter to willfully or deliberately disregard or violate:

(i) the building or construction laws of the state or any political subdivision;

(ii) the safety and labor laws applicable to a project;

(iii) any provision of the health laws applicable to a project;

(iv) the worker's compensation insurance laws of the state applicable to a project;

(v) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, social security taxes, or other required withholdings; or

(vi) reporting, notification, and filing laws of this state or the federal government; or

[~~(p)~~] (q) to aid or abet any person in evading the provisions of this chapter or rules.

(3) Any person who violates [~~the provisions of~~] Subsections (2)(a) through [~~(m)~~] (n), [~~(o)~~] (p), and [~~(p)~~] (q), or who fails to comply with a citation issued under Subsection [~~(6)~~] (7) after it is final, is guilty of a class A misdemeanor.

(4) (a) Any person who violates [~~the provisions of~~] Subsection (2)(h) or (m) may not be awarded and may not accept a contract for the performance of the work.

(b) Any licensee who submits a notice of intent to request an increase in the monetary limit under Subsection 58-55-21(5), but who is not granted an increase sufficient to cover the award of a contract upon which he has bid, may not be awarded and may not accept the contract.

[~~(4)~~] (5) Any person who violates [~~the provisions of~~] Subsection (2)[~~(n)~~] (o) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

[~~(5)~~] (6) Failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required or related rules, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier, shall be considered by the division and the board as grounds for immediate suspension of the licensee's license.

[~~(6)~~] (7) (a) If, upon inspection or investigation, the division concludes that a contractor has violated [~~the provisions of~~] [~~Subsections~~] Subsection (2)(a), (b), or (c), or any rule or order issued with respect to [~~either subsection~~] any of these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall[,] promptly issue a citation to the contractor according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the contractor to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of [~~the provisions of Subsections~~] Subsection (2)(a), (b), or (c), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine [~~pursuant to~~] under Subsection [~~(6)~~] (7)(i) and may, in addition to or [~~in lieu~~] instead of a fine, be ordered to cease and desist from violating [~~Subsections~~] Subsection (2)(a), (b), or (c).

(ii) The licensure sanctions [~~cited~~] in Section 58-55-12 may not be assessed through a citation.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The citation shall clearly state that the recipient [~~thereof must~~] shall notify the division within [~~10~~] ten working days of the citation's issuance if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may, in its discretion, issue a notice [~~in lieu~~] instead of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within [~~10~~] ten working days from the issuance of a citation by the division[~~,~~] the recipient fails to notify the division that the recipient intends to contest the citation, the citation shall be [~~deemed~~] considered a final order of the division and not be subject to review by any court or agency. The division may extend the period to contest a citation [~~may be extended by the division~~] for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is [~~a ground for denial of~~] cause for denying the license.

(h) [~~No~~] The division may not issue a citation [~~may be issued~~] under this section [~~after the expiration of~~] more than six months [~~following the occurrence of any~~] after the violation occurs.

(i) [~~Fines shall be assessed by the~~] The director or his designee shall assess fines according to the following:

(i) for a first offense handled [~~pursuant to~~] under Subsection (a), a citation or fine of up to $1,000;

(ii) for a second offense handled [~~pursuant to~~] under Subsection (a), a citation or fine of up to $2,000; and

(iii) for any subsequent offense handled [~~pursuant to~~] under Subsection (a), a violation or fine of up to $2,000 for each day of unlicensed practice.

[~~(7)~~] (8) Any amount received in payment of a penalty imposed by the director under this [~~subsection~~] section shall be deposited into the Commerce Service Fund. [~~Any~~] The director may collect any unpaid penalty [~~which is not paid may be collected by the director by~~] either by referring the matter to a collection agency or by bringing an action in the district court of the county [~~in which~~] where the person against whom the penalty is imposed resides or in the county where the office of the director is located. [~~Any~~] The appropriate county attorney or the attorney general [~~of the state is to~~] shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce [~~the provisions of~~] this subsection, reasonable attorney's fees and costs shall be awarded.

[~~(8)~~] (9) The following persons may engage in the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:

(a) persons exempted from licensure under Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) any authorized representative of the United States government or any authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of their trust, office, or employment;

(c) any person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, hauling to and from construction sites, and lumbering;

(d) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business;

(e) sole owners of property engaged in building structures on their property for their own noncommercial nonpublic use; except, any person other than the property owner who engages in building the structure [~~must~~] shall be licensed under this chapter if he is otherwise required to be licensed under this chapter;

(f) any person engaged in the sale or merchandising of personal property which by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(g) any contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

(h) any person engaged in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value of less than $500, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; however, work in the plumbing and electrical trades [~~must~~] shall be performed by a licensed electrician or plumber regardless of the dollar value of the work;

(i) any person practicing a specialty contractor classification or construction trade which is not classified by rule by the director as significantly impacting the public's health, safety, and welfare;

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, [~~are exempt from this chapter~~] when doing work upon the property;

(k) any person who ordinarily would be subject to the plumber licensure requirements set forth in this chapter when installing or repairing a water conditioner or other water treatment apparatus and the conditioner or apparatus meets the appropriate state construction codes or local plumbing standards and is installed or repaired under the direction of a person authorized to do such work under an appropriate specialty contractor license;

(l) any person who ordinarily would be subject to the electrician licensure requirements set forth in this chapter when employed by or under contract with:

(i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power; [~~and~~]

(m) persons involved in minor electrical work incidental to a mechanical or service installation[~~.~~]; and

(n) students participating in construction trade education and training programs approved by the division in collaboration with the board under the condition that:

(i) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and

(ii) a licensed contractor obtains the necessary building permits.

Section 3. Section Amended.

Section 58-55-10, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-10. Scope of practice — Rules.

(1) The division, in collaboration with the board, may adopt rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to define and limit the scope of practice of the classifications and subclassifications licensed under this chapter in a manner consistent with established practice in the construction trades industry. The division and the board may limit the field and scope of operations of a licensee under this chapter in accordance with the rules and the public health, safety, and welfare, based on the licensee's education, training, experience, knowledge, and financial responsibility.

[~~(2) The division shall limit the scope of operations of a licensee under this chapter by establishing a monetary limit on the combined amount of work which a licensee may undertake at any one time. Any such limit shall be based upon the licensee's qualifications, including financial responsibility, and the interests of the public health, safety, and welfare.~~]

[~~(3) Nothing contained in this~~] (2) This section [~~prohibits~~] does not prohibit a licensed specialty contractor from accepting and entering into a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades, other than that in which he is licensed, is incidental and supplemental to the work for which he is licensed.

Section 4. Section Amended.

Section 58-55-11, Utah Code Annotated 1953, as enacted by Chapter 128, Laws of Utah 1989, is amended to read:

58-55-11. Minimum time for division action.

[~~With respect to the issuance of any license to an applicant under this chapter or a change requested by the licensee to the monetary limit allowed that licensee, the~~]

(1) The division [~~may not issue a license or grant a change in monetary limit in less than~~] has at least five working days [~~from the day on which the~~] after receiving an application [~~or request~~] for [~~change is filed with the division~~] licensure to determine whether to issue a license under this chapter.

(2) Except as provided in Subsection (3), the division has at least five working days after receiving a request for a change in the monetary limit to determine whether to grant the change.

(3) The division shall approve or deny a request for an increase in the monetary limit within five working days after receiving the request if the licensee filed, within five working days before submitting the request to the division, a notice of intent to request an increase under Subsection 58-55-21(5).

Section 5. Section Amended.

Section 58-55-19, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-19. Investigation of regulated activity.

(1) The division shall be responsible for the investigation of persons and activities in violation of the provisions of this chapter.

(2) Investigation by the division shall include investigations of:

(a) licensees engaged in unlawful or unprofessional conduct; and

(b) unlicensed persons engaged in the conduct of activity or work regulated under this chapter and for which a license is required.

(3) The division shall decline to proceed with investigation of the violation of any provisions of this chapter if the division finds there is no apparent ma-

terial jeopardy to the public health, safety, and welfare.

(4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections 58-55-6(2)[(o)](p) and 58-55-13(1), (3), (5), unless the person engaging in a construction trade complies with applicable lawful corrective orders of compliance agencies of the state or a political subdivision of the state, and the division has no further reason to proceed under Subsection 58-1-6(2) as limited by Subsection (3).

(5) Authorized representatives of the division shall be permitted to enter upon the premises or site of work regulated under this chapter for the purpose of determining compliance with the provisions of this chapter.

Section 6. Section Enacted.

Section 58-55-21, Utah Code Annotated 1953, is enacted to read:

58-55-21. Monetary limit.

(1) The division shall establish and assign to each licensed contractor a monetary limit representing the maximum value of work in process that the licensee is permitted to undertake at any one time while engaged in any work requiring licensure under this chapter.

(2) Except as provided in Subsection (3), the division shall set a contractor's monetary limit by:

(a) evaluating the contractor's current financial statements using a financial model developed by the division;

(b) considering the contractor's qualifications, including financial responsibility; and

(c) balancing the interests of the public health, safety, and welfare.

(3) Upon request of the contractor, the division shall accept the contractor's aggregate bonding limit as the monetary limit if a surety acceptable to the division, as described by rule, has established this limit for the contractor.

(4) A licensee may request a change in the monetary limit by filing a written request with the division along with supporting documents.

(5) A licensee may submit to the division a written notice of intent to request an increase in the monetary limit. This notice temporarily permits the licensee to bid on a contract in excess of the monetary limit, but only in accordance with Subsections 58-55-6(2)(m) and (4). Within five working days after submitting the notice of intent, the licensee shall submit a properly documented request to increase the monetary limit.

Section 7. Coordinating Clause.

If this bill and S.B. 20, Division of Occupational and Professional Licensing Act Amendments, both pass in the 1993 General Session, it is the intent of the Legislature that:

(1) the amendments appearing in this bill as Subsection 58-55-6(2)(m), defining as unlawful the submission of a bid in excess of the monetary limit, shall be inserted into the definition of "unlawful conduct" as Subsection 58-55-2(29)(m) of S.B. 20;

(2) Subsection 58-55-13(1) in S.B. 20 shall be changed to read:

'Any person who violates Subsections 58-55-2(29)(a) through (n), (p), or (q), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates Subsection 58-55-2(29)(h) or (m) may not be awarded and may not accept a contract for the performance of the work. Any licensee who submits a notice of intent to request an increase in the monetary limit under Subsection 58-55-21(5), but who is not granted an increase sufficient to cover the award of a contract upon which he has bid, may not be awarded and may not accept the contract.';

(3) the reference to Subsection 58-55-2(29)(n) in Subsection 58-55-13(2) of S.B. 20 shall be changed to 58-55-2(29)(o)

(4) the reference to Subsection 58-55-2(29)(o) in Subsection 58-55-19(4) of S.B. 20 shall be changed to 58-55-2(29)(p)

(5) the reference to Subsections 58-55-6(2)(m) and (6) appearing in Subsection 58-55-21(5) of this bill shall be changed to Subsections 58-55-2(29)(m) and 58-55-13(1) respectively; and

(6) the exemption added by these amendments to Subsection 58-55-6(9)(n) of this bill shall be retained in the exemptions listed in Section 58-55-6 of S.B. 20.

CHAPTER 10
H. B. No. 30
Passed February 5, 1993
Approved February 24, 1993
Effective May 3, 1993

ALCOHOLIC BEVERAGES AMENDMENTS

By Kevin S. Garn

AN ACT RELATING TO ALCOHOLIC BEVERAGES; AUTHORIZING THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO IMPOSE CIVIL PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
32A-1-105, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-1-107, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-1-119, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-7-106, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 32A-1-105, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this subsection.

(b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within this definition.

(4) "Beer," "light beer," "malt liquor," or "malted beverages" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

(5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the commission, by a local authority, or both.

(b) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises. It includes taverns.

(c) "Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under Chapter 10, Part 2. "Tavern" includes beer bars, parlors, lounges, cabarets, and night clubs where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in such establishments.

(6) "Billboard" means any light device, painting, drawing, poster, sign, signboard, scoreboard, or other similar public display used to advertise, but does not include:

(a) displays on beer delivery vehicles if the displays do not overtly promote the consumption of alcoholic beverages;

(b) displays in taverns and private clubs, if the displays are not visible to persons off-premises;

(c) point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if the displays are not visible to persons off-premises;

(d) private business signs on the premises of any business engaged primarily in the distribution of beer;

(e) newspapers, magazines, circulars, programs, or other similar printed materials, if the materials are not directed primarily to minors;

(f) menu boards in retail establishments that sell beer for on-premise consumption if the menu boards also contain food items; [~~and~~]

(g) handles on alcoholic beverage dispensing equipment that identify brands of products being dispensed[~~:~~]; and

(h) displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority to inform attendees of the location where alcoholic beverages are being dispensed.

(7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted beverages.

(8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose, under a single contract, and at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.

(9) "Church" means a building set apart primarily for the purpose of worship in which religious services are held and with which clergy is associated, and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose, and which is tax exempt under the laws of this state.

(10) "Club" and "private club" means any nonprofit corporation operating as a social club, recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

(11) "Commission" means the Alcoholic Beverage Control Commission.

(12) "Cork-finished wine" means a container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

(13) "Council" means the Citizen's Council on Alcoholic Beverage Control.

(14) "Department" means the Department of Alcoholic Beverage Control.

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

(16) "General food store" means any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premise consumption.

(17) "Governing body" means the board of not fewer than five shareholders or voting members of a private club who have been elected and authorized to control or conduct the business and affairs of that club.

(18) "Guest" means a person accompanied by an active member or visitor of a club who enjoys only those privileges derived from the host for the duration of the visit to the club.

(19) "Heavy beer" means all products which contain more than 4% alcohol by volume obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered "liquor" for the purposes of this title.

(20) "Identification card" means the card issued by the commissioner of the Department of Public Safety under Title 41, Chapter 2, Part 4.

(21) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

(22) "Licensee" means any person issued a license by the commission to sell, manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

(23) "Limousine" means any motor vehicle licensed by the state or a local authority, other than a bus or taxicab, in which the driver and passengers are separated by a partition, glass, or other barrier and which is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

(24) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

(25) "Local authority" means the county legislative body of the county if the premises are located in an unincorporated area of a county, or the governing body of the city or town if the premises are located in an incorporated city or town.

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

(27) "Member" means a person who, after paying regular dues, has full privileges of a club under this title.

(28) "Minor" means any person under the age of 21 years.

(29) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

(30) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

(31) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

(32) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises which the package agent shall provide and maintain.

(33) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

(34) "Person" means any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

(35) "Policy" means a statement of principles established by the commission to guide the administration of this title and the management of the affairs of the department.

(36) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

(37) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for the obtaining of an alcoholic beverage for medicinal purposes only.

(38) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for public education, transacting public business, or regularly conducting government activities.

(b) "Public building" does not mean or refer to any building owned by the state or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

(39) "Representative" means an individual who is compensated by salary or commission for representing and selling the alcoholic beverage products of a supplier.

(40) "Residence" means the person's principal place of abode within Utah.

(41) "Restaurant" means any business establishment where a variety of foods is prepared and complete meals are served to the general public, located on a premises having adequate culinary fixtures for food preparation and dining accommodations, and that is engaged primarily in serving meals to the general public.

(42) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

(43) (a) "Rule" means a general statement adopted by the commission to guide the activities of those regulated or employed by the department, to implement or interpret this title, or to describe the organization, procedure, or practice requirements of the department in order to carry out the intent of the law and ensure its uniform application. This definition includes any amendment or repeal of a prior rule.

(b) "Rules" does not include rules concerning only the internal management of the department that do not affect private rights or procedures available to the public, including intradepartmental memoranda.

(44) "Sample" means liquor that has been placed in the possession of the department for analysis and testing, and is not of the same type and brand as any in the department's general inventory or currently on the department's order list.

(45) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules adopted by the commission.

(46) (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include nursery schools, infant day care centers, or trade or technical schools.

(47) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state. It includes the department identification mark and inventory control number.

(48) (a) "State store" means a facility for the sale of package liquor located on premises owned or leased by the state of Utah and operated by state employees.

(b) "State store" does not apply to any licensee, permittee, or to package agencies.

(49) "Supplier" means any person selling alcoholic beverages to the department.

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

(51) "Unsaleable liquor merchandise" means merchandise that is unsaleable because it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically determined to be impure, or that contains sediment, or any foreign substance, or is otherwise considered by the department as unfit for sale.

(52) "Visitor" means a person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

(53) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

(54) "Wholesaler" means any person, other than a licensed manufacturer, engaged in the importation for sale, or in the sale of beer, malt liquor, or malted beverages in wholesale or jobbing quantities to retailers.

(55) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added. "Wine" is considered "liquor" for purposes of this title.

Section 2. Section Amended.

Section 32A-1-107, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-107. Powers and duties of the Commission.

(1) The commission shall:

(a) act as a general policymaking body on the subject of alcoholic product control;

(b) adopt and issue policies, directives, rules, and procedures;

(c) set policy by written rules that establish criteria and procedures for:

(i) granting, denying, suspending, or revoking permits, licenses, and package agencies;

(ii) controlling liquor merchandise inventory including:

(A) listing and delisting products;

(B) the procedures for testing new products;

(C) purchasing policy;

(D) turnover requirements for regularly coded products to be continued; and

(E) the disposition of discontinued, distressed, or unsaleable merchandise; and

(iii) determining the location of state stores, package agencies, and outlets;

(d) decide within the limits and under the conditions imposed by this title, the number and location of state stores, package agencies, and outlets established in the state;

(e) issue, grant, deny, suspend, or revoke the following permits, licenses, and package agencies for the purchase, sale, storage, service, manufacture, distribution, and consumption of alcoholic products:

(i) package agencies;

(ii) restaurant licenses;

(iii) airport lounge licenses;

(iv) private club licenses;

(v) on-premise beer retailer licenses;

(vi) special use permits;

(vii) single event permits;

(viii) manufacturing licenses;

(ix) liquor warehousing licenses; and

(x) beer wholesaling licenses[.];

(f) fix prices at which liquors are sold that are the same at all state stores, package agencies, and outlets;

(g) issue and distribute price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor kept for sale by the department;

(h) require the director to follow sound management principles and require periodic reporting from the director to ensure that these principles are being followed and that policies established by the commission are being observed;

(i) receive, consider, and act in a timely manner upon all reports, recommendations, and matters submitted by the director to the commission, and do all things necessary to support the department in properly performing its duties and responsibilities;

(j) obtain temporarily and for special purposes the services of experts and persons engaged in the practice of a profession or who possess any needed skills, talents, or abilities if considered expedient and if approved by the governor;

(k) prescribe the duties of departmental officials authorized to issue permits and licenses under this title;

(l) prescribe, consistent with this title, the fees payable for permits, licenses, and package agencies issued under this title, or for anything done or permitted to be done under this title;

(m) prescribe the conduct, management, and equipment of any premises upon which alcoholic beverages may be sold, consumed, served, or stored;

(n) make rules governing the credit terms of beer sales to retailers within the state; and

(o) require that each state store, package agency, licensee, and permittee, where required in this title, display in a prominent place a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this premises may be hazardous to your health and the safety of others."

(2) The power of the commission to establish state stores, to create package agencies and grant authority to operate package agencies, and to grant or deny licenses and permits is plenary, except as otherwise provided by this title, and is not subject to review.

[~~(3) If a person holds more than one valid license or permit under this title at the same time and at the same location, the commission may suspend or revoke all licenses or permits of that person for a single violation under any one of the licenses or permits.~~]

[~~(4)~~] (3) The commission may appoint qualified hearing officers to conduct any suspension or revocation hearings required by law.

[~~(5)~~] (4) (a) The director may adopt internal departmental policies, directives, rules, and procedures related to department personnel matters and the day-to-day operation of the department that are consistent with those of the commission.

(b) The director shall keep a current copy of the manuals containing the rules and policies of the department and commission available for public inspection.

(5) (a) In any case where the commission is given the power to suspend any license or permit, it may impose a fine in addition to or in lieu of suspension. Fines imposed may not exceed $25,000 in the aggregate for any single Notice of Agency Action.

(b) The commission shall promulgate, by rule, a schedule setting forth a range of fines for each violation.

Section 3. Section Amended.

Section 32A-1-119, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-119. Adjudicative proceedings — Procedure.

(1)(a) The commission, director, and department may conduct adjudicative proceedings to inquire into any matter necessary and proper for the administration of this title and rules adopted under this title.

(b) The commission, director, and department shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(c) Except where otherwise provided by law, all adjudicative proceedings shall be conducted in accordance with Title 52, Chapter 4, the Open and Public Meetings Act.

(d) All adjudicative proceedings concerning departmental personnel shall be conducted in accordance with Title 67, Chapter 19, Utah State Personnel Management Act. All hearings that are informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures promulgated by the commission, director, or department.

(2) (a) Disciplinary proceedings shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on any disciplinary matter.

(b) (i) Nothing in this section precludes the commission from appointing necessary officers, including hearing examiners, from within or without the department, to administer the disciplinary hearing process.

(ii) Officers and examiners appointed by the commission may conduct hearings on behalf of the commission and submit findings of fact, conclusions of law, and recommendations to the commission.

(3) When the department has on file a report from any government agency, peace officer, examiner, or investigator alleging that a permittee or licensee or any of its officers or employees has violated this title or the rules of the commission, the department may initiate disciplinary proceedings to determine:

(a) whether or not the permittee or licensee is guilty of the violation; and

(b) if found guilty, the penalty to be imposed.

(4)(a) An adjudicative proceeding shall be held if required by law, and in all cases before revoking or suspending any license or permit issued under this title, unless waived by the respondent.

(b) Inexcusable failure of a respondent to appear at a scheduled evidentiary hearing after receiving proper notice is an admission of the charged violation.

(c) The validity of any hearing is not affected by the failure of any person to attend or remain in attendance.

(d) All evidentiary hearings shall be presided over by the commission or an appointed hearing examiner.

(e) A hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.

(f) The commission or its hearing examiner may administer oaths or affirmations, take evidence, take depositions within or without this state, require by subpoena from any place within this state the testimony of any person at a hearing, and the production of any books, records, papers, contracts, agreements, documents, or other evidence considered relevant to the inquiry.

(i) Persons subpoenaed shall testify and produce any books, papers, documents, or tangible things as required in the subpoena.

(ii) Any witness subpoenaed or called to testify or produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney in the jurisdiction where the privilege was claimed or where the witness resides setting forth the circumstance of the claimed privilege.

(iii) A person is not excused from obeying a subpoena without just cause. Any district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to appear before the issuing party, and to produce documentary evidence if so ordered, or to give evidence regarding the matter in question. Failure to obey an order of the court may be punished by the court as contempt.

(g) In all cases heard by a hearing examiner, the hearing examiner shall prepare a report to the commission. The report may not recommend a penalty more severe than that initially sought by the department in the notice of violation. A copy of the report shall be served upon the respective parties, and the respondent shall be given reasonable opportunity to file any written objections to the report before final commission action.

(h) In all cases heard by the commission, it shall issue its final decision and order.

(5)(a) The commission shall render a decision and issue a written order on any disciplinary action, and serve a copy on all parties.

(b) Any order of the commission is considered final on the date it becomes effective.

(c) If the commission is satisfied that a permittee or licensee has committed a violation of this title, or the commission's rules, it may take emergency action suspending or revoking the permit or the license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, and assess the administrative costs of any hearing to the permittee or the licensee.

(d) If the permit or license is revoked, the commission may order the revocation of any compliance bond posted by the permittee or licensee.

(e) Any permittee or licensee whose permit or license is revoked may not reapply for a permit or license under this title for three years from the date the permit or license was revoked.

(f) All costs assessed by the commission shall be transferred into the General Fund in accordance with Section 32A-1-113.

(6)(a) The commission may also initiate disciplinary actions against employees of licensees.

(b) If any employee is found to have violated this title, the commission may prohibit the employee from serving, selling, or handling alcoholic beverages in the course of employment for a period of up to one month.

(c) Any employee who receives three suspensions by the commission within a consecutive 36-month period may not handle alcoholic beverages, in the course of employment, for one year.

Section 4. Section Amended.

Section 32A-7-106, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-7-106. Operational restrictions.

(1) Any organization granted a single event permit and any person involved in the storage, sale, or service of liquor at the event for which the permit is issued, shall abide by this title, the rules of the commission, and the special conditions and requirements provided in this section. Failure to do so may result in an immediate revocation of the permit, forfeiture of the surety bond, immediate seizure of all liquor present at the event, and disqualifies the organization from applying for a single event permit for a period of three years from the date of revocation of the permit. Any liquor seized under this subsection shall be returned to the organization after the event if forfeiture proceedings are not instituted under Section 32A-13-103.

(2) Special conditions and requirements for single event permittees include, but are not limited to, the following:

(a) All persons involved in the storage, sale, or service of liquor at the event do so under the supervision and direction of the permittee.

(b) All liquor stored, sold, served, and consumed at the event shall be purchased by the permittee from a state store or package agency, and is considered under the control of the permittee during the event. Attendees of the event may not bring any liquor other than that furnished by the permittee onto the premises of the event.

(c) A permittee may not charge more than the maximum amount set forth in the permit for any alcoholic beverage.

(d) Each permittee shall post in a prominent place in the area in which liquor is being sold, served, and consumed, a copy of the permit, together with a list of the operational restrictions and requirements of single event permittees set forth in this section.

(e) Liquor purchased for the event may not be stored in any place other than that described in the application and designated on the permit.

(f) Liquor purchased for the event may not be sold or served in any place other than the site described in the application and designated on the permit.

(g) Liquor purchased for the event may not be consumed in any area other than that described in the application and designated on the permit.

(h)(i) A single event permittee may not provide any primary liquor except in one ounce quantities, except that:

(A) additional liquor may be used in a beverage if used as a secondary flavoring ingredient, but only in conjunction with the primary liquor and only if the secondary ingredient is not the only liquor in the beverage;

(B) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(C) heavy beer may be served in original containers not exceeding one liter.

(ii) Liquor otherwise need not be dispensed through a calibrated metered dispensing system.

(i) Hours of sale, service, and consumption shall be in accordance with any local ordinance restrictions.

(j) Liquor may not be sold, served, or otherwise furnished on the day of any state or national election until after the polls are closed.

(k) Liquor may not be sold, served, delivered, or furnished to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(l) Minors may not sell, serve, dispense, or handle any alcoholic beverage at the event.

(m) Public advertising of the event may not include reference to the availability of any alcoholic beverage at the event. However, the permittee may use signs or similar displays at the site of the event to inform attendees of the locations where alcoholic beverages are being dispensed.

(3) The following acts or conduct at an event for which a permit is issued under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals:

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus;

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(4) Nothing in Subsection (3) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (3).

(5) (a) Although live entertainment is permitted at the event for which a permit has been issued under this chapter, a permittee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (a).

(6) The permittee shall maintain an expense and revenue ledger or record showing:

(a) expenditures made for liquor, set-ups, and other ingredients and components of alcoholic beverages; and

(b) the revenue from sale of alcoholic beverages.

(7) Single event permits are not transferable.

Section 5. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 11
H. B. No. 33
Passed February 9, 1993
Approved February 24, 1993
Effective May 3, 1993

BOARDS AND COMMISSIONS DATA BASE

By Jordan Tanner

AN ACT RELATING TO GOVERNMENT BOARDS; MANDATING THE CREATION OF DATA BASES CONTAINING INFORMATION ABOUT GOVERNMENT BOARDS; DEFINING THEIR CONTENTS; REQUIRING AN ANNUAL REPORT; AND DEFINING ITS CONTENTS AND DISTRIBUTION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
67-1-2.5, UTAH CODE ANNOTATED 1953
78-3-21.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 67-1-2.5, Utah Code Annotated 1953, is enacted to read:

67-1-2.5. Data bases for executive boards.

(1) As used in this section, "executive board" means any executive branch board, commission, council, committee, working group, task force, study group, advisory group, or other body with a defined limited membership that is created to operate for more than six months by the constitution, by statute, by executive order, by the governor, lieutenant governor, attorney general, state auditor, or state treasurer or by the head of a department, division, or other administrative subunit of the executive branch of state government.

(2) The governor shall designate a person from his staff to maintain a computerized data base containing information about all executive boards.

(3) The person designated to maintain the data base shall ensure that the data base contains:

(a) the name of each executive board;

(b) the statutory or constitutional authority for the creation of the executive board;

(c) the sunset date on which each executive board's statutory authority expires;

(d) the state officer or department and division of state government under whose jurisdiction the executive board operates or with which the executive board is affiliated, if any;

(e) the name, address, gender, telephone number, and county of each person currently serving on the executive board, along with a notation of all vacant or unfilled positions;

(f) the title of the position held by the person who appointed each member of the executive board;

(g) the length of the term to which each member of the executive board was appointed and the month and year that each executive board member's term expires;

(h) whether or not members appointed to the executive board require confirmation by the Utah Senate;

(i) the organization, interest group, profession, local government entity, or geographic area that the person represents, if any;

(j) whether or not the board allocates state or federal funds and the amount of those funds allocated during the last fiscal year;

(k) the person's party affiliation, if the statute or executive order creating the position requires representation from political parties;

(l) whether the executive board is a policy board or an advisory board;

(m) whether or not the executive board has or exercises rulemaking authority; and

(n) any compensation and expense reimbursement that members of the executive board are authorized to receive.

(4) The person designated to maintain the data base shall:

(a) make the information contained in the data base available to the public upon request; and

(b) cooperate with other entities of state government to publish the data or useful summaries of the data.

(5)(a) The person designated to maintain the data base shall prepare, publish, and distribute an annual report by April 1 of each year that includes, as of March 1 of that year:

(i) the total number of executive boards;

(ii) the name of each of those executive boards and the state officer or department and division of state government under whose jurisdiction the executive board operates or with which the executive board is affiliated, if any;

(iii) for each state officer and each department and division, the total number of executive boards under the jurisdiction of or affiliated with that officer, department, and division;

(iv) the total number of members for each of those executive boards;

(v) whether or not some or all of the members of each of those executive boards are approved by the Utah Senate;

(vi) whether each board is a policymaking board or an advisory board and the total number of policy boards and the total number of advisory boards; and

(vii) the compensation, if any, paid to the members of each of those executive boards.

(b) The person designated to maintain the data bases shall distribute copies of the report to:

(i) the governor;

(ii) the president of the Utah Senate;

(iii) the speaker of the Utah House;

(iv) the Office of Legislative Research and General Counsel; and

(v) any other persons who request a copy of the annual report.

Section 2. Section Enacted.

Section 78-3-21.5, Utah Code Annotated 1953, is enacted to read:

78-3-21.5. Data bases for judicial boards.

(1) As used in this section, "judicial board" means any judicial branch board, commission, council, committee, working group, task force, study group, advisory group, or other body with a defined limited membership that is created to operate for more than six months by the constitution, by statute, by judicial order, by any justice or judge, by the Judicial Council, or by the state court administrator, a district court administrator, trial court executive, or by any clerk or administrator in the judicial branch of state government.

(2) The Judicial Council shall designate a person from its staff to maintain a computerized data base containing information about all judicial boards.

(3) The person designated to maintain the data base shall ensure that the data base contains:

(a) the name of the judicial board;

(b) the statutory or constitutional authority for the creation of the judicial board;

(c) the court or other judicial entity under whose jurisdiction the judicial board operates or with which the judicial board is affiliated, if any;

(d) the name, address, gender, telephone number, and county of each person currently serving on the judicial board, along with a notation of all vacant or unfilled positions;

(e) the title of the position held by the person who appointed each member of the judicial board;

(f) the length of the term to which each member of the judicial board was appointed and the month and year that each judicial board member's term expires;

(g) the organization, interest group, profession, local government entity, or geographic area that the member of the judicial board represents, if any;

(h) whether or not the judicial board allocates state or federal funds and the amount of those funds allocated during the last fiscal year;

(i) whether the judicial board is a policy board or an advisory board;

(j) whether or not the judicial board has or exercises rulemaking authority; and

(k) any compensation and expense reimbursement that members of the executive board are authorized to receive.

(4) The person designated to maintain the data base shall:

(a) make the information contained in the data base available to the public upon request; and

(b) cooperate with other entities of state government to publish the data or useful summaries of the data.

(5)(a) The person designated to maintain the data bases shall prepare, publish, and distribute an annual report by April 1 of each year that includes, as of March 1 of that year:

(i) the total number of judicial boards;

(ii) the name of each of those judicial boards and the court, council, administrator, executive, or clerk under whose jurisdiction the executive board operates or with which the judicial board is affiliated, if any;

(iii) for each court, council, administrator, executive, or clerk, the total number of judicial boards under the jurisdiction of or affiliated with that court, council, administrator, executive, or clerk;

(iv) the total number of members for each of those judicial boards;

(v) whether each board is a policymaking board or an advisory board and the total number of policy boards and the total number of advisory boards; and

(vi) the compensation, if any, paid to the members of each of those judicial boards.

(b) The person designated to maintain the data bases shall distribute copies of the report to:

(i) the chief justice of the Utah Supreme Court;

(ii) the state court administrator;

(iii) the governor;

(iv) the president of the Utah Senate;

(v) the speaker of the Utah House;

(vi) the Office of Legislative Research and General Counsel; and

(vii) any other persons who request a copy of the annual report.

CHAPTER 12
H. B. No. 39
Passed February 10, 1993
Approved February 24, 1993
Effective July 1, 1993

COORDINATED SERVICES FOR CHILDREN AT RISK AMENDMENTS

By Nancy S. Lyon
Rob W. Bishop
Beverly Ann Evans
Ronald J. Greensides
Neal B. Hendrickson
Patricia B. Larson
Kurt E. Oscarson
Grant D. Protzman
Jordan Tanner
Phil H. Uipi
Michael G. Waddoups
Martin R. Stephens
Christine R. Fox
Melvin R. Brown
M. Keele Johnson
Frank R. Pignanelli
Darrell L. Jorgensen
Allan C. Rushton
David M. Jones
Kelly C. Atkinson
Daniel H. Tuttle
Arlo D. James
Haynes R. Fuller
Gene Davis
Mary Carlson
Steve Barth
Tom Matthews
Judy Ann Buffmire
Pete Suazo
James Gowans
Eli H. Anderson
Gerry A. Adair
Sara Eubank
Paul Shepherd
Tim Moran

AN ACT RELATING TO CHILDREN AND YOUTH AT RISK; PROVIDING DEFINITIONS; EXPANDING THE COMPOSITION, POWERS, AND DUTIES OF THE STATE COUNCIL FOR CHILDREN AND YOUTH AT RISK; PROVIDING FOR A STEERING COMMITTEE FOR CHILDREN AND YOUTH AT RISK; PROVIDING FOR LOCAL INTERAGENCY COUNCILS AND ASSIGNING SPECIFIC DUTIES; EXPANDING PREVENTION AND EARLY INTERVENTION PROGRAMS FOR STUDENTS AT RISK TO ADDITIONAL SCHOOLS; ESTABLISHING PREVENTION AND EARLY INTERVENTION PROJECTS FOR INFANTS AT RISK; MAKING CERTAIN TECHNICAL CHANGES; PROVIDING A SUNSET DATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-75-1, AS ENACTED BY CHAPTER 146, LAWS OF UTAH 1989
63-75-2, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990
63-75-3, AS ENACTED BY CHAPTER 146, LAWS OF UTAH 1989
63-75-4, AS LAST AMENDED BY CHAPTER 57, LAWS OF UTAH 1992
63-75-6, AS ENACTED BY CHAPTER 146, LAWS OF UTAH 1989
63-75-7, AS ENACTED BY CHAPTER 146, LAWS OF UTAH 1989

ENACTS:
63-75-5.5, UTAH CODE ANNOTATED 1953
63-75-5.7, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
63-75-5, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 63-75-1, Utah Code Annotated 1953, as enacted by Chapter 146, Laws of Utah 1989, is amended to read:

63-75-1. Short title.

This chapter is known as the "[~~Coordinated Services~~] Agencies Coming Together for [~~At Risk~~] Children and Youth At Risk Act."

Section 2. Section Amended.

Section 63-75-2, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is amended to read:

63-75-2. Purpose of chapter.

(1) It is declared that the policy of the state [of ~~Utah~~] is to unite the Department of Human Services, the State Office of Education, [~~and~~] the Department of Health, and the Office of the Court Administrator to develop and implement comprehensive [~~school-based~~] systems of services for [~~each at risk student in grades kindergarten through three and the student's family in order to help prevent academic failure and social misbehavior~~] children and youth at risk and their families.

(2) It is the intent of the Legislature that the systems developed under this chapter shall require collaboration between existing state and local agencies and at the same time enhance their capacity to meet local community needs.

Section 3. Section Amended.

Section 63-75-3, Utah Code Annotated 1953, as enacted by Chapter 146, Laws of Utah 1989, is amended to read:

63-75-3. Definitions.

As used in this chapter:

[~~(1) "At risk children and youth" means persons in grades kindergarten through three who~~]

(1) "Children and youth at risk" means all persons from birth to age 18 and disabled persons age 18 to 21 who require appropriate and uniquely designed intervention to:

(a) achieve literacy;

(b) advance through the schools;

(c) achieve commensurate with their ability; and

(d) participate in society in a meaningful way as competent, productive, caring, and responsible citizens.

(2) "Council" means the State Council for [~~At Risk~~] Children and Youth At Risk established under Section 63-75-4.

(3) "Local [~~committee~~] interagency council" means a [~~local coordinating committee~~] council established under Section [~~63-75-5~~] 63-75-5.7.

(4) "Steering committee" means the Steering Committee for Children and Youth At Risk established under Section 63-75-5.

Section 4. Section Amended.

Section 63-75-4, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1992, is amended to read:

63-75-4. State Council for Children and Youth At Risk — Composition — Duties — Interagency case management team.

(1) There is created within state government the State Council for [~~At Risk~~] Children and Youth At Risk composed of:

(a) the state superintendent of public instruction [~~or the superintendent's designee~~];

(b) the executive director of the Department of Health [~~or the director's designee~~]; [~~and~~]

(c) the executive director of the Department of Human Services [~~or the director's designee~~]; and

(d) the state court administrator.

[~~(2) The council may:~~]

[~~(a) contract with committees for services described in Section 63-75-5; and~~]

[~~(b) monitor the implementation of contracts to ensure that projects are executed in accordance with the standards established in Subsection (4).~~]

[~~(3)~~] (2) (a) The council shall annually elect a chairman from its membership.

(b) All members of the council are necessary to constitute a quorum at any meeting.

(c) The action of a majority of the quorum shall be the action of the council.

(d) The council shall meet quarterly or more frequently as determined necessary by the chairman.

(3) The council shall:

(a) provide leadership to increase and enhance efficient and effective services to Utah's children and youth at risk by:

(i) cooperatively planning, funding, monitoring, evaluating, and marketing innovative service delivery and funding strategies;

(ii) recommending legislative, executive, and judicial policy and procedural changes, including joint budget proposals where appropriate;

(iii) developing incentives and strategies to increase family involvement, collaboration, and public-private partnerships in the planning and delivery of services at the state and local level;

(iv) promoting prevention and early intervention services; and

(v) increasing public understanding of and advocating for the needs of Utah's children and youth who are at risk;

(b) compile and disseminate information regarding effective service delivery and funding strategies for replication;

(c) receive and act upon recommendations of the steering committee established under this chapter; and

(d) report to the governor and the Legislature on an annual basis.

(4) The council shall ensure that projects selected under Section 63-75-6 have outcomes that:

(a) focus all project activities on the prevention of academic failure and social misbehaviors;

(b) demonstrate a strategy to provide for the active involvement of parents in planning, implementation, and evaluation of services;

[~~(c) contain a structured system that provides support and staff development to all participants;~~]

[~~(d) can be duplicated in other school communities with similar demographic and geographic conditions;~~]

[~~(e)~~] (c) allow frequent opportunities for planning between teachers, parents, school administrators, and representatives of those agencies that are providing services; and

(d) provide frequent monitoring and assessment of each child's and youth's progress.

[~~(f) are based on values that suggest that all students can learn and succeed;~~]

[~~(g) demonstrate that leadership in the school community is student-focused;~~]

[~~(h) guide instruction through a preplanned curriculum that has been adapted to the unique needs of the school; and~~]

[~~(i) provide frequent monitoring and assessment of individual student learning, consistent with the school's curriculum.~~]

(5) (a) The council shall make rules to ensure cooperative development of a single coordinated plan for [~~at risk students~~] children or youth at risk and their families for services required under the [~~pilot~~] programs authorized in this chapter.

(b) [~~The~~] A coordinated service plan shall be developed by [an] local interagency [~~case management team, which shall include one or more representatives from each agency providing services to at risk~~

~~students and their families under this~~ chapter] councils and case management teams established pursuant to this chapter.

(c) For purposes of developing and implementing the coordinated plan, the members of the local interagency [~~team~~] councils and case management teams shall be considered to be employees of each agency represented on the team and entitled to review and discuss agency records as necessary in planning and providing coordinated services.

(d) Records shared by the [~~interagency team~~] teams remain the property of the supplying agency and may not be incorporated in the records of another agency unless transferred in accordance with standard procedures for transfer of records of the type in question.

Section 5. Section Repealed and Reenacted.

Section 63-75-5, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is repealed and reenacted to read:

63-75-5. Steering committee — Membership — Duties.

(1) There is established a Steering Committee for Children and Youth At Risk.

(2) The steering committee shall consist of a minimum of 19 voting members as follows:

(a) the director of the Division of Health Care Financing;

(b) a representative annually designated by the Council of Mental Health Programs;

(c) the director of the Division of Substance Abuse;

(d) the director of the Division of Youth Corrections;

(e) the director of At Risk and Special Education Services;

(f) the Juvenile Court Administrator;

(g) a representative annually designated by substance abuse directors;

(h) the director of the Office of Social Services;

(i) the director of the Division of Family Services;

(j) the director of the Division of Mental Health;

(k) the director of the Division of Family Health Services;

(l) a representative annually designated by the Utah School Superintendents Association;

(m) a juvenile court judge designated by the presiding officer of the state Judicial Council;

(n) the director of the Division of Community Health Services;

(o) a representative annually designated by the local health officers;

(p) the director of the Office of Family Support;

(q) three members appointed by a majority of the committee, who represent a statewide perspective on children and youth issues; and

(r) parent representatives.

(3) Additional members may be selected by a majority of the committee to serve as voting members for two-year terms.

(4) The members shall annually elect a chairman, who may not serve for more than two consecutive years.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) The committee shall:

(a) assist the council in fulfilling its duties set out in Section 63-75-4;

(b) monitor, solicit input for policy changes, and provide technical assistance to local collaborative programs; and

(c) report any formal recommendations to the council at the council's quarterly meetings.

Section 6. Section Enacted.

Section 63-75-5.5, Utah Code Annotated 1953, is enacted to read:

63-75-5.5. Staffing.

The Department of Human Services, the Department of Health, the State Office of Education, and the Office of the Court Administrator shall provide staff for the state council and steering committee.

Section 7. Section Enacted.

Section 63-75-5.7, Utah Code Annotated 1953, is enacted to read:

63-75-5.7. Local interagency council — Composition — Duties.

(1) Communities shall establish local interagency councils to improve service delivery to children and youth at risk, who are experiencing multiple problems and who are in need of services from more than one agency.

(2) Each council shall consist of representatives from each agency serving children and youth who are at risk and their families within the community.

(a) At a minimum the council shall consist of a local representative from the following:

(i) child welfare;

(ii) mental health;

(iii) education;

(iv) juvenile justice;

(v) youth corrections;

(vi) substance abuse;

(vii) health;

(viii) developmental disabilities; and

(ix) parents.

(b) The council shall select three parents from the local community to serve on the council, representative of families with children.

(3) The council shall do the following:

(a) provide general staffing for individual at risk cases which require services from more than one agency;

(b) provide services to meet the needs of individual cases or create new services to fill gaps in current service continuum;

(c) develop an interagency coordinated service plan; and

(d) establish a case management process focused on effective implementation of the coordinated plan.

(4) Each council shall integrate into its operational procedures a method to involve parents in the staffing and treatment planning process.

(5) (a) Each council shall operate in accordance with a written agreement entered into by the participating agencies.

(b) The agreement shall include a provision that the participating agencies agree to implement the service recommendations in the interagency staffing and treatment plan as long as they do not violate existing federal law or regulations.

Section 8. Section Amended.

Section 63-75-6, Utah Code Annotated 1953, as enacted by Chapter 146, Laws of Utah 1989, is amended to read:

63-75-6. Prevention and early intervention programs — Applicants — Selection process.

(1) (a) [~~Beginning July 1, 1989, the~~] The State Council for [~~At Risk~~] Children and Youth At Risk shall implement a [~~pilot~~] prevention and early intervention program for at risk students in grades kindergarten through three.

(b) Beginning July 1, 1993, the state council shall expand the program to additional Chapter 1 elementary schools and to grades four through six in those schools that have existing early intervention student success at risk programs.

(c) (i) The council shall implement a pilot prevention and early intervention program for infants.

(ii) The infants pilot program shall involve a hospital-based intervention project for high risk infants and their families to reduce abuse and neglect.

(2) The council shall select a limited number of participants for the program through applications submitted by local [~~committees~~] entities. [~~The council shall provide the application forms.~~]

[~~(3) A local committee shall include in its application details of proposed programs that have outcomes identified in Section 63-75-4.~~]

[~~(4)~~] (3) The number of participants selected for the program is dependent on the availability of sufficient funding from a designated state appropriation.

(4) The prevention and early intervention services provided through the program shall be comprehensive, collaborative, and designed to strengthen and preserve families as well as accomplish the following:

(a) be culturally sensitive, family focused, and community based;

(b) protect endangered children;

(c) prevent abuse and neglect;

(d) provide access to health care; and

(e) prevent academic failure where appropriate.

(5) (a) A case management team shall be established in each participating school or hospital.

(b) The case management team shall include the following, except as otherwise provided in Subsection (c):

(i) an educator at the school;

(ii) the principal;

(iii) a public health nurse;

(iv) a representative of mental health;

(v) a representative from the Office of Social Services;

(vi) a representative from the Office of Family Support Services; and

(vii) parents who represent a community perspective on children and youth at risk.

(c) The hospital-based programs need not include a teacher and principal, but shall include a representative from the hospital.

(6) (a) The coordinated services shall be offered only through the public schools, except for the pilot program for hospital-based intervention for high risk infants who are not old enough to attend school.

(b) Nothing in this part shall be construed to waive the civil rights or parental rights of individuals receiving services under the authorized programs.

(c) The case management team shall recommend children or youth be evaluated for at risk intervention.

Section 9. Section Amended.

Section 63-75-7, Utah Code Annotated 1953, as enacted by Chapter 146, Laws of Utah 1989, is amended to read:

63-75-7. Evaluation of programs — Report to legislative interim committee.

(1) [~~Pilot projects under this chapter are funded for one year beginning July 1, 1989.~~] At the end of each fiscal year [~~1989-90, the local committees that have pilot projects shall submit~~], a final report shall be submitted to the council summarizing the [~~cost effectiveness and program effectiveness~~] outcome of

[~~the~~] each project undertaken pursuant to this chapter.

(2)(a) The council may do an independent evaluation of any or all of the [~~pilot~~] projects to assess the status of services provided and identified outcomes.

(b) The council shall prepare and deliver a report on the program to the Legislature's Education, Health, Human Services, and Judiciary Interim [~~Committee~~] Committees prior to [~~the 1991~~] each annual general session.

(c) The report shall include a recommendation by the council as to whether the program should be terminated, continued, or expanded.

Section 10. Sunset Date.

This act is repealed July 1, 1997.

Section 11. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 13
H. B. No. 46
Passed January 28, 1993
Approved February 24, 1993
Effective July 1, 1993

SUNSET REAUTHORIZATIONS

By Daniel H. Tuttle

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; AMENDING THE SUNSET DATE OF CERTAIN ENTITIES; REMOVING CERTAIN PROGRAMS FROM THE SUNSET ACT; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-102, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1990
63-55-103, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1990
63-55-105, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1990
63-55-106, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1990
63-55-209, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1992
63-55-213, AS LAST AMENDED BY CHAPTER 33, LAWS OF UTAH 1990
63-55-219, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-55-223, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1992
63-55-226, AS LAST AMENDED BY CHAPTER 131, LAWS OF UTAH 1992
63-55-240, AS ENACTED BY CHAPTERS 1 AND 137, LAWS OF UTAH 1990
63-55-241, AS LAST AMENDED BY CHAPTERS 7 AND 234, LAWS OF UTAH 1992
63-55-253, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992, THIRD SPECIAL SESSION
63-55-263, AS LAST AMENDED BY CHAPTERS 7 AND 241, LAWS OF UTAH 1992
63-55-264, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
63-55-267, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1990

REPEALS:
63-55-201, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 63-55-102, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1990, is amended to read:

63-55-102. Agency defined — Periodic termination of agencies — Legislative review.

(1) As used in this chapter, "agency" means any state authority, board, commission, department, division, office, or other agency, and the statute or rule that established it.

(2) The Legislature finds that the state should not regulate any area unless the regulation is necessary to protect the health, safety, and welfare of the public.

(3) In order to make state government more productive and responsive to the people, it is necessary to place many of the statutes and agencies of state government under Part 2 of this chapter on a reauthorization schedule. Any statute or agency scheduled for termination under this chapter is terminated unless the Legislature through affirmative act reauthorizes its existence. The continued existence of [an] a statute or agency subject to this chapter may not be reauthorized for a period of more than ten years.

(4) It is the purpose of this chapter to terminate any statute or agency that is not meeting a clear public purpose, and to improve the ability of state government to meet and fulfill legitimate public purposes.

Section 2. Section Amended.

Section 63-55-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1990, is amended to read:

63-55-103. Guidelines for conduct of review.

Committees assigned by the Legislative Management Committee shall review each statute or state agency scheduled for termination. The review shall begin not later than one year before scheduled termination and end before January 1 of the year in which termination is scheduled. In determining whether to reauthorize the statute or agency, the interim committee shall clearly identify the public purpose and interest for which each statute or agency was originally created and clearly identify whether that public purpose and interest is still relevant. The interim committee shall then consider:

(1) the extent to which the statute or agency has operated in the public interest;

(2) the extent to which existing statutes interfere with or assist the legitimate functions of the statute or agency, and any other circumstances including budgetary, resource, and personnel matters that have a bearing on the capacity of the statute or agency to serve the public interest;

(3) the extent to which the public has been encouraged to participate in the adoption of the [~~agency's~~] rules established in connection with the statute or agency;

(4) the extent to which the statute's provisions or agency's programs and services are duplicative of those offered by other statutes or state agencies;

(5) the extent to which the objectives of the statute or agency have been accomplished and their public benefit;

(6) the adverse effect on the public of termination of the statute or agency; and

(7) any other matter relevant to the review.

Section 3. Section Amended.

Section 63-55-105, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1990, is amended to read:

63-55-105. Reviewing committee — Report of recommendations.

The reviewing committee shall submit a report of its recommendations, including proposed legislation and recommendations concerning the statute or agency, to the Legislature before January 1 of the year in which the agency is scheduled for termination.

Section 4. Section Amended.

Section 63-55-106, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1990, is amended to read:

63-55-106. Legislative reauthorization of agency.

If the Legislature determines that the public interest requires the continued existence of the statute or agency, it shall reauthorize the existence of the statute or agency in this chapter.

Section 5. Section Amended.

Section 63-55-209, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1992, is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 2, Department of Community and Economic Development, is repealed July 1, 1995.

(2) Title 9, Chapter 2, Part 2, Division of Business and Economic Development, is repealed July 1, 2002.

(3) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation, is repealed July 1, 2002.

(4) Title 9, Chapter 3, Division of Travel Development, is repealed July 1, 1999.

(5) Title 9, Chapter 4, Part 8, Homeless Coordinating Committee, is repealed July 1, [~~1993~~] 1998.

(6) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency, is repealed July 1, 1996.

(7) Title 9, Chapter 5, Division of Expositions, is repealed July 1, 1999.

(8) Title 9, Chapter 6, Part 2, Division of Fine Arts, is repealed July 1, 1999.

(9) Title 9, Chapter 7, Part 2, Division of State Library, is repealed July 1, 1995.

(10) Title 9, Chapter 8, Part 2, Division of State History, is repealed July 1, 1997.

(11) Title 9, Chapter 9, Division of Indian Affairs, is repealed July 1, 1995.

(12) The Office of Hispanic Affairs is repealed July 1, 1995.

Section 6. Section Amended.

Section 63-55-213, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1990, is amended to read:

63-55-213. Repeal dates, Title 13.

The following chapters of Title 13 are repealed on the following dates:

(1) Chapter 1, the Department of Commerce, is repealed July 1, 1998.

(2) Chapter 2, the Division of Consumer Protection, is repealed July 1, 1998.

(3) Chapter 25, Regulation of Automated Dialing Telephone Solicitation, is repealed July 1, [~~1993~~] 1994.

Section 7. Section Amended.

Section 63-55-219, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-55-219. Repeal dates, Title 19.

(1) The following boards created under Section 19-1-106 are repealed on the following dates:

(a) The Air Quality Board is repealed July 1, 1999.

(b) The Solid and Hazardous Waste Control Board is repealed July 1, 1999.

(c) The Drinking Water Board is repealed July 1, 1999.

(d) The Water Quality Board is repealed July 1, 1999.

(2) The Petroleum Storage Tank Fund, created in Section 19-6-409, is repealed July 1, [~~1993~~] 1998.

Section 8. Section Amended.

Section 63-55-223, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1992, is amended to read:

63-55-223. Repeal dates, Title 23.

(1) The Division of Wildlife Resources, created in Section 23-14-1, is repealed July 1, 1999.

(2) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(3) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

[~~(4) Section 23-19-36, which provides reduced fishing license fees for disabled and mentally retarded persons, is repealed July 1, 1993.~~]

Section 9. Section Amended.

Section 63-55-226, Utah Code Annotated 1953, as last amended by Chapter 131, Laws of Utah 1992, is amended to read:

63-55-226. Repeal dates, Title 26.

(1) (a) The following committees created under Section 26-1-7 are repealed on the following dates:

(i) The Medical Examiner Committee is repealed July 1, 2000.

(ii) The Utah Health Data Committee is repealed July 1, [~~1993~~] 1996.

(b) The Utah Health Advisory Council, created in Section 26-1-7.5, is repealed July 1, 2001.

(2) The Executive Director's Office, created in Section 26-1-8, is repealed July 1, 2001.

(3) The Office of the Medical Examiner, created in Title 26, Chapter 4, is repealed July 1, 2000.

(4) The Division of Family Health Services, created in Title 26, Chapter 10, is repealed July 1, 2000.

(5) Title 26, Chapter 18, the Medical Assistance Act, is repealed July 1, 1994.

(6) The Division of Health Care Financing, created in Section 26-18-2.1, is repealed July 1, 1994.

(7) The following divisions and offices created by the Department of Health under Section 26-1-13 are repealed on the following dates:

(a) The Division of Community Health Services is repealed July 1, 1997.

(b) The State Health Laboratory is repealed July 1, 1995.

(8) The Waste Tire Recycling Act, created in Title 26, Chapter 32a, is repealed July 1, 1995.

(9) The Children's Organ Transplant Coordinating Committee created in Title 26, Chapter 18a, is repealed at the end of the 1997 taxable year.

Section 10. Section Amended.

Section 63-55-240, Utah Code Annotated 1953, as enacted by Chapters 1 and 137, Laws of Utah 1990, is amended to read:

63-55-240. Repeal dates, Title 40.

(1) The Board of Oil, Gas and Mining, created in Sections 40-6-4 and 63-34-3, is repealed July 1, [~~1993~~] 2003.

(2) The Division of Oil, Gas and Mining, created in Sections 40-6-15 and 63-34-3, is repealed July 1, [~~1993~~] 2003.

Section 11. Section Amended.

Section 63-55-241, Utah Code Annotated 1953, as last amended by Chapters 7 and 234, Laws of Utah 1992, is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Chapter 1, the Motor Vehicle Division, is repealed July 1, 1999.

(2) The Driver License Medical Advisory Board, created in Section 41-2-202, is repealed July 1, 1997.

(3) Chapter 3, the Motor Vehicle Enforcement Division, is repealed July 1, 1997.

(4) The hearing board for motor vehicle inspection station licensing, created in Section 41-6-160.5, is repealed July 1, [~~1993~~] 2003.

(5) Section 41-6-163.6, the emissions inspection program for motor vehicles, is repealed July 1, 1999.

(6) Chapter 13, the Department of Public Safety, is repealed July 1, [~~1993~~] 2003.

(7) Chapter 13a, the Security Personnel Licensing and Regulation Act, is repealed July 1, 1995.

(8) The Off-highway Vehicle Advisory Council, created in Section 41-22-10, is repealed July 1, 1997.

(9) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.

Section 12. Section Amended.

Section 63-55-253, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, Third Special Session, is amended to read:

63-55-253. Repeal dates, Titles 53A, 53B.

(1) The following provisions of Title 53A are repealed on the following dates:

(a) The State Textbook Commission, created in Section 53A-14-101, is repealed July 1, 2001.

(b) Section 53A-15-204, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection 21-2-2 (1)(a)(i), is repealed July 1, 1997.

(c) The advisory council for the Division of Services for the Visually Handicapped, appointed in Section 53A-24-305, is repealed July 1, 1996.

(d) The institutional council for the Schools for the Deaf and Blind, created in Section 53A-25-301, is repealed July 1, 1995.

(2) The following provisions of Title 53B are repealed on the following dates:

(a) The State Board of Regents, created in Section 53B-1-103, is repealed July 1, 2001.

(b) The following Boards of Trustees, created in Section 53B-2-103, are repealed on the following dates:

(i) University of Utah is repealed July 1, 2002.

(ii) Utah State University is repealed July 1, [~~1993~~] 2003.

(iii) Weber State University is repealed July 1, 1994.

(iv) Southern Utah University is repealed July 1, 1999.

(v) Snow College is repealed July 1, 1997.

(vi) Dixie College is repealed July 1, 2000.

(vii) College of Eastern Utah is repealed July 1, 1998.

(viii) Utah Valley Community College is repealed July 1, 1996.

(ix) Salt Lake Community College is repealed July 1, 1995.

Section 13. Section Amended.

Section 63-55-263, Utah Code Annotated 1953, as last amended by Chapters 7 and 241, Laws of Utah 1992, is amended to read:

63-55-263. Repeal dates, Title 63.

(1) Sections 63-1-50 and 63-1-50.1, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 1996.

(2) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(3) Title 63, Chapter 25, State Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(4) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 1994.

(5) The Utah Fire Prevention Board, created in Section 63-27-104, is repealed July 1, [~~1993~~] 2003.

(6) The Liquefied Petroleum Gas Board, created in Section 63-29a-103, is repealed July 1, 1997.

(7) (a) The Department of Natural Resources, created in Section 63-34-3, is repealed July 1, 1999.

(b) The Board of Water Resources, created in Sections 63-34-3 and 73-10-1.5, is repealed July 1, 2001.

(c) The Board of State Lands and Forestry, created in Sections 63-34-3 and 65A-1-2, is repealed July 1, 1999.

(d) The Board of Oil, Gas and Mining, created in Sections 40-6-4 and 63-34-3, is repealed July 1, [~~1993~~] 2003.

(e) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(f) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(g) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

(h) The Riverway Enhancement Advisory Council, created in Section 63-34-3, is repealed July 1, 1999.

(i) The Great Salt Lake Advisory Council, created in Sections 63-34-3 and 65A-10-5, is repealed July 1, 1999.

(j) The Board of the Utah Geological Survey, created in Sections 63-34-3 and 63-73-2, is repealed July 1, 1999.

(k) The Water Development Coordinating Council, created in Sections 63-34-3 and 73-10c-3, is repealed July 1, 2001.

(l) The Division of Water Rights, created in Sections 63-34-3 and 73-2-1.1, is repealed July 1, 2001.

(m) The Division of Water Resources, created in Sections 63-34-3 and 73-10-18, is repealed July 1, 2001.

(n) The Division of Parks and Recreation, created in Section 63-34-3, is repealed July 1, 1997.

(o) The Division of Oil, Gas and Mining, created in Sections 63-34-3 and 40-6-15, is repealed July 1, [~~1993~~] 2003.

(p) The Division of Geological Survey, created in Section 63-34-3 and Title 63, Chapter 73, is repealed July 1, 1999.

(q) The Division of Energy, created in Sections 63-34-3 and 63-53-2, is repealed July 1, 2001.

(r) The Energy Advisory Council, created in Sections 63-34-3 and 63-53-4, is repealed July 1, 2001.

(8) (a) The Office of Internal Audit, created in Section 63-49-7, is repealed July 1, 2001.

(b) The Office of Comptroller, created in Section 63-49-7, is repealed July 1, 2001.

(c) The Office of Planning and Programming, created in Section 63-49-7, is repealed July 1, 2001.

(d) The Office of Community Relations, created in Section 63-49-7, is repealed July 1, 2001.

(e) The Maintenance Division, created in Section 63-49-8, is repealed July 1, 1995.

(f) The Construction Division, created in Section 63-49-8, is repealed July 1, 1997.

(g) The Preconstruction Division, created in Section 63-49-8, is repealed July 1, 1997.

(h) The Safety Division, created in Section 63-49-8, is repealed July 1, 1999.

(i) The Right-of-way Division, created in Section 63-49-8, is repealed July 1, 1995.

(j) The Aeronautical Operations Division and Utah Aeronautical Committee, created in Sections 2-1-12 and 63-49-8, are repealed July 1, 1995.

(k) District management offices, created in Section 63-49-9, are repealed July 1, 2001.

(l) The Utah Transportation Commission, created in Section 63-49-10, is repealed July 1, 1995.

(9) The Utah Constitutional Revision Study Commission, created in Section 63-54-1, is repealed July 1, [~~1993~~] 1998.

(10) The Crime Victims' Reparations Board, created in Section 63-63-4, is repealed July 1, 1997.

Section 14. Section Amended.

Section 63-55-264, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1992, is amended to read:

63-55-264. Repeal dates, Title 64.

Title 64, Chapter 13, Department of Corrections - State Prison, and Title 64, Chapter 13a, Correctional Industries, are repealed July 1, [~~1993~~] 2003.

Section 15. Section Amended.

Section 63-55-267, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1990, is amended to read:

63-55-267. Repeal dates, Title 67.

The Council on Peace Office Standards and Training, created in Section 67-15-11, is repealed July 1, [~~1993~~] 2003.

Section 16. Repealer.

Section 63-55-201, Repeal dates, Title 1, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1990, is repealed.

Section 17. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 14
H. B. No. 54
Passed February 11, 1993
Approved February 24, 1993
Effective May 3, 1993

BESTIALITY PROHIBITION

By Frank R. Pignanelli

AN ACT RELATING TO THE CRIMINAL CODE; CREATING OFFENSE OF BESTIALITY; PROVIDING DEFINITIONS; AND PROVIDING THE PENALTY.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
76-9-301.8, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 76-9-301.8, Utah Code Annotated 1953, is enacted to read:

76-9-301.8. Bestiality — Definitions — Penalty.

(1) A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor.

(2) For purposes of this section only:

(a) "animal" means any live, nonhuman vertebrate creature, including fowl; and

(b) "sexual activity" means physical sexual contact:

(i) between the actor and the animal involving the genitals of the actor or the animal and the mouth or anus of the actor or the animal;

(ii) through the actor's use of an object in contact with the genitals or anus of the animal.

(3) A crime against nature is a class B misdemeanor.

CHAPTER 15
H. B. No. 62
Passed February 8, 1993
Approved February 24, 1993
Effective May 3, 1993

TRAFFIC REGULATION AMENDMENTS

By Stephen M. Bodily

AN ACT RELATING TO MOTOR VEHICLES; AMENDING PORTIONS OF THE TRAFFIC CODE TO CONFORM WITH THE MANUAL OF TRAFFIC CONTROL DEVICES; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-24, AS LAST AMENDED BY CHAPTER 31, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 41-6-24, Utah Code Annotated 1953, as last amended by Chapter 31, Laws of Utah 1990, is amended to read:

41-6-24. Traffic-control signal — At intersections — At place other than intersection — Color of light signal — Inoperative traffic-control signals.

(1) (a) [~~When traffic is controlled by a traffic-control signal exhibiting different colored lights, or color lighted arrows, successively one at a time or in combination, only the colors green~~] Green, red, and yellow are the only colors that may be used in traffic-control signals, except for special pedestrian signals [~~carrying a word legend~~] that may use white and orange. [~~The lights shall~~]

(b) Traffic-control signals indicate and apply to operators of vehicles and pedestrians as provided in this section.

(2) (a) [~~Vehicular~~] (i) Except as provided in Subsection (ii), vehicular traffic facing a circular green signal may:

(A) proceed straight through [~~or~~] the intersection;

(B) turn right; or

(C) turn left [~~unless a sign at that place prohibits either turn. But the vehicular~~].

(ii) Vehicular traffic facing a circular green signal, including vehicles turning right or left[~~,~~]:

(A) shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited; and

(B) may not turn right or left if a sign at the intersection prohibits the turn.

(b) Vehicular traffic facing a green arrow signal shown alone or in combination with other indication[~~,~~]:

(i) may cautiously enter the intersection only to make the movement indicated by the arrow or other indication shown at the same time[~~. The vehicular traffic~~]; and

(ii) shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian-control signal under Section 41-6-25, pedestrians facing any green signal [~~except when the sole~~] other than a green [~~signal is~~ a] turn arrow may proceed across the roadway within any marked or unmarked crosswalk.

(3) (a) Vehicular traffic facing a steady circular yellow or yellow arrow signal is warned that [~~the red signal will be exhibited next~~] the allowable movement related to a green signal is being terminated.

(b) [~~Pedestrians~~] Unless otherwise directed by a pedestrian-control signal under Section 41-6-25, pedestrians facing a steady circular yellow or yellow arrow signal[~~, unless otherwise directed by a pedestrian-control signal under Section 41-6-25~~] are advised that there is insufficient time to cross the roadway before a red indication is shown, and [~~no~~] a pedestrian may [~~then~~] not start to cross the roadway.

(4) (a) [~~Vehicular~~] Except as provided in Subsection (4)(c), vehicular traffic facing a steady circular red or red arrow signal [~~alone shall stop before entering~~]:

(i) may not enter the intersection unless entering the intersection to make a movement permitted by another indication; and

(ii) shall stop at a clearly marked stop line, but if none, before entering the marked or unmarked crosswalk on the near side of the intersection and shall remain stopped until an indication to proceed is shown[~~, except as provided in Subsection (4)(c)~~].

(b) Unless otherwise directed by a pedestrian-control signal under Section 41-6-25, pedestrians facing a steady red signal alone may not enter the roadway.

(c) (i) Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or may turn left from a one-way street into a one-way street, after stopping as required by Subsection (4)(a).

(ii) The vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(5) (a) [~~The provisions of this~~] This section [~~also apply~~] applies where an official traffic-control signal is erected and maintained at an intersection or at a place other than an intersection.

(b) Any stop required shall be made at a sign or marking on the highway pavement indicating where the stop shall be made, but, in the absence of any sign or marking, the stop shall be made at the signal.

(6) The operator of a vehicle approaching an intersection that has an official traffic-control signal that is inoperative shall stop before entering the intersection and shall yield the right-of-way to any vehicle as required under Section 41-6-72.

CHAPTER 16
H. B. No. 84
Passed February 9, 1993
Approved February 24, 1993
Effective May 3, 1993

EDUCATION OF SPOUSES AND CHILDREN OF VETERANS REPEALER

By Nora B. Stephens

AN ACT RELATING TO EDUCATION; REPEALING OUTDATED PROVISIONS RELATED TO EDUCATIONAL SERVICES THAT WERE ONCE OFFERED TO SPOUSES AND CHILDREN OF MEMBERS OF THE ARMED FORCES KILLED DURING WORLD WAR II AND THE KOREAN CONFLICT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
71-4-1, UTAH CODE ANNOTATED 1953
71-4-2, AS LAST AMENDED BY CHAPTER 283, LAWS OF UTAH 1977
71-4-3, UTAH CODE ANNOTATED 1953
71-4-4, UTAH CODE ANNOTATED 1953
71-4-5, UTAH CODE ANNOTATED 1953
71-4-6, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 71-4-1, "Educational or training institution" defined, Utah Code Annotated 1953;

Section 71-4-2, Education or training of unremarried surviving spouses or children of deceased veterans of World War II or the Korean conflict — Eligibility — Expiration dates, Utah Code Annotated 1953, as last amended by Chapter 283, Laws of Utah 1977;

Section 71-4-3, Institution to which entitled — Period of education or training, Utah Code Annotated 1953;

Section 71-4-4, Courses — Full or part time — Change or discontinuance, Utah Code Annotated 1953;

Section 71-4-5, Supervision and enforcement — Under state department of education — Veterans' organizations to act in advisory capacity, Utah Code Annotated 1953; and

Section 71-4-6, Free tuition, books and supplies, Utah Code Annotated 1953, are repealed.

CHAPTER 17
S. B. No. 21
Passed January 28, 1993
Approved February 24, 1993
Effective July 1, 1993

STATEWIDE TRANSPORTATION OF PRISONERS

By Wilford R. Black Jr.
Paul T. Fordham
Eldon A. Money
Alarik Myrin
Craig A. Peterson

AN ACT RELATING TO CRIMINAL PROCEDURE AND PEACE OFFICERS; DESIGNATING RESPONSIBILITY FOR TRANSPORTATION OF PRISONERS; REQUIRING RESTITUTION OF TRANSPORTATION COST; REQUIRING COURT CLERK TO DISPENSE TRANSPORTATION RESTITUTION IN CERTAIN CIRCUMSTANCES; DESIGNATING OFFENSES TO BE INCLUDED ON STATEWIDE WARRANT SYSTEM; DEFINING STATEWIDE WARRANT SYSTEM; AMENDING A RULE OF CRIMINAL PROCEDURE; MAKING TECHNICAL CHANGES; INCLUDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-3-201, AS LAST AMENDED BY CHAPTER 142, LAWS OF UTAH 1992
77-7-5, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1987
77-26-9, AS LAST AMENDED BY CHAPTERS 30 AND 233, LAWS OF UTAH 1992
THIS ACT AMENDS:
RULE 6, UTAH RULES OF CRIMINAL PROCEDURE

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

Section 1. Section Amended.

Section 76-3-201, Utah Code Annotated 1953, as last amended by Chapter 142, Laws of Utah 1992, is amended to read:

76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Hearing — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including insured damages, and payment for expenses to a governmental entity for extradition or transportation.

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

[~~(1)~~] (2) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal from or disqualification of public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) to life imprisonment;

(f) on or after April 27, 1992, to life in prison without parole; or

(g) to death.

[~~(2)~~] (3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property[~~,~~];

(ii) dissolve a corporation[~~,~~];

(iii) suspend or cancel a license[~~, or~~];

(iv) permit removal of a person from office[~~,~~];

(v) cite for contempt[~~,~~]; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

[~~(3)~~] (4) (a) (i) When a person is [~~adjudged guilty~~] convicted of criminal activity [~~which~~] that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has [~~pleaded guilty, is~~] been convicted, or to the victim of any other criminal conduct admitted by the defendant to the sentencing court [~~unless~~].

(ii) In determining whether restitution is appropriate, the court [~~in applying~~] shall consider the criteria in Subsection [~~(3)~~] (b) finds that restitution is inappropriate [~~(c)~~]. [~~Whether the court determines~~

that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record.]

[(ii)] (b) (i) When a defendant has been extradited to this state under Title 77, Chapter 30, [or has been transported at governmental expense from one county to another within the state for the purpose of resolving] Extradition, to resolve pending criminal charges and is [adjudged guilty] convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition [or transportation].

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection [(3)(b)] (c). [If the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record. The court shall send a copy of its order of restitution to the Division of Finance.]

[(b)] (c) In determining whether or not to order restitution, or restitution [which] that is complete, partial, or nominal under this subsection, the court shall take into account:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(d) (i) When the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record.

(ii) The court shall send a copy of its order of restitution to the Division of Finance.

[(c)] (e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on the issue.

[(4) As used in Subsection (3):]

[(a) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.]

[(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes, but is not limited to, the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses such as earnings and medical expenses.]

[(c) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including insured damages.]

[(d) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.]

[(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.]

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear warrant issued for an infraction;

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (a)(i) shall be calculated according to the following schedule:

(A) $75 for up to 100 miles a defendant is transported;

(B) $125 for 100 up to 200 miles a defendant is transported;

(C) $250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

[(5)] (6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the

case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) The court in determining a just sentence shall consider sentencing guidelines regarding aggravation and mitigation promulgated by the Commission on Criminal and Juvenile Justice.

[~~(6)~~] (7) (a) (i) If a defendant subject to Subsection [~~(5)~~] (6) has been sentenced and committed to the Utah State Prison, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Board of Pardons, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced, so long as the new sentence is no greater than the initial sentence nor less than the mandatory time prescribed by statute.

(ii) The resentencing provided for in this section shall take into consideration the sentencing guidelines established under this section by the Commission on Criminal and Juvenile Justice to eliminate disparity of sentences and to promote uniformity of sentencing.

(iii) Credit shall be given for time served.

(b) (i) The court shall state the reasons for its sentence choice on the record at the time of sentencing.

(ii) The court shall also inform the defendant as part of the sentence that if the defendant is released from prison he may be on parole for a period of ten years.

(c) If during the commission of a crime described as child kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the aggravated mandatory term in state prison. This subsection takes precedence over any conflicting provision of law.

Section 2. Section Amended.

Section 77-7-5, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1987, is amended to read:

77-7-5. Issuance of warrant — Time and place arrests may be made — Contents of warrant — Responsibility for transporting prisoners — Court clerk to dispense restitution for transportation.

(1) A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charged is:

[~~(1)~~] (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

[~~(2)~~] (b) a misdemeanor, the arrest upon a warrant can be made at night only if:

[~~(a)~~] (i) the magistrate has endorsed authorization to do so on the warrant;

[~~(b)~~] (ii) the person to be arrested is upon a public highway [~~or~~], in a public place, or in a place open to or accessible to the public; or

[~~(c)~~] (iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(2) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall account for restitution paid under Section 76-3-201 for governmental transportation expenses and dispense restitution monies collected by the court to the law enforcement agency responsible for the transportation of a convicted defendant.

Section 3. Section Amended.

Section 77-26-9, Utah Code Annotated 1953, as last amended by Chapters 30 and 233, Laws of Utah 1992, is amended to read:

77-26-9. Definition — Magistrates and court clerks to supply information — Offenses included on statewide warrant system — Transportation fee to be included — Statewide warrant system responsibility — Quality control — Training — Technical support — Transaction costs.

(1) "Statewide warrant system" means the portion of the state court computer system containing records of criminal warrant information that is accessed by modem from the state mainframe computer.

[~~(1)~~] (2) Every magistrate or clerk of a court responsible for court records in this state shall furnish the bureau with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convic-

tions, acquittals, or probations granted, within 30 days of the disposition and on forms provided by the bureau; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the bureau.

(3)(a)(i) The bureau will include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(ii) For each offense the bureau shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(b) Infractions will not be included on the statewide warrant system, including any subsequent failure to appear warrants issued on an infraction.

[~~(2)~~] (4) The bureau is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering warrant information on the system;

(b) establish system procedures and provide training to all criminal justice agencies having access to warrant information;

(c) provide technical support, program development, and systems maintenance for the operation of the system; and

(d) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to warrant information.

[~~(3)~~] (5) Notwithstanding Subsection [~~(2)~~] (4)(d) any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

Section 4. Rule 6. Warrant of arrest or summons.

(a) Upon the return of an indictment the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

(b) If it appears to the magistrate that the accused will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the accused. If the defendant is a corporation, a summons shall issue. A warrant of arrest may issue in cases where the defendant has failed to appear in response to a summons or citation or thereafter when required by the court. When a warrant of arrest is issued, [~~the amount of bail shall be fixed by~~] the magistrate [~~and state~~] shall state on the warrant:

(1) the amount of bail; and

(2) if the magistrate determines that the accused must appear in court, the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(c)(1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(2) The warrant may be executed or the summons may be served at any place within the state.

(3) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the defendant's last-known address.

(4) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the magistrate for cancellation.

Section 5. Approval required.

This act amends a Supreme Court rule of criminal procedure and takes effect only upon approval of two-thirds of all members of both houses of the Legislature, as provided in Article VIII, Sec. 4 of the Utah Constitution.

Section 6. Coordinating Clause.

If this act and S.B. 19, Public Safety Reorganization, both pass in the 1993 General Session, it is the intent of the Legislature that "bureau" in Section 77-26-9 be deleted and "division" inserted.

Section 7. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 18
H. B. No. 8
Passed February 12, 1993
Approved February 25, 1993
Effective May 3, 1993

REPEAL OF ALIEN DEPENDENT STATUS FOR BENEFIT PURPOSES

By Allan C. Rushton
Pete Suazo
Phil H. Uipi

AN ACT RELATING TO WORKERS' COMPENSATION BENEFITS; ELIMINATING PROVISIONS DIFFERENTIATING BETWEEN ALIEN AND RESIDENT DEPENDENTS OF DECEASED WORKERS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
35-1-72, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 35-1-72, Alien, Utah Code Annotated 1953, is repealed.

CHAPTER 19
H. B. No. 18
Passed February 5, 1993
Approved February 25, 1993
Effective May 3, 1993

ALCOHOLIC BEVERAGES - AIRPORT LOUNGES

By Afton B. Bradshaw
J. Brent Haymond
Daniel H. Tuttle
Norm Nielsen
Allan C. Rushton
Lowell A. Nelson
James F. Yardley
Nora B. Stephens
Met Johnson
Russell A. Cannon
Steve Barth

AN ACT RELATING TO ALCOHOLIC BEVERAGES; ALLOWING AIRPORT LOUNGES TO BE PLACED IN CONCOURSES; EXPANDING THE TIME OF OPERATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
32A-4-201, AS ENACTED BY CHAPTER 23, LAWS OF UTAH 1990
32A-4-206, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 32A-4-201, Utah Code Annotated 1953, as enacted by Chapter 23, Laws of Utah 1990, is amended to read:

32A-4-201. Commission's power to grant licenses - - Limitations.

(1) Before any airport lounge may sell or allow the consumption of liquor on its premises, it shall first obtain a license from the commission as provided in this part.

(2) The commission may issue airport lounge liquor licenses for the purpose of establishing airport liquor outlets at international airports for the storage, sale, and consumption of liquor on premises operated as public airport lounges.

(3) [~~Subject to this section, the~~] The total number of airport lounge liquor licenses may not exceed one lounge per terminal plus one lounge per concourse located beyond the security point at that international airport.

Section 2. Section Amended.

Section 32A-4-206, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-4-206. Operational restrictions.

Each person granted an airport lounge liquor license and the employees and management personnel of the airport lounge shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by an airport lounge liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with the rules established by the commission.

(2) An airport lounge liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(c) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Airport lounges may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(b) Airport lounges that sell beer pursuant to Subsection (a) shall comply with all appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter that apply to airport lounges.

(c) Failure to comply with the operational restrictions under Chapter 10 as set forth in Subsection (b) may result in a suspension or revocation of the airport lounge's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the airport lounge.

(b) A patron or guest may only make purchases in the airport lounge from a server designated and trained by the licensee.

(c) Alcoholic beverages may not be stored where they are visible to persons outside the airport lounge.

(6) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(7) [~~(a) Liquor~~] Alcoholic beverages may not be sold or offered for sale at an airport lounge during the following days or hours:

[~~(i)~~] (a) on the day of any state or national election until after the polls are closed; and

[~~(ii)~~] (b) on any other day after [~~10 p.m.~~] 12 midnight and before [~~10~~] 8 a.m.

[~~(b) The hours of beer sales are those specified in Chapter 10 for on-premise beer licenses.~~]

(8) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(9) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any day or at any time.

(10) An airport lounge patron or guest may have only one alcoholic beverage at a time before him.

(11) No more than one ounce of primary liquor may be served to a patron or guest at a time, except wine as provided in Subsection (2)(b) and heavy beer as provided in Subsection (2)(c).

(12) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons or guests of the airport lounge.

(13) (a) Beginning January 1, 1991, a person may not bring onto the premises of an airport lounge licensee any alcoholic beverage for on-premise consumption.

(b) Beginning January 1, 1991, an airport lounge or its officers, managers, employees, or agents may not allow a person to bring onto the airport lounge premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

(c) Beginning January 1, 1991, if any airport lounge liquor licensee or any of its officers, managers, employees, or agents violates this subsection:

(i) the commission may immediately suspend or revoke the airport lounge's liquor license and the airport lounge liquor licensee is subject to criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the airport lounge's local liquor license, local consent under Subsection 32A-4-202 (1)(c), or local business license.

(14) Alcoholic beverages purchased from the airport lounge may not be removed from the airport lounge premises.

(15) Minors may not be employed by an airport lounge licensee to sell or dispense alcoholic beverages.

(16) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(17) Each airport lounge liquor licensee shall display in a prominent place in the airport lounge:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(18) (a) Each airport lounge liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, liquor, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(19) Each airport lounge liquor licensee shall maintain accounting and other records and documents as the department may require. Any airport lounge or person acting for the airport lounge, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the airport lounge required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the airport lounge's liquor license and possible criminal prosecution under Chapter 12.

(20) There shall be no transfer of an airport lounge liquor license from one location to another, without prior written approval of the commission.

(21) (a) A person, having been granted an airport lounge liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An airport lounge liquor license has no monetary value for the purpose of any type of disposition.

(22) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(23) An airport lounge liquor licensee's premises may not be leased for private functions.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 20
H. B. No. 36
Passed February 8, 1993
Approved February 25, 1993
Effective February 25, 1993

ALCOHOLIC BEVERAGE - LIQUOR/WINE REPRESENTATIVES

By David M. Jones

AN ACT RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR REGULATION OF LIQUOR AND WINE REPRESENTATIVES; CLARIFYING THE USE OF ADVERTISING AND SAMPLES BY SUCH REPRESENTATIVES; PROVIDING FOR TRADE SHOWS FOR LIQUOR; PROVIDING FOR AND RESTRICTING CERTAIN TRADE PRACTICES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
32A-1-105, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-1-107, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-1-109, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-1-119, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-12-201, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991
32A-12-307, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990

ENACTS:
32A-1-501, UTAH CODE ANNOTATED 1953
32A-1-502, UTAH CODE ANNOTATED 1953
32A-1-503, UTAH CODE ANNOTATED 1953
32A-1-504, UTAH CODE ANNOTATED 1953
32A-8-501, UTAH CODE ANNOTATED 1953
32A-8-502, UTAH CODE ANNOTATED 1953
32A-8-503, UTAH CODE ANNOTATED 1953
32A-8-504, UTAH CODE ANNOTATED 1953
32A-8-505, UTAH CODE ANNOTATED 1953
32A-12-601, UTAH CODE ANNOTATED 1953
32A-12-602, UTAH CODE ANNOTATED 1953
32A-12-603, UTAH CODE ANNOTATED 1953
32A-12-604, UTAH CODE ANNOTATED 1953
32A-12-605, UTAH CODE ANNOTATED 1953
32A-12-606, UTAH CODE ANNOTATED 1953

REPEALS:
32A-1-124, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1991
32A-12-402, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-12-403, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 32A-1-105, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this subsection.

(b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within this definition.

(4) "Beer," "light beer," "malt liquor," or "malted beverages" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

(5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the commission, by a local authority, or both.

(b) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises. It includes taverns.

(c) "Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under Chapter 10, Part 2. "Tavern" includes beer bars, parlors, lounges, cabarets, and night clubs where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in such establishments.

(6) "Billboard" means any light device, painting, drawing, poster, sign, signboard, scoreboard, or other similar public display used to advertise, but does not include:

(a) displays on beer delivery vehicles if the displays do not overtly promote the consumption of alcoholic beverages;

(b) displays in taverns and private clubs, if the displays are not visible to persons off-premises;

(c) point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if the displays are not visible to persons off-premises;

(d) private business signs on the premises of any business engaged primarily in the distribution of beer;

(e) newspapers, magazines, circulars, programs, or other similar printed materials, if the materials are not directed primarily to minors;

(f) menu boards in retail establishments that sell beer for on-premise consumption if the menu boards also contain food items; and

(g) handles on alcoholic beverage dispensing equipment that identify brands of products being dispensed.

(7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted beverages.

(8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose, under a single contract, and at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.

(9) "Church" means a building set apart primarily for the purpose of worship in which religious services are held and with which clergy is associated, and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose, and which is tax exempt under the laws of this state.

(10) "Club" and "private club" means any nonprofit corporation operating as a social club, recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

(11) "Commission" means the Alcoholic Beverage Control Commission.

(12) "Cork-finished wine" means a container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

(13) "Council" means the Citizen's Council on Alcoholic Beverage Control.

(14) "Department" means the Department of Alcoholic Beverage Control.

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

(16) "General food store" means any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premise consumption.

(17) "Governing body" means the board of not fewer than five shareholders or voting members of a private club who have been elected and authorized to control or conduct the business and affairs of that club.

(18) "Guest" means a person accompanied by an active member or visitor of a club who enjoys only those privileges derived from the host for the duration of the visit to the club.

(19) "Heavy beer" means all products which contain more than 4% alcohol by volume obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered "liquor" for the purposes of this title.

(20) "Identification card" means the card issued by the commissioner of the Department of Public Safety under Title 41, Chapter 2, Part 4.

(21) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

(22) "Licensee" means any person issued a license by the commission to sell, manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

(23) "Limousine" means any motor vehicle licensed by the state or a local authority, other than a bus or taxicab, in which the driver and passengers are separated by a partition, glass, or other barrier and which is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

(24) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

(25) "Local authority" means the county legislative body of the county if the premises are located in an unincorporated area of a county, or the governing body of the city or town if the premises are located in an incorporated city or town.

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

(27) "Member" means a person who, after paying regular dues, has full privileges of a club under this title.

(28) "Minor" means any person under the age of 21 years.

(29) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

(30) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

(31) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

(32) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises which the package agent shall provide and maintain.

(33) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

(34) "Person" means any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

(35) "Policy" means a statement of principles established by the commission to guide the administration of this title and the management of the affairs of the department.

(36) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

(37) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for the obtaining of an alcoholic beverage for medicinal purposes only.

(38) (a) "Privately-hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests.

(b) "Privately-hosted event" and "private social function" does not include events or functions to which the general public is invited, whether for an admission fee or not.

[~~(38)~~] (39) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for public education, transacting public business, or regularly conducting government activities.

(b) "Public building" does not mean or refer to any building owned by the state or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

[~~(39)~~] (40) "Representative" means an individual who is compensated by salary [or], commission, or any other means for representing and selling the alcoholic beverage products of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

[~~(40)~~] (41) "Residence" means the person's principal place of abode within Utah.

[~~(41)~~] (42) "Restaurant" means any business establishment where a variety of foods is prepared and complete meals are served to the general public, located on a premises having adequate culinary fixtures for food preparation and dining accommodations, and that is engaged primarily in serving meals to the general public.

[~~(42)~~] (43) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

[~~(43)~~] (44) (a) "Rule" means a general statement adopted by the commission to guide the activities of those regulated or employed by the department, to implement or interpret this title, or to describe the organization, procedure, or practice requirements of the department in order to carry out the intent of the law and ensure its uniform application. This definition includes any amendment or repeal of a prior rule.

(b) "Rules" does not include rules concerning only the internal management of the department that do not affect private rights or procedures available to the public, including intradepartmental memoranda.

[~~(44)~~] (45) (a) "Sample" includes department samples, industry representative samples, and department trade show samples.

(b) "Department sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for [~~analysis and~~] testing, analysis, and [~~is not of the same type and brand as any in the department's general inventory or currently on the department's order list~~] sampling.

(c) "Department trade show sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for use in a trade show conducted by the department.

(d) "Industry representative sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling by local industry representatives on the premises of the department to educate themselves of the quality and characteristics of the product.

[~~(45)~~] (46) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules adopted by the commission.

[~~(46)~~] (47) (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include nursery schools, infant day care centers, or trade or technical schools.

[~~(47)~~] (48) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state. It includes the department identification mark and inventory control number.

[~~(48)~~] (49) (a) "State store" means a facility for the sale of package liquor located on premises owned or leased by the state of Utah and operated by state employees.

(b) "State store" does not apply to any licensee, permittee, or to package agencies.

[~~(49)~~] (50) "Supplier" means any person selling alcoholic beverages to the department.

[~~(50)~~] (51) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

[~~(51)~~] (52) "Unsaleable liquor merchandise" means merchandise that is unsaleable because it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically determined to be impure, or that contains sediment, or any foreign substance, or is otherwise considered by the department as unfit for sale.

[~~(52)~~] (53) "Visitor" means a person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

[~~(53)~~] (54) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

[~~(54)~~] (55) "Wholesaler" means any person, other than a licensed manufacturer, engaged in the importation for sale, or in the sale of beer, malt liquor, or malted beverages in wholesale or jobbing quantities to retailers.

[~~(55)~~] (56) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added. "Wine" is considered "liquor" for purposes of this title.

Section 2. Section Amended.

Section 32A-1-107, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-107. Powers and duties of the Commission.

(1) The commission shall:

(a) act as a general policymaking body on the subject of alcoholic product control;

(b) adopt and issue policies, directives, rules, and procedures;

(c) set policy by written rules that establish criteria and procedures for:

(i) granting, denying, suspending, or revoking permits, licenses, and package agencies;

(ii) controlling liquor merchandise inventory including:

(A) listing and delisting products;

(B) the procedures for testing new products;

(C) purchasing policy;

(D) turnover requirements for regularly coded products to be continued; and

(E) the disposition of discontinued, distressed, or unsaleable merchandise; [and]

(iii) determining the location of state stores, package agencies, and outlets; and

(iv) department trade shows;

(d) decide within the limits and under the conditions imposed by this title, the number and location of state stores, package agencies, and outlets established in the state;

(e) issue, grant, deny, suspend, or revoke the following permits, licenses, and package agencies for the purchase, sale, storage, service, manufacture, distribution, and consumption of alcoholic products:

(i) package agencies;

(ii) restaurant licenses;

(iii) airport lounge licenses;

(iv) private club licenses;

(v) on-premise beer retailer licenses;

(vi) special use permits;

(vii) single event permits;

(viii) manufacturing licenses;

(ix) liquor warehousing licenses; and

(x) beer wholesaling licenses.

(f) fix prices at which liquors are sold that are the same at all state stores, package agencies, and outlets;

(g) issue and distribute price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor kept for sale by the department;

(h) require the director to follow sound management principles and require periodic reporting from the director to ensure that these principles are being followed and that policies established by the commission are being observed;

(i) receive, consider, and act in a timely manner upon all reports, recommendations, and matters submitted by the director to the commission, and do all things necessary to support the department in properly performing its duties and responsibilities;

(j) obtain temporarily and for special purposes the services of experts and persons engaged in the practice of a profession or who possess any needed skills, talents, or abilities if considered expedient and if approved by the governor;

(k) prescribe the duties of departmental officials authorized to issue permits and licenses and to conduct trade shows under this title;

(l) prescribe, consistent with this title, the fees payable for permits, licenses, and package agencies issued under this title, or for anything done or permitted to be done under this title;

(m) prescribe the conduct, management, and equipment of any premises upon which alcoholic beverages may be sold, consumed, served, or stored;

(n) make rules governing the credit terms of beer sales to retailers within the state; and

(o) require that each state store, package agency, licensee, and permittee, where required in this title, display in a prominent place a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this premises may be hazardous to your health and the safety of others."

(2) The power of the commission to establish state stores, to create package agencies and grant authority to operate package agencies, and to grant or deny licenses and permits is plenary, except as otherwise provided by this title, and is not subject to review.

(3) If a person holds more than one valid license or permit under this title at the same time and at the same location, the commission may suspend or revoke all licenses or permits of that person for a single violation under any one of the licenses or permits.

(4) The commission may appoint qualified hearing officers to conduct any suspension or revocation hearings required by law.

[~~(5) (a) The director may adopt internal departmental policies, directives, rules, and procedures related to department personnel matters and the day-to-day operation of the department that are consistent with those of the commission.~~]

[~~(b) The director shall keep a current copy of the manuals containing the rules and policies of the department and commission available for public inspection.~~]

Section 3. Section Amended.

Section 32A-1-109, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-109. Powers and duties of the director.

Subject to the powers and responsibilities vested in the commission by this title the director shall:

(1) prepare and propose to the commission general policies, directives, rules, and procedures governing the administrative activities of the department and may submit other recommendations to the commission as the director considers in the interest of its or the department's business;

(2) within the general policies, directives, rules, and procedures of the commission, provide day-to-day direction, coordination, and delegation of responsibilities in the administrative activities of the department's business and promulgate internal department policies, directives, rules, and procedures relating to department personnel matters, and the day-to-day operation of the department;

(3) appoint or employ personnel as considered necessary in the administration of this title and prescribe the conditions of their employment, define their respective duties and powers, fix their remuneration in accordance with Title 67, Chapter 19, [the] State Personnel Management Act, and designate those employees required to give bonds and specify the bond amounts;

(4) establish and secure adherence to a system of reports, controls, and performance in all matters relating to personnel, security, department property management, and operation of department offices, warehouses, state stores, package agencies, and licensees;

(5) within the policies, directives, rules, and procedures approved by the commission and provisions of law, buy, import, keep for sale, sell and control the sale, storage, service, transportation, and delivery of alcoholic products;

(6) prepare for commission approval:

(a) recommendations regarding the location, establishment, relocation, and closure of state stores and package agencies;

(b) recommendations regarding the issuance, suspension, nonrenewal, and revocation of licenses and permits;

(c) annual budgets, proposed legislation, and reports as required by law and sound business principles;

(d) plans for reorganizing divisions of the department and their functions;

(e) manuals containing all commission and department policies, directives, rules, and procedures;

(f) an inventory control system;

(g) any other reports and recommendations as may be requested by the commission;

(h) rules governing the credit terms of beer sales to beer retailer licensees;

(i) rules governing the calibration, maintenance, and regulation of calibrated metered dispensing systems;

(j) rules governing the posting of a list of types and brand names of liquor being served through calibrated metered dispensing systems;

(k) price lists issued and distributed showing the price to be paid for each class, variety, or brand of liquor kept for sale at state stores, package agencies, and outlets;

(l) directives prescribing the books of account kept by the department and by state stores, package agencies, and outlets;

(m) an official state label and the manner in which the label shall be affixed to every package of liquor sold under this title; [and]

(n) a policy prescribing the manner of giving and serving notices required by this title or rules made under this title; and

(o) rules governing department trade shows;

(7) make available through the department to any person, upon request, a copy of any [rule,] policy[;] or directive promulgated by the director; [and]

(8) adopt internal departmental policies, directives, rules, and procedures relating to department personnel matters and the day-to-day operation of the department that are consistent with those of the commission;

(9) keep a current copy of the manuals containing the rules and policies of the department and commission available for public inspection; and

[(8)] (10) perform other duties required by the commission and by law.

Section 4. Section Amended.

Section 32A-1-119, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-119. Adjudicative proceedings — Procedure.

(1) (a) The commission, director, and department may conduct adjudicative proceedings to inquire into any matter necessary and proper for the administration of this title and rules adopted under this title.

(b) The commission, director, and department shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(c) Except where otherwise provided by law, all adjudicative proceedings shall be conducted in accordance with Title 52, Chapter 4, [the] Open and Public Meetings Act.

(d) All adjudicative proceedings concerning departmental personnel shall be conducted in accordance with Title 67, Chapter 19, Utah State Personnel Management Act. All hearings that are informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures promulgated by the commission, director, or department.

(2) (a) Disciplinary proceedings shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on any disciplinary matter.

(b) (i) Nothing in this section precludes the commission from appointing necessary officers, including hearing examiners, from within or without the department, to administer the disciplinary hearing process.

(ii) Officers and examiners appointed by the commission may conduct hearings on behalf of the commission and submit findings of fact, conclusions of law, and recommendations to the commission.

(3) When the department has on file a report from any government agency, peace officer, examiner, or investigator alleging that a permittee or licensee or any of its officers or employees has violated this title or the rules of the commission, the department may initiate disciplinary proceedings to determine:

(a) whether or not the permittee or licensee is guilty of the violation; and

(b) if found guilty, the penalty to be imposed.

(4) (a) An adjudicative proceeding shall be held if required by law, and in all cases before revoking or suspending any license or permit issued under this title, unless waived by the respondent.

(b) Inexcusable failure of a respondent to appear at a scheduled evidentiary hearing after receiving proper notice is an admission of the charged violation.

(c) The validity of any hearing is not affected by the failure of any person to attend or remain in attendance.

(d) All evidentiary hearings shall be presided over by the commission or an appointed hearing examiner.

(e) A hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.

(f) The commission or its hearing examiner may administer oaths or affirmations, take evidence, take depositions within or without this state, require by subpoena from any place within this state the testimony of any person at a hearing, and the production of any books, records, papers, contracts, agreements, documents, or other evidence considered relevant to the inquiry.

(i) Persons subpoenaed shall testify and produce any books, papers, documents, or tangible things as required in the subpoena.

(ii) Any witness subpoenaed or called to testify or produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney in the jurisdiction where the privilege was claimed or where the witness resides setting forth the circumstance of the claimed privilege.

(iii) A person is not excused from obeying a subpoena without just cause. Any district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to appear before the issuing party, and to produce documentary evidence if so ordered, or to give evidence regarding the matter in question. Failure to obey an order of the court may be punished by the court as contempt.

(g) In all cases heard by a hearing examiner, the hearing examiner shall prepare a report to the commission. The report may not recommend a penalty

more severe than that initially sought by the department in the notice of violation. A copy of the report shall be served upon the respective parties, and the respondent shall be given reasonable opportunity to file any written objections to the report before final commission action.

(h) In all cases heard by the commission, it shall issue its final decision and order.

(5)(a) The commission shall render a decision and issue a written order on any disciplinary action, and serve a copy on all parties.

(b) Any order of the commission is considered final on the date it becomes effective.

(c) If the commission is satisfied that a permittee or licensee has committed a violation of this title, or the commission's rules, it may take emergency action suspending or revoking the permit or the license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, and assess the costs of any hearing to the permittee or the licensee.

(d) If the permit or license is revoked, the commission may order the revocation of any compliance bond posted by the permittee or licensee.

(e) Any permittee or licensee whose permit or license is revoked may not reapply for a permit or license under this title for three years from the date the permit or license was revoked.

(f) All costs assessed by the commission shall be transferred into the General Fund in accordance with Section 32A-1-113.

(6)(a) The commission may also initiate disciplinary actions against employees or agents of licensees.

(b) If any employee or agent is found to have violated this title, the commission may prohibit the employee or agent from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any licensee licensed under this title for a period [~~of up to one month~~] determined by the commission.

[~~(c) Any employee who receives three suspensions by the commission within a consecutive 36-month period may not handle alcoholic beverages, in the course of employment, for one year.~~]

(7) If any manufacturer, supplier, or importer of liquor, wine, or heavy beer or their employee, agent, or representative violates any provision of this title, the commission may, in addition to other penalties prescribed by this title, order the removal of the manufacturer's, supplier's, or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.

Section 5. Section Enacted.

Section 32A-1-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Department Trade Shows

32A-1-501. Definitions.

As used in this part:

(1) "Industry member" means a liquor, wine, or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(2) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission or by local authority to allow the holder to engage in the sale of liquor, wine, or heavy beer to consumers, or any of its agents, officers, directors, shareholders, partners, or employees.

(3) "Trade association" means an association of industry members or retailers.

Section 6. Section Enacted.

Section 32A-1-502, Utah Code Annotated 1953, is enacted to read:

32A-1-502. Purpose.

Department trade shows may be conducted for the limited purpose of allowing industry members to meet with retailers and trade associations under the supervision of the department, to conduct alcoholic product tastings, and to disseminate product information to educate retailers as to the quality and characteristics of the industry member's liquor, wine, and heavy beer products.

Section 7. Section Enacted.

Section 32A-1-503, Utah Code Annotated 1953, is enacted to read:

32A-1-503. Procedures.

(1) The department may conduct up to four trade shows each calendar year under rules adopted by the commission, and for specific industry members and at times, dates, and places approved by the commission.

(2) The department shall provide notice of the date, time, and place of each trade show at least 60 days in advance in the following manner:

(a) written notice shall be mailed to all retailers licensed by the commission to sell liquor, wine, or heavy beer products;

(b) written notice shall be mailed to all industry members and trade associations who have requested to be on the department's trade show mailing list;

(c) written notice shall be posted at the department's central warehouse administrative building and

(d) notice shall be given to at least one newspaper of general circulation within the geographic jurisdiction of the department, or to a local media correspondent.

(3) (a) The department shall accept applications from industry members who wish to purchase display space to allow tastings of their products at a department trade show.

(b) The department shall endeavor to ensure that a diversity of brands are represented at each show. If there are more applications for display space than space will allow, selections shall be made by the department randomly by lot.

(c) The department may assess an application fee to industry members applying for trade show display space, and a display space fee to successful applicants.

(4) Department trade shows shall be conducted under the direction of the department, but the department may utilize the assistance of trade associations.

(5) The department may charge an admission fee to attendees of a department trade show.

Section 8. Section Enacted.

Section 32A-1-504, Utah Code Annotated 1953, is enacted to read:

32A-1-504. Operational restrictions.

(1) Department trade shows may not be open to the general public, and may be attended only by industry members, retailers, personnel of any trade association, authorized representatives of the commission, the department, the council, and any law enforcement officer. Authorized representatives of the commission, the council, and any law enforcement officer shall have unrestricted right of access, ingress, and egress to and from all premises of a department trade show.

(2) No person under the age of 21 years may attend a department trade show.

(3) No bottle or container of liquor, wine, or heavy beer may be used in a department trade show unless it has been processed, labeled, and delivered to the show by the department in accordance with Section 32A-12-602, and has affixed to it a department label clearly identifying it as a "department trade show sample".

(4) No department trade show sample may be removed from the premises of the trade show except by the department in accordance with Section 32A-12-602.

(5) No department trade show sample may be stored, used, served, or consumed in any place other than the premises of the department trade show.

(6) No department trade show sample may be served or otherwise furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(7) No attendees of the department trade show may bring any alcoholic beverage product onto the premises of the department trade show.

(8) A violation of this section is a class B misdemeanor.

Section 9. Section Enacted.

Section 32A-8-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Local Industry Representative Licenses

32A-8-501. Commission's power to grant licenses.

(1) The commission may issue local industry representative licenses to individual residents of Utah, Utah partnerships, and Utah corporations who are employed by a manufacturer, supplier, or importer, whether compensated by salary, commission, or any other means, to represent liquor, wine, or heavy beer products with the department, package agencies, licensees, and permittees under this title.

(2) Before any Utah resident, Utah partnership, or Utah corporation may represent a liquor, wine, or heavy beer product of a manufacturer, supplier, or importer, the resident, partnership, or corporation shall first obtain a local industry representative license from the commission as provided in this part. A violation of this subsection is a class B misdemeanor.

(3) Individual employees or agents of partnership or of corporate local industry representative licensees are not required to be separately licensed.

(4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.

(5) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, package agencies, licensees, or permittees. However, any employee or agent of the manufacturer, supplier, or importer while in the state must first register with the department, on forms provided by the department, before representing alcoholic beverage products with the department, package agencies, licensees, and permittees of the department. A manufacturer, supplier, or importer and their employees and agents are subject to the same operational restrictions of this part and Chapter 12.

Section 10. Section Enacted.

Section 32A-8-502, Utah Code Annotated 1953, is enacted to read:

32A-8-502. Application and renewal requirements.

(1) An individual resident, partnership, or corporation seeking a local industry representative license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $100 application fee;

(b) an initial license fee of $50, which is refundable if a license is not granted;

(c) verification that the applicant is a resident of Utah, or a Utah partnership or corporation;

(d) an affidavit stating the name and address of all manufacturers, suppliers, and importers the applicant will represent;

(e) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, council, or any law enforcement officer the right to enter, during normal business hours, the specific premises where the representative conducts business;

(f) in the case of a partnership or corporate applicant, proper verification evidencing that the person or persons signing the application are authorized to so act on the partnership's or corporation's behalf; and

(g) any other information the commission or department may require.

(2) All local industry representative licenses expire on January 1 of each year. Licensees desiring to renew their license shall submit a renewal fee of $50 and a completed renewal application to the department no later than November 30. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department, but shall require the licensee to file an affidavit stating the name and address of all manufacturers, suppliers, and importers the licensee currently represents.

(3) A licensed local industry representative may represent more than one manufacturer, supplier, or importer without paying additional license fees.

Section 11. Section Enacted.

Section 32A-8-503, Utah Code Annotated 1953, is enacted to read:

32A-8-503. Qualifications.

(1) (a) The commission may not grant a local industry representative license to an individual who has been convicted of:

(i) a felony under any federal or state law;

(ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, importing, warehousing, adulteration, or transportation of alcoholic beverages; or

(iii) any crime involving moral turpitude.

(b) In the case of a partnership or corporation, the proscription under Subsection (a) applies if any partner, managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in Subsection (1)(a).

(2)(a) If any employee of a local industry representative licensee is convicted of any offense designated in Subsection (1)(a), the commission may take emergency action by immediately revoking the license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(b) In the case of a partnership or corporation that has been granted a local industry representative license, if any partner, managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of a corporation is convicted of any offense designated in Subsection (1)(a), the commission may take emergency action by immediately revoking the license according to the procedures and requirements of Title 63, Chapter 46b.

(3) Upon the arrest of any local industry representative licensee on any charge set forth in Subsection (1)(a), the director may take emergency action by immediately suspending the operation of the licensee according to the procedures and requirements of Title 63, Chapter 46b, for the period during which the criminal matter is being adjudicated.

(4)(a)(i) The commission may not grant a local industry representative license to any individual who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a local industry representative license to any partnership or corporation applicant if any partner, managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant is or was a partner or managing agent of any partnership, or is or was a managing agent, officer, director, or a stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had a liquor license, agency, or permit revoked within the last three years.

(b) A partnership or corporation applicant may not be granted a local industry representative license if any partner or managing agent of the partnership or any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the corporate applicant had a liquor license, agency, or permit revoked while acting in their individual capacity within the last three years.

(c) A person acting in an individual capacity may not be granted an industry representative license if that person was a partner or managing agent of a partnership, or a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had a liquor license, agency, or permit revoked within the last three years.

(5) The commission may not grant a local industry representative license to any person who is under the age of 21 years.

(6) The commission may not grant a local industry representative license to any holder of any retail license issued under this title, to any employee or agent of any retail license issued under this title, or to any individual, partnership, or corporation who holds any interest in any retail license issued under this title except as otherwise provided.

(7) If any individual, partnership, or corporation to whom a local industry representative license has been issued under this part no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

Section 12. Section Enacted.

Section 32A-8-504, Utah Code Annotated 1953, is enacted to read:

32A-8-504. Commission and department duties before granting licenses, and in issuing licenses.

(1) Before a local industry representative license may be granted by the commission, the department shall conduct an investigation for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted. This information shall be forwarded to the commission to aid in its determination.

(2) Before issuing a local industry representative license, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections 32A-8-502 and 32A-8-503, and that the application is complete; and

(b) consider any other factors or circumstances it considers necessary.

(3) The commission shall furnish each licensee a license which must be displayed at the licensee's principal place of business.

Section 13. Section Enacted.

Section 32A-8-505, Utah Code Annotated 1953, is enacted to read:

32A-8-505. Operational restrictions.

(1) (a) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state, shall abide by the conditions and requirements set forth in this section.

(b) If any person listed in Subsection (1)(a) knowingly violates or fails to comply with the conditions and requirements set forth in this section, such violation or failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or agents of the licensee, and the commission may order the removal of the manufacturer's, supplier's, or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.

(2) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state:

(a) may assist the department in ordering, shipping, and delivering merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, and educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit to the department price lists and samples of their products, but only to the extent authorized by Chapter 12;

(b) may not sell any liquor, wine, or heavy beer within the state except to the department and military installations;

(c) may not ship or transport, or cause to be shipped or transported, into this state or from one place to another within this state any liquor, wine, or heavy beer, or sell or furnish any liquor, wine, or heavy beer to any person within this state other than to the department and military installations;

(d) except as otherwise provided, may not advertise products it represents in violation of this title or any other federal or state law;

(e) shall comply with all trade practices provided in Chapter 12; and

(f) may only provide samples of their products for tasting and sampling purposes by the department or by retail licensees or permittees at a department trade show.

(3) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of all manufacturers, suppliers, and importers the licensee represents. The licensee shall notify the department in writing of any changes to the accounts listed within 14 days from the date the licensee either acquired or lost the account of a particular manufacturer, supplier, or importer.

(4) A local industry representative licensee shall maintain accounting and other records and documents as the department may require for at least three years.

(5) Any local industry representative licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the industry representative's license and possible criminal prosecution under Chapter 12.

(6) A local industry representative licensee may, for the purpose of becoming educated as to the quality and characteristics of a liquor, wine, or heavy beer product which the licensee represents, may taste and analyze industry representative samples under the following conditions:

(a) The licensee may not receive more than two industry representative samples of a particular type,

vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) Each sample of liquor may not exceed 1 liter. Each sample of wine or heavy beer may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters.

(c) Each industry representative sample may only be of a product not presently listed on the department's sales list.

(d) Industry representative samples shall be shipped prepaid by the manufacturer, supplier, or importer by common carrier and not via United States mail directly to the department's central administrative warehouse office. These samples may not be shipped to any other location within the state.

(e) Industry representative samples shall be accompanied by a letter from the manufacturer, supplier, or importer clearly identifying the product as an "industry representative sample", and clearly stating the FOB case price of the product, and the name of the local industry representative for who it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to each bottle or container a label clearly identifying the product as an "industry representative sample".

(h) The department shall account for and record each industry representative sample received, account for its disposition, and maintain a record of the sample and its disposition for a two-year period.

(i) Industry representative samples may not leave the premises of the department's central administrative warehouse office.

(j) Licensed industry representatives and their employees and agents may, at regularly scheduled days and times established by the department, taste and analyze industry representative samples on the premises of the department's central administrative warehouse office.

(k) Any unused contents of an opened product remaining after the product has been sampled shall be destroyed by the department under controlled and audited conditions established by the department.

(l) Industry representative samples that are not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) contents destroyed under controlled and audited conditions established by the department;

(ii) added to the inventory of the department for sale to the public.

(7) A local representative licensee may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not. A local industry representative license has no monetary value for the purpose of any type of disposition.

Section 14. Section Amended.

Section 32A-12-201, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

32A-12-201. Unlawful sale or supply.

(1) It is unlawful for any person, licensee, permittee, or their officers, managers, employees, or agents to keep for sale, or to directly or indirectly or upon any pretense or device, sell, offer to sell, or otherwise furnish or supply to another, any alcoholic beverage or product, except as provided by this title or the rules of the commission adopted under this title.

[~~(2) A violation of this section is a class B misdemeanor.~~]

(2) Except as otherwise provided, a manufacturer, supplier, or importer of liquor, wine, and heavy beer products, and their employees, agents, and representatives may not sell, offer to sell, solicit or canvass for orders, or otherwise furnish or supply these products to another within this state other than the department and military installations.

Section 15. Section Amended.

Section 32A-12-307, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-12-307. Interfering with suppliers.

[~~(1)~~] A member of the commission or council, or employee of the department may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of any agent, representative, employee, or officer of any manufacturer, supplier, or importer of liquor, wine, or heavy beer to the department except to determine qualifications for licensing under Chapter 8, Part 5, and to enforce compliance with this title.

[~~(2) A violation of this section is a third degree felony.~~]

Section 16. Section Enacted.

Section 32A-12-601, Utah Code Annotated 1953, is enacted to read:

Part 6. Trade Practices

32A-12-601. Definitions.

For purposes of this part:

(1)(a) "Industry member" means an alcoholic beverage manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(b) "Industry member" does not include the commission or the department or any of its officers or employees.

(2) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission or by local authority to allow the holder to engage in the sale of alcoholic beverages to consumers whether for consumption on or off the premises or any of

the holder's, agents, officers, directors, shareholders, partners, or employees.

Section 17. Section Enacted.

Section 32A-12-602, Utah Code Annotated 1953, is enacted to read:

32A-12-602. Exclusive outlets.

(1) It is unlawful for any industry member, directly or indirectly or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase any alcoholic beverage products from the industry member or the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons.

(2) This prohibition includes purchases coerced by industry members through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.

Section 18. Section Enacted.

Section 32A-12-603, Utah Code Annotated 1953, is enacted to read:

32A-12-603. Tied house — Prohibition.

(1) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce, through any of the following means, any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons:

(i) by acquiring or holding any interest in any retailer's license, except where the license is held by a retailer that is completely owned by the industry member; or

(ii) by acquiring any interest in real or personal property owned, occupied, or used by any retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (1)(a)(ii), "interest" does not include complete ownership of a retail business by an industry member but may include acquiring a mortgage on a retailer's real or personal property or paying for display space at a retail establishment.

(2) It is unlawful for any industry member, directly or indirectly or through an affiliate, to furnish, give, rent, lend, or sell any equipment, fixtures, signs, supplies, money, services, or other thing of value, as defined in federal law 27 C.F.R Section 6.41 through 6.47, to the department, to any retailer, or to any third party retailer association or display company where the benefits resulting from the thing of value flow to the individual retailers, subject to the following exceptions:

(a) (i) Product displays such as wine racks, bins, barrels, casks, shelving and the like from which liquor, wine, and heavy beer are displayed may be provided to the department, package agencies, private clubs, airport lounges, public service permittees, and single event permittees to the extent allowed by federal law 27 C.F.R. Section 6.83, but may only be displayed so as not to be visible to persons off the premises.

(ii) Product displays from which light beer is displayed may be provided to package agencies, licensed off-premise beer retailers, taverns, private clubs, airport lounges, public service permittees, and single event permittees to the extent allowed by federal law 27 C.F.R. Section 6.83, but may only be displayed so as not to be visible to persons off the premises.

(b) (i) Inside signs relating to liquor, wine, and heavy beer products may be provided to private clubs, airport lounges, public service permittees, and single event permittees that bear advertising matter such as posters, placards, designs, and mechanical devices, and point-of-sale advertising matter such as table tents and menu clip-ons if they have no secondary value, are of value to the retailer only as advertising, are displayed in a manner so as not to be visible off the retailer's premises, otherwise comply with the advertising provisions of this title, and the industry member does not directly or indirectly pay or credit the retailer for displaying the sign or pay any expense incidental to its operation.

(ii) Inside signs as described in Subsection (2)(b)(i) relating to light beer products may be provided to off-premise beer retailers licensed by local authority, taverns, private clubs, airport lounges, public service permittees, and single event permittees if they are displayed in a manner so as not to be visible off of the retailer's premises, otherwise comply with the advertising provisions of this title, and the industry member does not directly or indirectly pay or credit the retailer for displaying the sign or pay any expenses incidental to its operation.

(c) (i) Liquor, wine, and heavy beer retailer advertising specialties such as trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, and calendars may be provided to licensed private clubs, airport lounges, public service permittees, and single event permittees but only to the extent allowed by federal law 27 C.F.R. Section 6.85 if they bear advertising matter and are primarily valuable to the retailer as point of sale advertising.

(ii) Light beer retailer advertising specialties as described in Subsection (2)(c)(i) may be provided to licensed taverns, private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member, if the price is collected within 30 days of the sale date, and if they bear advertising matter and are primarily valuable to the retailer as point of sale advertising.

(d) (i) Trade literature, recipes, brochures, wine lists, and wine menus relating to liquor, wine, and heavy beer products may be provided to licensed private clubs, restaurants with a state liquor license, airport lounges, special use permittees, and single event permittees.

(ii) Trade literature, recipes, and brochures relating to light beer products may be provided to licensed on-premise beer retailers, off-premise beer

retailers licensed by local authority, private clubs, restaurants with a state liquor license, airport lounges, special use permittees, and single event permittees.

(e)(i) Glassware that bears advertising matter relating to liquor, wine, and heavy beer, and identifying the industry member or the industry member's product may be provided to private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member and the price is collected within 30 days of the sale date.

(ii) Glassware that bears advertising matter relating to light beer and identifying the industry member or the industry member's product may be provided to licensed on-premise beer retailers, private clubs, airport lounges, public service permittees, and single event permittees if sold at a price not less than the cost to the industry member and the price is collected within 30 days of the sale date.

(f) Beer and wine tapping accessories such as standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and coil cleaning services may be provided to private clubs, restaurants with a state liquor license, airport lounges, public service permittees, and single event permittees. Light beer tapping accessories, coil cleaning services, and supplies also may be provided to licensed on-premise beer retailers. All wine tapping accessories referenced in this subsection shall be sold at a price not less than the cost to the industry member and the price shall be collected within 30 days of the sale date. All wine services and supplies referenced in this subsection shall be sold at reasonable market price for the locality and the price shall be collected within 30 days of the sale. All light beer tapping accessories referenced in this subsection may be provided without charge.

(3) Samples of liquor, wine, and heavy beer may be provided to the department and to licensed retailers under the following conditions:

(a) An industry member may submit department samples to the department for product testing, analysis, and sampling, but only with the department's permission.

(b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.

(c) Each sample of liquor may not exceed 1 liter. Each sample of wine and heavy beer may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters.

(d) Department samples submitted to the department shall be shipped prepaid by the industry member by common carrier and not via United States mail directly to the department's central administrative warehouse office. Department samples may not be shipped to any other location within the state.

(e) Department samples submitted to the department shall be accompanied by a letter from the industry member clearly identifying the product as a "department sample", and clearly stating the FOB case price of the product.

(f) The department may transfer listed items from current stock for use as comparison control samples or to verify product spoilage as deemed appropriate. Each sample shall be billed back, debited, to their respective industry members.

(g) The department shall account for, label, and record all department samples received or transferred, account for their disposition, and maintain a record of the samples and their disposition for a two-year period.

(h) The department shall affix to each bottle or container a label clearly identifying the product as a "department sample".

(i) Each department sample delivered to the department or transferred from the department's current stock shall be disposed of at the discretion of the department in one of the following ways:

(i) tested and analyzed with the remaining contents destroyed under controlled and audited conditions established by the department;

(ii) entire contents destroyed under controlled and audited conditions established by the department; or

(iii) added to the inventory of the department for sale to the public.

(j) An industry member, for purposes of educating licensed retailers of the quality and characteristics of the industry member's liquor, wine, or heavy beer product may utilize department trade show samples for tasting and analysis purposes only.

(k) Department trade show samples shall be shipped prepaid by the industry member by common carrier and not via United States mail directly to the department's central administrative warehouse office. These samples may not be shipped to any other location within the state.

(l) Department trade show samples shall be accompanied by a letter from the industry member clearly identifying the product as a "department trade show sample", and stating the name, time, and location of the trade show, the FOB case price of the product, and the name of the industry member who will be representing the product at the trade show.

(m) The department shall assess a reasonable handling, labeling, storage, and delivery fee for each department trade show sample received.

(n) The department shall affix to each bottle or container a label clearly identifying the product as a "department trade show sample".

(o) The department shall account for and record each department trade show sample received, account for its disposition, and maintain a record of the samples and their disposition for a two-year period.

(p) The department shall transport department trade show samples to the appropriate trade show designated in the letter described in Subsection (3)(l) and shall deliver the sample to the industry member designated to represent the product at the trade show.

(q) Department trade show samples may not be removed from the premises of the trade show.

(4) The department shall take reasonable measures to ensure that only industry members, licensed retailers, trade show permittees, their employees and agents, and department personnel are in attendance, and to ensure that retailer trade show samples are not removed from the premises except by the department.

(5) Industry members may charge a fee to trade show attendees for tasting samples of their product at a department trade show.

(6) At the conclusion of the trade show, the department shall take possession of all department trade show sample bottles and:

(a) destroy the unused portion of all opened sample bottles under controlled and audited conditions established by the department; and

(b) either destroy the contents of unopened sample bottles under controlled and audited conditions established by the department or return the bottles to the department and add them to the inventory of the department for sale to the public.

(7) Persons other than authorized department officials may not be in possession of department or department trade show samples except as otherwise provided.

(8) Samples of light beer may be provided by a light beer industry member to a licensed on-premise beer retailer, off-premise beer retailer licensed by local authority, private club, restaurant with a liquor license, airport lounge, public service permittee, and single event permittee. For each on-premise beer retailer or liquor licensee or permittee, the industry member may give not more than two gallons of any brand of light beer, except that if a particular product is not available in a size within the quantity limitation an industry member may furnish the next largest size. For each off-premise beer retailer, the industry member may give not more than two liters of any brand of light beer.

(9) Educational seminars may involve an industry member under the following conditions:

(a) An industry member may provide or participate in educational seminars involving the department and its employees, retailers, holders of educational or scientific special use permits, or other industry members regarding such topics as merchandising and product knowledge, and tours of alcoholic beverage manufacturing facilities. An industry member may not pay a department employee's, retailer's, or permittee's expenses or compensate them for attending these seminars and tours.

(b) An industry member may conduct tastings for the department, at the department's request, for licensed industry representatives, but only at the department's central administrative warehouse office, and for licensed retailers authorized to sell the type of products to be tasted, but only at department trade shows. Tastings may not be offered to the general public. The industry member may only use department, department trade show, or industry representative samples when conducting any tasting.

(10) An industry member may participate in retailer association activities, and may:

(a) display its products at a retailer convention or trade show, except that liquor, wine, and heavy beer products may only be displayed at department trade shows and products shall be processed, labeled, and delivered to the trade show by the department under the terms and conditions of this title;

(b) rent display booth space if the rental fee is not excessive and is the same as paid by all exhibitors;

(c) provide its own hospitality which is independent from association sponsored activities;

(d) purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as paid by all exhibitors; and

(e) make payments for advertisements in programs or brochures issued by retailer associations at a retailer convention or trade show if the total payments made by an industry member for all such advertisements do not exceed that allowed by federal law per year for any retailer association as provided in 27 C.F.R. Section 6.100.

(11) An industry member may contribute to charitable, civic, religious, fraternal, educational, or community activities. These contributions may not be given to influence a retailer in the selection of the alcoholic beverage products which may be sold at these activities and events. If the industry member's contribution influences, directly or indirectly, the retailer in the selection of alcoholic beverage products, and a competitor's alcoholic beverage products are excluded in whole or in part from sale at the activity or event, the industry member and the retailer violate the provisions of this section.

(12) An industry member, who is also engaged in business as a bona fide vendor of other merchandise, such as groceries or drugs, may sell that merchandise to a retailer if:

(a) the merchandise is sold at its fair market value;

(b) the merchandise is not sold in combination with alcoholic beverages; and

(c) the merchandise is itemized separately on the industry member's invoices and other records.

(13) Things of value covered in other subsections of this section may be furnished to retailers only as provided in those subsections.

(14) (a) A liquor, wine, and heavy beer industry member may assist the department in ordering, shipping, and delivering merchandise, new product

notification, listing and delisting information, price quotations, product sales analysis, shelf management, educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit to the department samples of their products and price lists. However, an industry member may not solicit either in person, by mail, or otherwise, any state store personnel for the purpose or with the intent of furthering the sale of a particular brand or brands of alcoholic beverage product as against another brand or brands. Any visitations to a state store or package agency by an industry member shall be confined to the customer areas of the store. Calls on the state warehouse by industry members are to be confined to the office area only unless otherwise approved.

(b) A light beer industry member may assist licensed on-premise beer retailers, off-premise beer retailers licensed by local authority, private clubs, restaurants with liquor licenses, airport lounges, public service permittees, and single event permittees in ordering, shipping, and delivering light beer merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, educational seminars, and may, for the purpose of acquiring new listings, solicit orders from them and submit to them samples of their light beer products and price lists.

(c) A light beer industry member may, at a licensed on-premise beer retailer, off-premise beer retailer licensed by local authority, private club, restaurant with liquor license, airport lounge, public service permittee and single event permittee premises or establishment, stock, rotate, and affix the price to light beer products which they sell, provided products purchased from other industry members are not altered or disturbed.

(15)(a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to pay the department or any retailer licensed under this title by the commission or by local authority for any advertising, display, or distribution service as defined in federal law 27 C.F.R. Sections 6.51 through 6.56.

(b) An industry member may not, directly or indirectly, share the cost of an advertisement with a retailer.

(c) An industry member may give, furnish, loan, rent, or sell copy ready art, newspaper cuts, mats or engraved blocks to licensed beer retailers for use in beer retailer advertisements to the extent such advertisements are authorized by this title.

(16) It is unlawful for any industry member, directly or indirectly or through an affiliate, to guarantee any loan or the repayment of any financial obligation of a retailer including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

(17)(a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce light beer purchases by extending to any beer retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge of the retailer through the payment of cash or its equivalent, from all indebtedness arising from the transaction, so long as that light beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month, and light beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) First party instate checks which are honored on presentment and which are received under the terms prescribed in Subsection (17)(a) are considered cash payments.

(18)(a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to require the department to take and dispose of a certain quota of any alcoholic products or to require a beer retailer or wholesaler to take and dispose of a certain quota of any light beer products.

(b) A requirement that the department purchase one product in order to purchase another or that a beer retailer or wholesaler purchase one light beer product in order to purchase another is also prohibited.

(c) Subsection (18) does not preclude the selling, at a special combination price, two or more kinds or brands of products so long as the department or beer retailer has the option of purchasing either product at the usual price and is not required to purchase any product he or she does not want.

(d) An industry member may package and distribute alcoholic beverages in combination with other non-alcoholic items or products.

(e) The combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department.

(19) It is unlawful for any industry member, directly or indirectly or through an affiliate, to provide financial, legal, administrative, or other assistance to a retailer or wholesaler to obtain a license or permit.

Section 19. Section Enacted.

Section 32A-12-604, Utah Code Annotated 1953, is enacted to read:

32A-12-604. Commercial bribery.

Federal law 27 U.S.C. Section 205(c) and 27 C.F.R. Sections 10.1 through 10.24 which makes it unlawful for any industry member directly or indirectly or through an affiliate to induce a wholesaler or retailer engaged in the sale of alcoholic beverages, to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer is hereby adopted and made applicable to light beer industry members doing business in this state.

Section 20. Section Enacted.

Section 32A-12-605, Utah Code Annotated 1953, is enacted to read:

32A-12-605. Consignment sales.

(1) Federal law 27 U.S.C. Section 205(d) and 27 C.F.R. Sections 11.1 through 11.46, which makes it unlawful for an industry member, directly or indirectly or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of alcoholic beverages, or for any wholesaler or retailer to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or his agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce is hereby adopted and made applicable to light beer industry members doing business in this state.

(2) This section does not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

Section 21. Section Enacted.

Section 32A-12-606, Utah Code Annotated 1953, is enacted to read:

32A-12-606. Unlawful acts involving consumers.

(1) It is unlawful for any industry member, directly or indirectly or through an affiliate, to give away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department, local industry representative licensees, and licensed alcoholic beverage retailers to the extent authorized by this title. This does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served as part of a promotion of its products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to engage in any advertisement or promotional scheme that requires the purchase or sale of an alcoholic beverage, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity.

(3) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to pay, give, or deliver to any person any money or any other thing of value, including rebates, refunds, or prizes, based upon the purchase, display, use, sale, or consumption of alcoholic beverages.

(4) It shall be unlawful for any industry member or retailer to sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that:

(a) involves the display of drinking scenes;

(b) overtly promotes the consumption of alcoholic products;

(c) offers alcoholic products to the general public without charge; or

(d) takes place on the premises of a school, college, university, or other educational institution.

Section 22. Repealer.

Section 32A-1-124, Representatives — Residency — Licensing, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1991;

Section 32A-12-402, Canvassing and soliciting prohibited, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990; and

Section 32A-12-403, Disposition of samples, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, are repealed.

Section 23. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 21
H. B. No. 37
Passed February 12, 1993
Approved February 25, 1993
Effective May 3, 1993

STUDENT DONATIONS FOR COLLEGE AND UNIVERSITY LIBRARIES

By Nancy S. Lyon
Rob W. Bishop
Beverly Ann Evans
Ronald J. Greensides
Neal B. Hendrickson
Patricia B. Larson
Kurt E. Oscarson
Jordan Tanner
Phil H. Uipi
Grant D. Protzman
Michael G. Waddoups
M. Keele Johnson
Gerry A. Adair

AN ACT RELATING TO HIGHER EDUCATION; PROVIDING FOR A REALLOCATION AND DISTRIBUTION OF MONIES REMAINING IN THE STUDENT DONATIONS FOR COLLEGE AND UNIVERSITY LIBRARIES MATCHING PROGRAM AS OF JULY 1, 1994; REMOVING THE SUNSET DATE ON THE PROGRAM; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53B-7-303, AS ENACTED BY CHAPTER 226, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 53B-7-303, Utah Code Annotated 1953, as enacted by Chapter 226, Laws of Utah 1990, is amended to read:

53B-7-303. Partial distribution -- Reallocation — Report to Legislature.

(1)(a) If an institution is unable to certify matching funds for its total allocation during the fiscal year, the State Board of Regents shall distribute only that portion of the allocation for which matching funds were obtained.

(b) The board may reallocate and distribute any money appropriated but not distributed under this part by July 1, 1994, to any institution that has raised sufficient matching monies under Subsection 53B-7-302(3)(a).

(2) Funds not allocated or expended during the fiscal year are nonlapsing.

(3) The board shall prepare an annual report for the Legislature on the relative success of programs authorized under this part [prior to the 1991 General Session of the Legislature].

[(4) The program authorized under this part shall terminate June 30, 1993, unless reauthorized by the Legislature.]

CHAPTER 22
S. B. No. 1
Passed February 3, 1993
Approved February 25, 1993
Effective February 25, 1993

RETIREMENT SERVICE CREDIT

By Craig A. Peterson

AN ACT RELATING TO PENSIONS; PROVIDING THAT NO LESS THAN EIGHT MONTHS OF FULL-TIME SERVICE CONSTITUTES A SERVICE YEAR; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-2-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-3-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 49-2-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-2-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of fixed payments regularly made by an employer to an employee for services rendered to the employer, including performance-based bonuses, which by its nature is currently includable in gross income and which is subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law. It includes amounts which the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law. "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(b) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) payments upon termination, accumulated lump-sum vacation, sick leave payments, or any other special payments except performance-based bonuses and cost-of-living adjustments which are set by a policy of the employing unit to cover all employees or a distinct class of employees; or

(vi) uniform, travel, or similar allowances.

(2) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including but not limited to the State Board of Education and its instrumentalities, any institution of higher learning and its branches, any school district and its instrumentalities, vocational and technical schools, and any entity arising out of a consolidation agreement between entities under this definition.

(3) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

[~~(a) It~~] (b)(i) "Employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

[~~(b) An "appointive~~] (ii) "Appointive officer" means a person appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit who earns $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

(4) "Employer" or "employing unit" means any department, educational institution, political subdivision, or organization or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

(5) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement. However, the percentage increase in any one of the years used may not exceed the previous year's salary by more than the blanket salary increase given by the employer plus 10%, except in cases where the employing unit provides acceptable documentation to the board that this limitation has been exceeded because: (a) the member has transferred from another employing unit; (b) the member has been promoted to a new position; or (c) the years used are not consecutive. For purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last salary rate from the date of the termination of employment to the date retirement becomes effective. If participating service is less than five years, final average salary means the average annual compensation paid to the member during the full period of participating service.

(6) "Normal retirement age" means the age of 65 years.

(7) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization which receives public funds. The term does not include political subdivisions, departments, or educational institutions. Public funds are those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

(8) "Regular full-time employee," in qualifying for membership in the system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit. It includes a teacher who teaches half-time or more, or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided.

(9) "Years of service" or "service years" means: (a) the number of periods, each to consist of 12 full months; or (b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter. For a teacher, school administrator, or other contract employee of an educational institution, not less than [nine] eight months of full-time service constitutes a service year.

Section 2. Section Amended.

Section 49-3-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-3-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of fixed payments regularly made by an employer to an employee for services rendered to the employer, including performance-based bonuses and cost of living adjustments, which by its nature is currently includable in gross income and which is subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law. It includes amounts which the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law. "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(b) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) payments upon termination, accumulated lump-sum vacation, sick leave payments, or any other special payments except performance-based bonuses which are set by policy of the employing unit to cover all employees or a distinct class of employees; or

(vi) uniform, travel, or similar allowances.

(2) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including but not limited to the State Board of Education and its instrumentalities, any institution of higher learning and its branches, any school district and its instrumentalities, vocational and technical schools, and any entity arising out of a consolidation agreement between entities under this definition.

(3) "Effective date" means 12:01 a.m., July 1, 1986.

(4) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

[~~(a) It~~] (b)(i) "Employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

[~~(b) An "appointive~~] (ii) "Appointive officer" means a person appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit and who earns $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

(5) "Employer" or "employing unit" means any department, educational institution, political subdivision, organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

(6) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement. However, the percentage increase in any one of the years used may not exceed the previous year's salary by more than the blanket salary increase given by the employer plus 10%, except in cases where the employing unit provides acceptable documentation to the board that this limitation has been exceeded because: (a) the member has transferred from another employing unit; (b) the member has been promoted to a new position; or (c) the years used are not con-

secutive. For purposes of computing the member's final average salary only, the member is considered to have been in service at his last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

(7) "Normal retirement age" means the age of 65 years.

(8) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization which receives public funds. The term does not include political subdivisions, departments, or educational institutions. Public funds are those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

(9) "Regular full-time employee," in qualifying for membership in the system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit. It includes a teacher who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided.

(10) "Years of service" or "service years" means: (a) the number of periods, each to consist of 12 full months; or (b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter. For a teacher, school administrator, or other contract employee of an educational institution, not less than [~~nine~~] eight months of full-time service constitutes a service year.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Sec. 8, without the governor's signature, or in the case of a veto, the date of the veto override and applies retroactively to include service years beginning July 1, 1990.

CHAPTER 23
S. B. No. 7
Passed February 11, 1993
Approved February 25, 1993
Effective May 3, 1993

ALCOHOLIC BEVERAGES - RESTAURANT HOURS

By Robert C. Steiner

AN ACT RELATING TO ALCOHOLIC BEVERAGES; ALLOWING LIQUOR TO BE SERVED BY RESTAURANT LIQUOR LICENSEES AT THE NOON HOUR; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
32A-4-106, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 32A-4-106, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-4-106. Operational restrictions.

Each person granted a restaurant liquor license and the employees and management personnel of the restaurant shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by a restaurant liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(2) Beginning July 1, 1991, a restaurant liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(d) heavy beer may be served in original containers not exceeding one liter.

(3)(a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the commission.

(b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (a) shall comply with all appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(c) Failure to comply with the operational restrictions under Chapter 10 as set forth in Subsection (b) may result in a suspension or revocation of the restaurant's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5)(a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the restaurant.

(b) A patron or guest may only make purchases in the restaurant from a server designated and trained by the licensee.

(c) Any alcoholic beverage may only be consumed at the patron's or guest's table.

(d) Liquor may not be stored where it is visible to patrons of the restaurant.

(6) Alcoholic beverages may not be dispensed directly to a patron or guest from the storage area but shall be delivered by a server to the patron.

(7) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(8)(a) Liquor may not be sold or offered for sale at a restaurant during the following days or hours:

(i) on the day of any state or national election until after the polls are closed;

(ii) on the day of any local election if closure is required by local ordinance;

[~~(iii) on Saturday, Sunday, and any state or federal legal holiday after 12 midnight and before 12 noon;~~ and]

[~~(iv)~~] (iii) on any other day after 12 midnight and before [~~1 p.m.~~] 12 noon.

(b) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

(9) Alcoholic beverages may not be sold except in connection with an order for food prepared, sold, and served at the restaurant.

(10) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(11) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(12) A restaurant patron or guest may have only one alcoholic beverage at a time before him on his table.

(13) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a patron or guest at a time, except wine as provided in Subsection (2)(c) and heavy beer as provided in Subsection (2)(d).

(14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons or guests of the restaurant.

(15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any location where they are stored or dispensed.

(16) A wine service may be performed and a service charge assessed by the restaurant as authorized by commission rule for wine purchased at the restaurant or carried in by a patron. If wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(17) (a) Beginning January 1, 1991, a person may not bring onto the premises of a restaurant liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee and consume wine pursuant to Subsection (16).

(b) Beginning January 1, 1991, a restaurant, licensed or unlicensed under this title, or its officers, managers, employees, or agents may not allow a person to bring onto the restaurant premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises, except cork-finished wine under Subsection (a).

(c) Beginning January 1, 1991, if any restaurant licensee, or any of its officers, managers, employees, or agents violates this subsection:

(i) the commission may immediately suspend or revoke the restaurant's liquor license and the restaurant licensee is subject to possible criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the restaurant's local liquor license, local consent under Subsection 32A-4-102(1)(c), or local business license.

(18) Alcoholic beverages purchased from the restaurant may not be removed from the restaurant premises.

(19) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic beverages.

(20) An employee of a restaurant liquor licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a food menu except that a statement of availability of a liquor and wine menu on request, the content and form of which is approved by the department, may be attached to or carried on a food menu. The context of both food and liquor and wine menus may not in any manner attempt to promote or increase the sale of alcoholic beverages.

(b) A server, employee, or agent of a licensee may not draw attention to the availability of alcoholic beverages for sale, unless a patron or guest first inquires about it.

(c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic beverage menus.

(22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(23) The following acts or conduct in a restaurant licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that

simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this subsection; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(24) Nothing in Subsection (23) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (23).

(25) (a) Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (a).

(26) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, set-ups, liquor, food, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, set-ups, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(27) Each restaurant liquor licensee shall maintain accounting and other records and documents as the department may require. Any restaurant or person acting for the restaurant, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the restaurant required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, council, or department, or any of their officials or employees, is subject to the immediate suspension or revocation of the restaurant's liquor license and possible criminal prosecution under Chapter 12.

(28) (a) A restaurant liquor licensee may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the restaurant licensee and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year.

(29) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges.

(30) There shall be no transfer of a restaurant liquor license from one location to another, without prior written approval of the commission.

(31) (a) A person, having been granted a restaurant liquor license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) A restaurant liquor license has no monetary value for the purpose of any type of disposition.

(32) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(33) A person's willingness to serve alcoholic beverages may not be made a condition of employment as a server with a restaurant that has a restaurant liquor license.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 24
S. B. No. 8
Passed February 3, 1993
Approved February 25, 1993
Effective May 3, 1993

DRIVER LICENSE REQUIREMENTS

By LeRay McAllister

AN ACT RELATING TO MOTOR VEHICLES; AMENDING REQUIREMENTS FOR DRIVER LICENSE CERTIFICATE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-2-112, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991
41-2-121, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989
41-2-404, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987
41-2-712, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 41-2-112, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

41-2-112. Application for license or endorsement — Fee required — Tests — Expiration dates of licenses and endorsements — Information required — Previous licenses surrendered — Driving record transferred from other states — Reinstatement — Fee required.

(1) An application for any original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 41-2-103.

(2) An application and fee for an original class D license entitles the applicant to:

(a) not more than three attempts to pass both the written and skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed after the written test is passed; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for an original class M license entitles the applicant to:

(a) not more than three attempts to pass both the written and skills tests for a class M license within six months of the date of the application;

(b) a learner permit if needed after the written test is passed; and

(c) an original class M license and license certificate after all tests are passed.

(4) An application and fee for a motorcycle or taxicab endorsement entitles the applicant to:

(a) not more than three attempts to pass both the written and skills tests within six months of the date of the application;

(b) a motorcycle learner permit if needed after the motorcycle written test is passed: and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(5) An application and fees for a commercial class A, B, or C license entitles the applicant to:

(a) not more than two attempts to pass a written test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the written test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(6) An application and fee for a CDL endorsement entitles the applicant to:

(a) not more than two attempts to pass a written test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(7) If a CDL applicant does not pass a written test, skills test, or an endorsement test within the number of attempts provided in Subsection (5) or (6), each test may be taken two additional times within the six months for the fee provided in Section 41-2-103.

(8) An original, an extension, or a renewal license and any endorsement to the license issued before October 1, 1991, expires on the birth date of the applicant in the fourth year following the year the license certificate is issued.

(9) (a) An original license issued after September 30, 1991, expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) A renewal license or an extension to a license issued after September 30, 1991, expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) A duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was issued.

(10) Notwithstanding Subsections (8) and (9), until April 1, 1992, a driver with a valid Utah operator license obtained prior to October 1, 1989, who surrenders the license to obtain a commercial driver li-

cense shall have an expiration date on his commercial driver license that is four years after the expiration date on the license surrendered.

(11)(a) In addition to the information required by Title 63, Chapter 46b, Administrative Procedures Act, for requests for agency action, each application shall:

[~~(a)~~] (i) state the full legal name, [~~date of~~] birth date, sex, Social Security number, and residence address of the applicant;

[~~(b)~~] (ii) briefly describe the applicant;

[~~(c)~~] (iii) state whether the applicant has previously been licensed to operate a motor vehicle and, if so, when and by what state or country;

[~~(d)~~] (iv) state whether the applicant has ever had any operator license suspended, revoked, disqualified, or denied in the last six years, or whether the applicant has ever had an operator license application refused, and if so, the date of and reason for the suspension, revocation, disqualification, denial, or refusal;

[~~(e)~~] (v) provide all other information the division requires; and

[~~(f)~~] (vi) be signed and verified before a person authorized to administer oaths.

(b) An applicant's Social Security number shall be maintained on the computerized records of the division.

(12) The division shall require proof of every applicant's name, birth date, and birthplace by at least one of the following means:

(a) current operator license;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof such as church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(13) When an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled. However, a disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.

(14)(a) When an application is received from a person previously licensed in another state to operate a motor vehicle, the division shall request a copy of the operator's record from the other state.

(b) When received, the operator's record becomes part of the operator's record in this state with the same effect as though entered originally on the operator's record in this state.

(15) An application for reinstatement of a license after the suspension, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 41-2-103.

(16) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 41-2-103.

Section 2. Section Amended.

Section 41-2-121, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

41-2-121. License certificates issued to operators by class of vehicle — Contents — Anatomical gifts indication — Temporary licenses — Minors' licenses and permits.

(1) (a) The division shall issue to every person privileged to operate a motor vehicle, a license certificate indicating the type or class of vehicle the licensee may operate.

(b) A person may not operate a class of motor vehicle unless licensed in that class.

(2) (a) Every license certificate shall bear:

(i) the [~~Social Security number and any~~] distinguishing number assigned to the licensee by the division;

(ii) the name, [~~date of~~] birth date, and residence address of the licensee;

(iii) a brief description of the licensee for the purpose of identification;

(iv) a photograph of the licensee; and

(v) a photograph or other facsimile of the licensee's signature.

(b) After May 3, 1993, a new license certificate issued by the division may bear the Social Security number of the licensee only at the request of the licensee.

[~~(b)~~] (c) (i) The license shall be of an impervious material, resistant to wear, damage, and alteration.

(ii) The size, form, and color of the license shall be as prescribed by the commissioner.

(iii) The commissioner may also prescribe the issuance of a special type of limited license under Subsection 41-2-127(4)[;] and may authorize the issuance of a renewed or duplicate license without a picture if the applicant is not then living in the state.

(3)(a)(i) With every license issued or renewed, the division shall, upon request of the licensee, provide a method of identification on the license which indicates the licensee's intent to make an anatomical gift under Title 26, Chapter 28, [~~the~~] Uniform Anatomical Gift Act.

(ii) The statement shall be signed in the presence of at least one witness, who shall sign the statement in the presence of the licensee.

(b) The division or any of its employees are not liable for any loss, detriment, or injury, directly or indirectly, which results from false or inaccurate information regarding the anatomical gift notification.

(4)(a)(i) The division[;] upon determining after an examination that an applicant is mentally and physically qualified to be granted a license[;] may issue to an applicant a receipt for the fee[~~, which~~].

(ii) The receipt serves as a temporary license certificate allowing him to operate a motor vehicle while the division is completing its investigation to determine whether he is entitled to be licensed.

(b) The receipt shall be in his immediate possession while operating a motor vehicle, and it is invalid when the applicant's license certificate has been issued or when, for good cause, the privilege has been refused.

(c) The division shall indicate on the receipt a date after which it is not valid as a license certificate.

(5) The division shall distinguish learner permits, temporary permits, and licenses issued to any person younger than 21 years of age by use of the plainly printed word "minor" or the use of a special color not used for other license certificates.

(6) The division shall issue temporary licenses of the same nature, except as to duration, as the licenses which they temporarily replace, as are necessary to implement applicable provisions of Section 41-2-130.

Section 3. Section Amended.

Section 41-2-404, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

41-2-404. Identification card — Contents — Specifications.

(1) The commissioner shall issue a card of identification which provides:

(a) all the information contained in the application, other than the applicant's:

(i) Social Security number, except as provided in Subsection (3); and

(ii) place of birth[~~, and~~];

(b) a photograph of the applicant; and

(c) a facsimile of the applicant's signature.

(2) The card shall be of an impervious material, resistant to wear, damage, and alteration. The size, form, and color of the card is prescribed by the commissioner.

(3) At the applicant's request, the card may include any of the following:

(a) a statement that the applicant has a special medical problem or allergies to certain drugs, for the purpose of medical treatment;

(b) the applicant's Social Security number.

(4) The card may also indicate the applicant's intent to make an anatomical gift, under the same procedure as provided for an operator license under Subsection 41-2-121(3).

Section 4. Section Amended.

Section 41-2-712, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

41-2-712. Description of CDL — Information to be included.

(1) The CDL shall be printed with the identifying words "Commercial Driver License" or "CDL".

(2) To the maximum extent practicable, the license shall be resistant to alteration.

(3) The CDL shall include[~~, but is not limited to the following~~]:

(a) the legal name and principal place of residence of the holder;

(b) the holder's photograph in color;

(c) a physical description of the holder, including sex and height;

(d) the holder's [~~date of~~] birth date;

(e) the holder's Utah driver license number;

[~~(f) the holder's Social Security number, unless the license is for a nonresident;~~]

[~~(g)~~] (f) the holder's signature;

[~~(h)~~] (g) the class or type of commercial motor vehicle or vehicles the holder is authorized to drive;

[~~(i)~~] (h) any endorsements or restrictions to which the holder is subject;

[~~(j)~~] (i) the name of the issuing state; and

[~~(k)~~] (j) the dates between which the CDL is valid.

(4) The CDL may include the holder's Social Security number only upon the request of the holder.

CHAPTER 25
S. B. No. 10
Passed February 8, 1993
Approved February 25, 1993
Effective February 25, 1993

SUBCOMMITTEE OF UTAH SUBSTANCE ABUSE COORDINATING COUNCIL

By Delpha A. Baird

AN ACT RELATING TO CRIMINAL JUSTICE AND SUBSTANCE ABUSE; CREATING A JUDICIARY SUBCOMMITTEE ON THE UTAH SUBSTANCE ABUSE COORDINATING COUNCIL; NAMING ITS MEMBERSHIP; ADDING OTHER MEMBERS TO GOVERNOR'S SUBCOMMITTEES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-25-8, AS LAST AMENDED BY CHAPTER 42, LAWS OF UTAH 1991
63-25-9, AS ENACTED BY CHAPTER 99, LAWS OF UTAH 1990
63-25-11, AS LAST AMENDED BY CHAPTER 42, LAWS OF UTAH 1991
63-25-12, AS ENACTED BY CHAPTER 99, LAWS OF UTAH 1990
63-25-13, AS LAST AMENDED BY CHAPTER 42, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 63-25-8, Utah Code Annotated 1953, as last amended by Chapter 42, Laws of Utah 1991, is amended to read:

63-25-8. Creation of council and subcommittees — Membership — Terms.

(1) There is created within the governor's office the Utah Substance Abuse Coordinating Council.

(2) (a) The Utah Substance Abuse Coordinating Council comprises [~~13~~] 14 voting members as follows:

(i) a member of the House of Representatives annually designated by the speaker;

(ii) a member of the Senate annually designated by the president;

(iii) a member of the judiciary annually designated by the chief justice of the Utah Supreme Court;

(iv) the attorney general;

(v) a county commissioner annually designated by the Utah Association of Counties;

(vi) the commissioner of public safety;

(vii) the director of the Division of Substance Abuse;

(viii) the state superintendent of public instruction; and

(ix) the chairmen for the Criminal Justice Subcommittee, the Prevention Subcommittee, [and] the Treatment Subcommittee, and the Judiciary Subcommittee.

(b) (i) The remaining two members shall be appointed by the governor, with the advice and consent of the Senate, as follows:

(A) a representative of the governor; and

(B) one member of the general public.

(ii) The initial member appointed shall serve for one year. The second member appointed shall serve for two years. Each appointment thereafter shall be for two years.

(c) In addition to the members designated under Subsections (2)(a) and (b), the executive director of the Commission on Criminal and Juvenile Justice shall serve as an ex-officio member of the council.

Section 2. Section Amended.

Section 63-25-9, Utah Code Annotated 1953, as enacted by Chapter 99, Laws of Utah 1990, is amended to read:

63-25-9. Chairman — Vacancies — Quorum — Expenses.

(1) The Utah Substance Abuse Coordinating Council shall annually select one of its members to serve as chairman.

(2) The chairman may not serve for more than [~~two~~] six consecutive years.

(3) A vacancy on the council shall be filled for the unexpired term in the same manner as the position was originally filled.

(4) A majority of the members of the council constitutes a quorum.

(5) Members of the council shall be reimbursed for actual and necessary travel expenses incurred as established by the Division of Finance if the agencies they represent do not provide reimbursement.

Section 3. Section Amended.

Section 63-25-11, Utah Code Annotated 1953, as last amended by Chapter 42, Laws of Utah 1991, is amended to read:

63-25-11. Creation of subcommittees — Membership — Terms.

(1) There is created within the governor's office, the Criminal Justice Subcommittee, the Treatment Subcommittee, [and] the Prevention Subcommittee, and the Judiciary Subcommittee.

(2) (a) The Criminal Justice Subcommittee comprises a minimum of [~~12~~] 13 voting members as follows:

(i) a representative annually designated by the Utah Chiefs of Police Association;

(ii) a representative annually designated by the Utah [~~Sheriffs'~~] Sheriffs Association;

(iii) a representative annually designated by the Statewide Association of [~~Prosecutors~~] Public Attorneys;

(iv) a representative annually designated by the [~~Judicial Council~~] Judiciary Subcommittee from its membership;

(v) a representative annually designated by the Department of Commerce;

(vi) [~~a representative~~] an assistant attorney general annually designated by the attorney general;

(vii) a representative annually designated by the commissioner of the Department of Public Safety;

(viii) the director of the Utah Division of Investigation or his designee;

(ix) the director of the Department of Corrections or his designee;

(x) the director of the Division of Youth Corrections or his designee;

[~~(x)~~] (xi) a representative annually designated by the Prevention Subcommittee from its membership; and

[~~(xi)~~] (xii) a representative annually designated by the Treatment Subcommittee from its membership.

(b) The remaining member shall be a representative from a drug task force within the state appointed by the governor, with the advice and consent of the Senate, to serve up to two years.

(c) In addition to the members designated under Subsection (a):

(i) the Federal Bureau of Investigation may annually designate a representative to be a voting member of the subcommittee;

(ii) the United States Attorney's Office may annually designate a representative to be a voting member of the subcommittee; and

(iii) the Drug Enforcement Administration may annually designate a representative to be a voting member of the subcommittee.

(d) Additional subcommittee members may be selected by a majority of the subcommittee to serve as voting members for two-year terms.

(3) (a) The Treatment Subcommittee comprises a minimum of [~~12~~] 15 voting members as follows:

(i) an urban representative annually designated by the Utah Association of [~~Alcohol and Drug Program~~] Substance Abuse Providers;

(ii) a rural representative annually designated by the Utah Association of [~~Alcohol and Drug Program~~] Substance Abuse Providers;

(iii) a representative annually designated by the Division of Substance Abuse;

(iv) a representative annually designated by the director of the Division of Youth Corrections;

(v) a registered pharmacist annually designated by the Utah Pharmaceutical Association;

(vi) a representative annually designated by the Judiciary Subcommittee from its membership;

[~~(iv)~~] (vii) a representative annually designated by the Utah Hospital Association;

[~~(v)~~] (viii) a [~~representative~~] licensed physician annually designated by the Utah Medical Association;

[~~(vi)~~] (ix) a [~~representative~~] licensed psychologist annually designated by the Utah Psychological Association;

[~~(vii)~~] (x) a [~~representative~~] licensed social worker annually designated by the National Association of Social Workers (Utah Chapter);

[~~(viii)~~] (xi) a [~~representative~~] registered nurse annually designated by the Utah Nurses Association;

[~~(ix)~~] (xii) a [~~representative~~] counselor annually designated by the Utah Association of [~~Alcoholism~~] Alcohol and Drug Abuse Counselors;

[~~(x)~~] (xiii) a representative annually designated by the Utah Association of Local Health Officers;

[~~(xi)~~] (xiv) a representative annually designated by the Prevention Subcommittee from its membership; and

[~~(xii)~~] (xv) a representative annually designated by the Criminal Justice Subcommittee from its membership.

(b) Additional subcommittee members may be selected by a majority of the subcommittee to serve as voting members for two-year terms.

(4) (a) The Prevention Subcommittee comprises a minimum of [~~16~~] 18 voting members as follows:

(i) a representative annually designated by the director of the Division of Substance Abuse;

(ii) the executive director of the Utah Council for Crime Prevention or his designee;

(iii) a representative annually designated by the Judiciary Subcommittee from its membership;

[~~(ii)~~] (iv) a representative annually designated by the state superintendent of public instruction, State Office of Education;

[~~(iii)~~] (v) the commissioner of higher education, from the State Board of Regents, or his designee;

[~~(iv)~~] (vi) the executive director of the Department of Health or his designee;

[~~(v)~~] (vii) the president of the Utah Federation for Drug-Free Youth or his designee;

[~~(vi)~~] (viii) the [~~chairman~~] president of the Governor's Youth Council or his designee;

[~~(vii)~~] (ix) a representative annually designated by the Treatment Subcommittee from its membership;

[~~(viii)~~] (x) a representative annually designated by the Criminal Justice Subcommittee from its membership;

[~~(ix)~~] (xi) a superintendent from an urban school district or his Drug-Free Schools program director, annually designated by the Utah School Superintendents Association;

[(x)] (xii) a superintendent from a rural school district or his Drug-Free Schools program director, annually designated by the Utah School Superintendents Association;

[(xi)] (xiii) the president of the state Parent Teacher Association [Health Commissioner] or his designee;

[(xii)] (xiv) an urban substance abuse prevention specialist annually designated by the Utah Association of [Alcohol and Drug Program] Substance Abuse Providers;

[(xiii)] (xv) a representative annually designated by the Industrial Commission of Utah; and

[(xiv)] (xvi) a rural substance abuse prevention specialist annually designated by the Utah Association of [Alcohol and Drug Program] Substance Abuse Providers.

(b) (i) The remaining two members shall be appointed by the governor, with the advice and consent of the Senate, as follows:

(A) a representative of the media; and

(B) a representative of the academic and research community who is knowledgeable in the field of substance abuse prevention.

(ii) The initial member appointed shall serve for one year. The second member appointed shall serve for two years. Each appointment thereafter shall be for two years.

(c) In addition to the members designated under Subsections (a) and (b), the Utah representative for the Southwest Regional Center for Drug-Free Schools and Communities may be a voting member of the Prevention Subcommittee.

[(c)] (d) Additional subcommittee members may be selected by a majority of the subcommittee to serve as voting members for two-year terms.

(5) (a) The Judiciary Subcommittee comprises a minimum of 19 voting members as follows:

(i) a circuit court judge annually designated by the presiding officer of the Judicial Council;

(ii) a juvenile court judge annually designated by the presiding officer of the Judicial Council;

(iii) a district court judge annually designated by the presiding officer of the Judicial Council;

(iv) an appellate court judge annually designated by the presiding officer of the Judicial Council;

(v) a justice court judge annually designated by the presiding officer of the Judicial Council;

(vi) two court executives annually designated by the presiding officer of the Judicial Council;

(vii) two court administrative officers annually designated by the presiding officer of the Judicial Council;

(viii) a representative of court treatment or prevention programs annually designated by the presiding officer of the Judicial Council;

(ix) a licensed physician from a public health agency annually designated by the executive director of the Department of Health;

(x) a representative annually designated by the director of the Division of Substance Abuse;

(xi) a defense attorney annually designated by the Utah State Bar;

(xii) a prosecuting attorney annually designated by the Utah Prosecution Council;

(xiii) a dean of a Utah law school or his designee, annually designated by the Utah State Bar Commission;

(xiv) an assistant attorney general annually designated by the attorney general;

(xv) a representative annually designated by the Criminal Justice Subcommittee from its membership;

(xvi) a representative annually designated by the Prevention Subcommittee from its membership; and

(xvii) a representative annually designated by the Treatment Subcommittee from its membership.

(b) In addition to the members designated under Subsection (a), the presiding federal judge may annually designate a federal trial judge to be a voting member of the subcommittee.

(c) Additional subcommittee members may be selected by a majority of the subcommittee to serve as voting members for two-year terms.

Section 4. Section Amended.

Section 63-25-12, Utah Code Annotated 1953, as enacted by Chapter 99, Laws of Utah 1990, is amended to read:

63-25-12. Chairman — Vacancies — Quorum — Expenses.

(1) The members of the Criminal Justice, Treatment, [and] Prevention, and Judiciary Subcommittees shall each annually select one of their members as chairman.

(2) The chairmen of the subcommittees may not serve for more than [two] six consecutive years.

(3) A vacancy on any subcommittee shall be filled for the unexpired term in the same manner as the position was originally filled.

(4) A majority of the members of a subcommittee constitutes a quorum for the transaction of business by the subcommittee.

(5) Members of the subcommittees may be reimbursed for their actual and necessary travel expenses incurred as established by the Division of Finance if the agencies they represent do not provide reimbursement.

Section 5. Section Amended.

Section 63-25-13, Utah Code Annotated 1953, as last amended by Chapter 42, Laws of Utah 1991, is amended to read:

63-25-13. Duties of subcommittees.

(1) The Criminal Justice, Prevention, [and] Treatment, and Judiciary Subcommittees shall:

(a) recommend a statewide substance abuse policy;

(b) [~~set~~] develop priorities for programs to combat substance abuse; and

(c) recommend executive, legislative, and judicial action based upon policy needs and identified gaps in the continuum of services.

(2) The subcommittees shall meet quarterly or more frequently as determined necessary by the chairman.

(3) Each subcommittee shall report its recommendations to the Substance Abuse Coordinating Council at the quarterly meetings.

Section 6. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 26
S. B. No. 27
Passed February 3, 1993
Approved February 25, 1993
Effective July 1, 1993

MOTOR VEHICLE SAFETY INSPECTION ADVISORY COUNCIL

By Wilford R. Black, Jr.
Paul T. Fordham
Eldon A. Money
Alarik Myrin
Craig A. Peterson

AN ACT RELATING TO MOTOR VEHICLES; REPLACING THE SAFETY INSPECTION STATION HEARING BOARD WITH A MOTOR VEHICLE SAFETY INSPECTION ADVISORY COUNCIL; DEFINING ITS MEMBERSHIP AND DUTIES; SPECIFYING DUTIES OF THE UTAH HIGHWAY PATROL FOR SAFETY INSPECTION ADMINISTRATION; REQUIRING THE DEPARTMENT TO COMPILE AND PUBLISH SAFETY INSPECTION REQUIREMENTS FOR SAFETY INSPECTION STATIONS AND PROVIDE UPDATES AS NEEDED; AUTHORIZING CERTAIN FEES; SPECIFYING PENALTIES; MAKING TECHNICAL CHANGES; INCLUDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-802, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992
41-6-156, AS LAST AMENDED BY CHAPTER 242, LAWS OF UTAH 1979
41-6-157, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1957
41-6-158, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-6-161, AS LAST AMENDED BY CHAPTER 11, LAWS OF UTAH 1992
41-6-162, AS LAST AMENDED BY CHAPTER 242, LAWS OF UTAH 1979
41-6-163, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1986
41-6-164, UTAH CODE ANNOTATED 1953
63-55-241, AS LAST AMENDED BY CHAPTERS 7 AND 234, LAWS OF UTAH 1992

RENUMBERS AND AMENDS:
41-6-155.1, (RENUMBERED FROM 41-6-160.5, AS LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992)
41-6-155.2, (RENUMBERED FROM 41-6-160, AS LAST AMENDED BY CHAPTER 11, LAWS OF UTAH 1992)

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

Section 1. Section Amended.

Section 41-1a-802, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-802. Identification number inspectors — Duties.

(1) The commission, designated officers and employees of the division, a person operating [~~an official~~] a safety inspection station under [~~Sections 41-6-160 and~~] Section 41-6-161, and all peace officers of the state are qualified identification number inspectors.

(2) The qualified identification number inspectors shall, upon the application for the first registration in this state of any vehicle:

(a) inspect the identification number of the vehicle;

(b) make a record of the identification number inspection upon an application form provided by the division; and

(c) verify the facts in the application.

Section 2. Section Renumbered and Amended.

Section 41-6-155.1, Utah Code Annotated 1953, which is renumbered from Section 41-6-160.5, as last amended by Chapter 234, Laws of Utah 1992, is renumbered and amended to read:

[~~41-6-160.5~~] 41-6-155.1. Council created — Members — Term — Meetings — Duties.

(1) [~~(a)~~] There is created [~~a hearing board to consist~~] within the department the Motor Vehicle Safety Inspection Advisory Council.

(2) (a) The council is comprised of six members.

(b) The governor shall appoint with the advice and consent of the Senate the following members:

(i) one [~~member~~] representative from the Department of Commerce[~~, one member from the Motor Vehicle Enforcement Division, and~~] with experience in consumer protection administration;

(ii) two representatives from motor vehicle mechanics and motor vehicle repair business owners;

(iii) one member of the motoring public with no former or current affiliation with the motor vehicle sales, repair, or fuel industry or its regulation;

(iv) one peace officer with experience in motor vehicle law enforcement; and

(v) one [~~member~~] representative of the staff of the attorney general who shall serve without voting privileges.

[~~(b) The governor shall appoint all members for a term of four years commencing July 1, 1969.~~]

(3) Each member of the council shall:

(a) be selected on a nonpartisan basis;

(b) be appointed by the governor; and

(c) have been a legal resident of the state for at least one year immediately preceding the date of appointment.

(4) The initial council shall be appointed by July 1, 1993, as follows:

(a) two members shall be appointed for two-year terms;

(b) two members shall be appointed for three-year terms; and

(c) two members shall be appointed for four-year terms.

(5) (a) Members serve from the date of appointment until a replacement is appointed.

(b) Upon expiration of the term of a council member, the governor shall appoint the replacement member to serve a term of four years beginning the day following the expiration of the preceding term.

(6) The council shall elect its own chair and vice-chair at its first regular meeting each calendar year.

[~~(2)(a)~~] (7) [~~The hearing board~~] All meetings of the council shall be called by the superintendent of the [~~Utah~~] highway patrol [~~and shall hear all evidence and information regarding the suspension or revocation of an official inspection station license~~] as needed.

[~~(b) The hearing board shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.~~]

(8) Any three voting members constitute a quorum for the transaction of business that comes before the council.

(9) The members of the council do not receive compensation but may receive travel expenses as determined by the Division of Finance.

(10) The council shall:

(a) hear appeals of administrative actions regarding the suspension or revocation of safety inspection station permits and safety inspector certificates;

(b) advise the department on interpretation, adoption, and implementation of motor vehicle safety inspection standards; and

(c) advise the department on other motor vehicle safety inspection issues as requested by the superintendent.

(11) In conducting appeal hearings on the suspension or revocation of any safety inspection station permit or safety inspector certificate the council may:

(a) compel the attendance of witnesses by subpoena;

(b) require the production of any records or documents determined by it to be pertinent to the subject matter of the hearing; and

(c) apply to the district court of the county where the hearing is held for an order citing any applicant or witness for contempt and for failure to attend, testify, or produce required documents.

Section 3. Section Renumbered and Amended.

Section 41-6-155.2, Utah Code Annotated 1953, which is renumbered from Section 41-6-160, as last amended by Chapter 11, Laws of Utah 1992, is renumbered and amended to read:

[~~41-6-160~~] 41-6-155.2. Department duties — Official inspection stations — Permits — Fees — Suspension or revocation — Utah-based interstate commercial motor carriers.

(1) The department shall:

(a) conduct examinations of every safety inspection station permit applicant and safety inspector certificate applicant to determine whether the applicant is properly equipped and qualified to make safety inspections;

(b) issue safety inspection station permits and safety inspector certificates to qualified applicants;

(c) establish application, renewal, and reapplication fees in accordance with Section 63-38-3 for safety inspection station permits and safety inspector certificates;

(d) provide instructions and all necessary forms, including safety inspection certificates, to [~~official~~] safety inspection stations for the inspection of motor vehicles and the issuance of [~~official~~] the safety inspection certificates [~~of inspection and approval.~~];

[~~(2) (a) The department may~~] (e) charge a [~~fee of~~] $1 fee for each safety inspection certificate[~~.~~];

(f) investigate complaints regarding safety inspection stations and safety inspectors;

(g) compile and publish all applicable safety inspection laws, rules, instructions, and standards and distribute them to all safety inspection stations and provide updates to the compiled laws, rules, instructions, and standards as needed;

(h) establish a fee in accordance with Section 63-38-3 to cover the cost of compiling and publishing the safety inspection laws, rules, instructions, and standards and any updates; and

(i) assist the council in conducting its meetings and hearings.

[~~(b)~~] (2) (a) Receipts from the [fee] fees established in accordance with Subsection (1) are fixed collections to be used by the department for all expenses of the [~~Safety Inspection Section of the~~] Utah Highway Patrol incurred under this section.

[~~(c)~~] (b) Funds received in excess of these expenses shall be deposited in the Transportation Fund.

[~~(3) (a) Application for a permit shall be made upon an official form and granted only when the department is satisfied that the applicant station is properly equipped and has competent personnel to make inspections and adjustments.~~]

[~~(b) Before~~] (3) The department may:

(a) before issuing a safety inspection permit, [the department may] require [the] an applicant, other

than a fleet station or government station, to file a bond that will provide a guarantee that the applicant safety inspection station will make compensation for any damage to a motor vehicle during an inspection or adjustment due to negligence on the part of an applicant or his employees[;];

[~~(4) (a) The department shall supervise and inspect the stations.~~]

(b) establish procedures governing the issuance of safety inspection certificates to Utah-based interstate commercial motor carriers; and

[~~(b) The department may~~] (c) suspend [~~or~~], revoke, or refuse renewal of any safety inspection station permit issued [~~to a station that it~~] when the department finds that the safety inspection station is not:

(i) properly equipped; or

(ii) complying with rules made by the [~~commissioner of public safety.~~] department; and

(d) suspend, revoke, or refuse renewal of any safety inspection station permit or safety inspector certificate issued when the station or inspector has violated any safety inspection law or rule.

[~~(c)~~] (4) The department shall maintain a record of safety inspection station permits and safety inspector certificates issued, suspended, [~~or~~] revoked, or refused renewal under Subsection (3)(c).

[~~(5) (a) Upon receiving notice of the suspension or revocation of his permit, the operator shall immediately terminate all inspection activities and on demand by the department return all certificates of inspection, license, and supplies.~~]

[~~(b) The department shall issue a receipt for all unused certificates of inspection.~~]

[~~(6) The commissioner of public safety may establish procedures governing the issuance of Utah safety inspection certificates to Utah-based interstate commercial motor carriers.~~]

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules:

(a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway;

(b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely;

(c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections;

(d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate;

(e) establishing requirements:

(i) designed to protect consumers from unwanted or unneeded repairs or adjustments;

(ii) for maintaining safety inspection records;

(iii) for providing reports to the department; and

(iv) for maintaining and protecting safety inspection certificates;

(f) establishing procedures for a motor vehicle that fails a safety inspection;

(g) setting bonding amounts for safety inspection stations if bonds are required under Subsection (3)(a); and

(h) establishing procedures for a safety inspection station to follow if the station is going out of business.

(6) The rules of the department:

(a) shall conform as nearly as practical to federal motor vehicle safety standards including 49 CFR 393, 396, 396 Appendix G, and Federal Motor Vehicle Safety Standards 205; and

(b) may incorporate by reference, in whole or in part, the federal standards under Subsection (a) and nationally recognized and readily available standards and codes on motor vehicle safety.

Section 4. Section Amended.

Section 41-6-156, Utah Code Annotated 1953, as last amended by Chapter 242, Laws of Utah 1979, is amended to read:

41-6-156. Inspection by officers — Certificate of inspection.

[~~(a) The members of the state highway patrol or other~~] (1) A peace [~~officers,~~] officer may stop, inspect, and test a vehicle at any time upon reasonable cause to believe that:

(a) a vehicle is unsafe or not equipped as required by law[;]; or

(b) that its equipment is not in proper adjustment or repair[~~, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate~~].

[~~(b) In the event such~~] (2) (a) (i) If a vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the department. [~~Said~~]

(ii) The notice shall:

(A) require that [~~such~~] the vehicle be placed in safe condition and its equipment in proper repair and adjustment[~~, specifying~~];

(B) specify the [~~particulars with reference thereto~~] repairs and adjustments needed; and

(C) require that a safety inspection certificate [~~of inspection and approval~~] be obtained within five days.

[~~(c) In the event any such~~] (b) If a vehicle is, in the [~~reasonable~~] judgment of the peace officer, [~~in such condition that further operation would be~~] hazardous to operate, the peace officer may require [~~in addition~~] that the vehicle:

(i) not be operated under its own power; or [~~that it~~]

(ii) be driven to the nearest garage or other place of safety.

[~~(d) Every owner or driver shall~~] (c) If the owner or driver does not comply with the notice requirements and secure [~~an official~~] a safety inspection certificate [~~of inspection and approval~~] within [~~5~~] five days [~~or~~], the vehicle [~~shall~~] may not be operated on the highways of this state.

Section 5. Section Amended.

Section 41-6-157, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1957, is amended to read:

41-6-157. Enforcement of inspection requirements.

[~~(a) No~~] (1) A person [~~driving~~] operating a vehicle shall [~~refuse to~~] submit [~~such~~] the vehicle to [~~an~~] a safety inspection [~~and test~~] when required to do so by [~~an authorized officer of the department or any~~] a peace officer.

[~~(b) Every~~] (2) (a) An owner or driver, upon receiving a notice as provided in Section 41-6-156, shall [~~comply therewith and shall~~] within five days secure [~~an official~~] a safety inspection certificate [~~of inspection and approval~~], which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the department.

(b) In lieu of compliance with this subsection, the vehicle [~~shall~~] may not be operated, except as provided in [~~the next succeeding~~] Subsection (3).

[~~(c) No~~] (3) (a) A person [~~shall~~] may not operate any vehicle after receiving a notice [~~with reference thereto as above provided~~] from a peace officer that the vehicle is in need of repair or adjustment, except that [~~the members of the department and other~~] a peace [~~officers~~] officer may[~~, when to do so is reasonable and not excessively dangerous,~~] allow the vehicle to be driven to the residence or place of business of the owner or driver or to the nearest garage where repairs are available[~~, and not thereafter, until said~~] if driving the vehicle is not excessively dangerous.

(b) The vehicle [~~and~~] may not be operated again on the highways until its equipment has been placed in proper repair and adjustment and otherwise [~~made to conform~~] conforms to the requirements of this [~~act~~] chapter and a safety inspection certificate [~~of inspection and approval shall be~~] is obtained as promptly as possible [~~thereafter~~].

[~~(d) In the event~~] (4) If repair or adjustment of any vehicle or its equipment is [~~found~~] necessary [~~upon inspection~~], the owner of [~~said~~] the vehicle may obtain [~~such~~] repair or adjustment at any place he may choose[~~, but in every event an official certificate of inspection and approval must be obtained, otherwise such vehicle shall not be operated upon the highways of this state~~].

Section 6. Section Amended.

Section 41-6-158, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-6-158. Safety inspection required — Safety inspection certificate required — Out of state permit.

[~~(1) At least once each year the department shall require that every motor vehicle registered in this state or bearing temporary permits or Utah plates, except off-highway vehicles, be inspected and that an official safety inspection certificate and approval be obtained for each vehicle.~~]

[~~(2) The safety inspection shall be made and certificate obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the department under this section.~~]

[~~(3) The department may establish rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the administration and enforcement of this section.~~]

(1) (a) Except as provided in Subsection (b), a person may not operate on a highway a motor vehicle required to be registered in this state unless the motor vehicle has passed a safety inspection.

(b) Subsection (a) does not apply to:

(i) vehicles exempt from registration under Section 41-1a-205; and

(ii) off-highway vehicles.

(2) The safety inspection shall:

(a) be made at least once each year;

(b) be made by a safety inspector certified by the department, at a safety inspection station authorized by the department;

(c) cover an inspection of the motor vehicle mechanism, brakes, and equipment to ensure proper adjustment and condition as required by department rules.

(3) (a) A safety inspection station shall issue a safety inspection certificate to the owner of each motor vehicle that passes a safety inspection under this section.

(b) The safety inspection certificate shall be on a form prescribed by the department.

(4) The department may:

(a) authorize the acceptance in this state of a safety inspection certificate [~~and approval~~] issued in another state having [~~an~~] a safety inspection law similar to [~~that of~~] this state; and [~~may~~]

(b) extend the time within which a safety inspection certificate [~~shall~~] must be obtained by the resident owner of a vehicle that was not in this state during the time a safety inspection was required.

[~~(5) A person may not drive a motor vehicle registered in this state on any highway without a safety inspection under this section unless exempted under Section 41-1a-205.~~]

Section 7. Section Amended.

Section 41-6-161, Utah Code Annotated 1953, as last amended by Chapter 11, Laws of Utah 1992, is amended to read:

41-6-161. Safety inspection station requirements — Permits not transferable — Certificate of inspection — Fees — Unused certificates — Suspension or revocation of permits.

(1) The safety inspection required under Section 41-6-158 may only be performed:

(a) by a person certified by the department as a safety inspector; and

(b) at a safety inspection station with a valid safety inspection station permit issued by the department.

[~~(1)~~] (2) A [~~permit for an official~~] safety inspection station permit may not be assigned or transferred or used at any location other than a designated location, and every safety inspection station permit shall be posted in a conspicuous place at the location designated.

[~~(2)~~] (3) [~~The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form to the owner of a vehicle upon inspecting the vehicle and determining that its required equipment is in good condition and in proper adjustment, otherwise no certificate may be issued. When~~] If required by the department, a record and report shall be made of every safety inspection and every safety inspection certificate issued.

[~~(3)~~] (4) [~~Official~~] A safety inspection [~~stations~~] station holding a safety inspection station permit issued by the department [~~of Public Safety~~] may charge [a]:

(a) $1 [fee] as reimbursement for the safety inspection certificate fee; and

(b) a reasonable fee for labor in performing safety inspections, not to exceed:

[~~(a)~~] (i) $5 or less for motorcycles;

[~~(b)~~] (ii) unless Subsection (i) or (iii) apply, $9 or less for [~~passenger cars and 3/4 ton pickup trucks~~] motor vehicles;

[~~(c)~~] (iii) $12 or less for 4-wheel drive, split axle, and [~~larger trucks~~] any motor vehicles that necessitate disassembly of front hub or removal of rear axle for inspection.

[~~(4) Official~~] (5) A safety inspection [~~stations~~] station may return unused safety inspection certificates in a quantity of ten or more and shall be reimbursed by the department for the cost of the safety inspection certificates.

(6) (a) Upon receiving notice of the suspension or revocation of a safety inspection station permit, the safety inspection station permit holder shall immediately terminate all safety inspection activities and return all safety inspection certificates and the safety inspection station permit to the department.

(b) The department shall issue a receipt for all unused safety inspection certificates.

Section 8. Section Amended.

Section 41-6-162, Utah Code Annotated 1953, as last amended by Chapter 242, Laws of Utah 1979, is amended to read:

41-6-162. Falsely representing to be safety inspection station or safety inspector.

[~~(a) No~~] (1) A person [~~shall~~] may not in any manner represent any place as [~~an official~~] a safety inspection station unless [~~such~~] the station is operating under a valid safety inspection station permit issued by the department.

[~~(b) No~~] (2) A person [~~shall~~] may not issue a safety inspection certificate [~~of inspection and approval~~] unless [~~then holding~~] the person:

(a) is a safety inspector certified by the department;

(b) is operating under a valid safety inspection station permit [~~hereunder~~] issued by the department; and

(c) performs the safety inspection on the motor vehicle in compliance with Section 41-6-158.

[~~(c) No~~] (3) An unauthorized person [~~shall~~] may not knowingly possess [~~official~~] safety inspection certificates [~~of inspection~~]. tf

Section 9. Section Amended.

Section 41-6-163, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1986, is amended to read:

41-6-163. Counterfeit safety inspection certificates.

[~~(a) No~~] (1) A person may not make, issue, or knowingly use any imitation or counterfeit of [~~an official~~] a safety inspection certificate [~~of inspection~~].

[~~(b) No~~] (2) A person may not present or cause or permit to be presented [~~in order to obtain or renew the registration on any motor vehicle~~] any safety inspection certificate [~~of inspection and approval~~] knowing [~~the same~~] the certificate to be fictitious [~~or~~], issued for another motor vehicle, or issued without [~~an~~] a safety inspection having been made and passed.

Section 10. Section Amended.

Section 41-6-164, Utah Code Annotated 1953, Utah Code Annotated 1953, is amended to read:

41-6-164. Safety inspection and emission inspection penalty.

[~~It is a misdemeanor for any person to violate any of the provisions of this act, unless such violation is by this act or other law of this state declared to be a felony~~] A violation of Sections 41-6-155 through 41-6-163 is a class C misdemeanor, unless otherwise provided.

Section 11. Section Amended.

Section 63-55-241, Utah Code Annotated 1953, as last amended by Chapters 7 and 234, Laws of Utah 1992, is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Chapter [~~1~~] 1a, the Motor Vehicle Division, is repealed July 1, 1999.

(2) The Driver License Medical Advisory Board, created in Section 41-2-202, is repealed July 1, 1997.

(3) Chapter 3, the Motor Vehicle Enforcement Division, is repealed July 1, 1997.

(4) The [~~hearing board for~~] Motor Vehicle Safety Inspection [~~station licensing~~] Advisory Council, created in Section [~~41-6-160.5~~] 41-6-155.1, is repealed July 1, [~~1993~~] 2003.

(5) Section 41-6-163.6, the emissions inspection program for motor vehicles, is repealed July 1, 1999.

(6) Chapter 13, the Department of Public Safety, is repealed July 1, 1993.

(7) Chapter 13a, the Security Personnel Licensing and Regulation Act, is repealed July 1, 1995.

(8) The Off-highway Vehicle Advisory Council, created in Section 41-22-10, is repealed July 1, 1997.

(9) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.

Section 12. Coordinating Clause.

If this act and S.B. 19, Public Safety Reorganization, both pass in the 1993 General Session, it is the intent of the Legislature that the following amendments be made:

(1) in this act:

(a) "department", referring to the Department of Public Safety, in Sections 41-6-155.1 through 41-6-164 shall be deleted and "division" inserted;

(b) Section 41-6-155.1 shall be renumbered as Section 53-8-203;

(c) Section 41-6-155.2 shall be renumbered as Section 53-8-204;

(d) in Section 41-6-157(3)(b) "chapter" shall be deleted and "part" inserted;

(e) in Section 41-6-161(1) "41-6-158" shall be deleted and "53-8-205" inserted;

(f) in Section 41-6-162(2)(c) "41-6-158" shall be deleted and "53-8-205" inserted; and

(g) Section 41-6-164 shall be repealed; and

(2) in Subsection 53-8-203(1) S.B. 19, "to hear appeals of administrative actions regarding the suspension or revocation of an official inspection station license" shall be deleted.

Section 13. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 27
S. B. No. 38
Passed February 8, 1993
Approved February 25, 1993
Effective May 3, 1993

AID TO WIDOWED MOTHERS

By Craig A. Peterson

AN ACT RELATING TO COUNTIES; REPEALING PROVISIONS GOVERNING COUNTY FUNDING AND CONDITIONS FOR PUBLIC AID TO DEPENDENT MOTHERS AND THEIR CHILDREN.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
17-13-1, UTAH CODE ANNOTATED 1953
17-13-2, UTAH CODE ANNOTATED 1953
17-13-3, UTAH CODE ANNOTATED 1953
17-13-4, UTAH CODE ANNOTATED 1953
17-13-5, UTAH CODE ANNOTATED 1953
17-13-6, UTAH CODE ANNOTATED 1953
17-13-7, UTAH CODE ANNOTATED 1953
17-13-8, UTAH CODE ANNOTATED 1953
17-13-9, UTAH CODE ANNOTATED 1953
17-13-10, UTAH CODE ANNOTATED 1953
17-13-11, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 17-13-1, Counties to provide funds, Utah Code Annotated 1953;

Section 17-13-2, Monthly allowance, Utah Code Annotated 1953;

Section 17-13-3, Conditions and restrictions, Utah Code Annotated 1953;

Section 17-13-4, Age limit of children — Discontinuance and modification of allowance, Utah Code Annotated 1953;

Section 17-13-5, In case funds prove insufficient, Utah Code Annotated 1953;

Section 17-13-6, Only dependent mothers entitled, Utah Code Annotated 1953;

Section 17-13-7, Fraudulent claims — Penalty, Utah Code Annotated 1953;

Section 17-13-8, Taxpayers may object, Utah Code Annotated 1953;

Section 17-13-9, Exempt from execution, Utah Code Annotated 1953;

Section 17-13-10, Disposition of unused funds, Utah Code Annotated 1953; and

Section 17-13-11, "Widowed mothers" defined, Utah Code Annotated 1953, are repealed.

CHAPTER 28
S. B. No. 39
Passed February 5, 1993
Approved February 25, 1993
Effective May 3, 1993

LOCAL HEALTH REGULATION REPEAL

By Craig A. Peterson

AN ACT RELATING TO HEALTH; REPEALING PROVISIONS SUPERSEDED BY CURRENT STATUTORY PROVISIONS REGARDING LOCAL HEALTH DEPARTMENTS AND SOLID WASTE MANAGEMENT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
10-8-61, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 10-8-61, Regulations to prevent contagious diseases - Quarantine — Boards of health — Garbage disposal, Utah Code Annotated 1953, is repealed.

CHAPTER 29
S. B. No. 40
Passed February 5, 1993
Approved February 25, 1993
Effective May 3, 1993

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT'S INTERFACE WITH PUBLIC SERVICE COMMISSION

By Ronald J. Ockey

AN ACT RELATING TO ECONOMIC DEVELOPMENT; DIRECTING THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO BECOME INFORMED OF PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION; AND ALLOWING THE DEPARTMENT TO APPEAR IN THESE PROCEEDINGS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
9-1-207, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-1-207, Utah Code Annotated 1953, is enacted to read:

9-1-207. Interface with Public Service Commission.

(1) The executive director or his designee shall:

(a) become generally informed of significant rate cases and policy proceedings before the Public Service Commission; and

(b) monitor and study the potential economic development impact of these proceedings before the Public Service Commission.

(2) In the discretion of the executive director or his designee, the department may appear in any proceeding before the Public Service Commission to testify, advise, or present argument regarding the economic development impact of any matter that is the subject of the proceeding.

CHAPTER 30
S. B. No. 56
Passed February 11, 1993
Approved February 25, 1993
Effective May 3, 1993

BOXING RULES

By Craig A. Peterson

AN ACT RELATING TO LOCAL GOVERNMENTS; REPEALING OBSOLETE PROVISIONS GOVERNING BOXING CONTESTS AND WRESTLING MATCHES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
11-5-1, UTAH CODE ANNOTATED 1953
11-5-2, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 11-5-1, License to hold — Rules of contest, Utah Code Annotated 1953; and
Section 11-5-2, Fake contests — Penalty, Utah Code Annotated 1953, are repealed.

CHAPTER 31
S. B. No. 57
Passed February 11, 1993
Approved February 25, 1993
Effective May 3, 1993

BIDDING OF STATIONERY SUPPLIES

By Craig A. Peterson

AN ACT RELATING TO COUNTY SUPPLIES; REPEALING SECTIONS GOVERNING THE PURCHASE OF STATIONERY SUPPLIES; NOTICE TO BIDDERS; AWARD OF CONTRACTS AND BOND REQUIRED; AND AUDIT OF ACCOUNT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
17-15-6, UTAH CODE ANNOTATED 1953
17-15-7, UTAH CODE ANNOTATED 1953
17-15-8, UTAH CODE ANNOTATED 1953
17-15-9, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 17-15-6, Purchase of stationery supplies — Notice to bidders, Utah Code Annotated 1953;
Section 17-15-7, Award of contract — Bond required, Utah Code Annotated 1953;
Section 17-15-8, Bids for notices and advertising, Utah Code Annotated 1953; and
Section 17-15-9, Audit of accounts — Distribution of supplies, Utah Code Annotated 1953, are repealed.

CHAPTER 32
S. B. No. 62
Passed February 11, 1993
Approved February 25, 1993
Effective May 3, 1993

COUNTY RECORDER BOOKS AND SUPPLIES

By Craig A. Peterson

AN ACT RELATING TO THE COUNTY RECORDER; ELIMINATING THE REQUIREMENT GOVERNING HOW A COUNTY RECORDER PROCURES BOOKS AND SUPPLIES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17-21-1, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1983

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

Section 1. Section Amended.

Section 17-21-1, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1983, is amended to read:

17-21-1. Recorder — Document custody responsibility.

[~~The recorder must procure from the county auditor or purchasing agent those books and supplies the business of the office requires, but orders for the same must first be obtained from the board of county commissioners.~~] The recorder has custody of, and must keep, all books, records, maps, and papers required by law to be kept or recorded in the office.

CHAPTER 33
S. B. No. 65
Passed February 10, 1993
Approved February 25, 1993
Effective May 3, 1993

COUNTY OFFICE HOURS

By Craig A. Peterson

AN ACT RELATING TO COUNTIES; REPEALING STATUTORY REQUIREMENTS SETTING THE HOURS OF OPERATION FOR CERTAIN COUNTY GOVERNMENTS; AND REQUIRING CERTAIN COUNTY OFFICERS TO HAVE THEIR OFFICE AT THE COUNTY SEAT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17-16-9, AS LAST AMENDED BY CHAPTER 36, LAWS OF UTAH 1957

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

Section 1. Section Amended.

Section 17-16-9, Utah Code Annotated 1953, as last amended by Chapter 36, Laws of Utah 1957, is amended to read:

17-16-9. Officers at county seats — Office hours.

(1) The [~~clerks, recorders and treasurers~~] elected county officers of all counties, [~~and~~] except those in counties having a population of less than 8,000, [~~all other county officers must~~] shall have their offices at the county seats[~~; and in~~].

(2) (a) In all counties [~~having a population of 20,000 and over,~~] the clerk, sheriff, recorder, auditor, treasurer, assessor, and attorney [~~must~~] shall keep their offices open for the transaction of business [~~from 9 o'clock a.m. until 5 o'clock p.m. except Saturdays said offices shall be open for the transaction of business from 9 o'clock a.m. until 1 o'clock p.m.; provided that when~~] as authorized by resolution of the [~~board of~~] county [~~commissioners county offices may remain closed on Saturday~~] legislative body. [~~Should the governing~~]

(b) If the county legislative body does not authorize [~~a Saturday closing~~] hours of operation for Saturdays, then the hours served by the employees of the county shall not be less than under their present schedule.

(c) (i) Any act authorized, required, or permitted to be performed at or by, or with respect to, any [~~such~~] county [~~municipal~~] office on a Saturday when the county [~~municipal~~] office is closed, may be [~~so~~] performed on the next [~~succeeding~~] business day [~~and no~~].

(ii) No liability or loss of rights of any kind [~~shall~~] may result from [~~such~~] that delay.

CHAPTER 34
S. B. No. 77
Passed February 8, 1993
Approved February 25, 1993
Effective May 3, 1993

UTAH DINEH COMMITTEE MEMBERSHIP

By Mike Dmitrich

AN ACT RELATING TO THE NAVAJO TRUST FUND; CLARIFYING THE NUMBER OF DINEH COMMITTEE MEMBERS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-88-107, AS ENACTED BY CHAPTER 195, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-88-107, Utah Code Annotated 1953, as enacted by Chapter 195, Laws of Utah 1992, is amended to read:

63-88-107 (Repealed 07/01/95). Utah Dineh Committee.

(1) There is created the Dineh Committee.

(2) (a) The governor[,] with the advice and consent of the Senate[,] shall appoint nine members to the committee.

(b) The governor shall ensure that the committee includes:

(i) two enrolled members of the Aneth Chapter of the Navajo tribe who reside in Utah;

(ii) one enrolled member of the Blue Mountain Dine', an off-reservation chapter, who resides in Utah;

(iii) one enrolled member of the Mexican Water Chapter of the Navajo tribe who resides in Utah;

(iv) one enrolled member of the Navajo Mountain Chapter of the Navajo tribe who resides in Utah;

(v) two enrolled members of the Oljato Chapter of the Navajo tribe who reside in Utah;

(vi) one enrolled member of the Red Mesa Chapter of the Navajo tribe who resides in Utah; and

(vii) one enrolled member of the Teec Nos Pos Chapter of the Navajo tribe who resides in Utah.

(3) (a) (i) Each of the Navajo chapters identified in this subsection, except the Aneth and Oljato chapters shall submit to the governor the names of three nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select one of those three persons as that chapter's representative on the Dineh Committee.

(b) (i) The Aneth and Oljato Navajo chapters shall each submit to the governor the names of six nominees to the Dineh Committee chosen by the chapter.

(ii) The governor shall select two of the six persons submitted by each chapter to be that chapter's representatives on the Dineh Committee.

(4) The governor may not appoint any person who is currently, or who, within the last 12 months, has been an officer, director, employee, or contractor of any business enterprise or service provider that solicits, accepts, or receives monies from the Division of Indian Affairs or from the trust fund established in this part.

(5) Other than the amount authorized by this section for Dineh Committee member expenses, a person appointed to the Dineh Committee may not solicit, accept, or receive any monies from:

(a) the Division of Indian Affairs;

(b) the trust fund; or

(c) as an officer, director, employee, or contractor of any business enterprise or service provider that solicits, accepts, or receives expenditures from the Division of Indian Affairs or the trust fund.

(6) (a) (i) Except as provided in Subsection (a)(ii), the governor shall appoint committee members to serve four-year terms.

(ii) In making the initial appointments to the committee, the governor shall appoint [~~six~~] five members to two-year terms and [~~five~~] four members to four-year terms.

(b) Except as provided in Subsection (c), committee members shall serve until their successors are appointed and qualified.

(c) (i) If a committee member is absent from three consecutive committee meetings, or if the committee member has violated the ethical or conflict of interest policies established by statute or by the committee, that member's appointment is terminated, the position is vacant, and the governor shall appoint a replacement.

(ii) The governor shall fill any vacancy that occurs on the committee for any reason by appointing a person according to the procedures of this section for the unexpired term of the vacated member.

(7) (a) The committee shall select a chairperson from its membership.

(b) Five members of the committee are a quorum for the transaction of business.

(c) The committee shall:

(i) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings;

(ii) ensure that all of its meetings are held on the Utah portion of the Navajo nation; and

(iii) ensure that all of its [~~meeting~~] meetings are public hearings at which any resident of San Juan County may appear and speak.

(8) Members of the committee shall serve without compensation, but may be reimbursed for expenses incurred in performance of their official duties by the trust administrator from the trust fund.

(9) The Office of Trust Administrator is staff to the committee.

(10) The committee shall advise the trust administrator about the expenditure of trust fund monies.

CHAPTER 35
H. B. No. 2
Passed February 26, 1993
Approved March 10, 1993
Effective May 3, 1993

INTENSIVE EARLY RELEASE PAROLE PROGRAM

By R. Lee Ellertson

AN ACT RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR INTENSIVE EARLY RELEASE PAROLE PROGRAM AS A CONDITION OF PAROLE; EXCEPTING CONVICTED SEX OFFENDERS; AND MAKING NECESSARY CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-27-10, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1986

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

Section 1. Section Amended.

Section 77-27-10, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1986, is amended to read:

77-27-10. Conditions of parole — Intensive early release parole program.

(1) (a) When the Board of Pardons releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole which he shall accept and agree to as evidenced by his signature affixed to the agreement.

(b) A copy of the agreement shall be delivered to the Department of Corrections and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) If an offender convicted of violating or attempting to violate Section 76-5-301.1, Subsection 76-5-302 (1), Sections 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole. This subsection does not apply to intensive early release parole.

(3) (a) In addition to the conditions set out in Subsection (1), the board may place offenders in an intensive early release parole program. The board shall determine the conditions of parole which are reasonably necessary to protect the community as well as to protect the interests of the offender and to assist the offender to lead a law-abiding life.

(b) The offender is eligible for this program only if he:

(i) has not been convicted of a sexual offense; or

(ii) has not been sentenced pursuant to Section 76-3-406.

(c) The department shall:

(i) promulgate rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for operation of the program;

(ii) adopt and implement internal management policies for operation of the program;

(iii) determine whether or not to refer an offender into this program within 120 days from the date the offender is committed to prison by the sentencing court; and

(iv) make the final recommendation to the board regarding the placement of an offender into the program.

(d) The department shall not consider credit for time served in a county jail awaiting trial or sentencing when calculating the 120 day period.

(e) The prosecuting attorney or sentencing court may refer an offender for consideration by the department for participation in the program.

(f) The board shall determine whether or not to place an offender into this program within 30 days of receiving the department's recommendation.

(4) This program shall be implemented by the department within the existing budget.

CHAPTER 36
H. B. No. 16
Passed February 11, 1993
Approved March 10, 1993
Effective May 3, 1993

CENTENNIAL LICENSE PLATE AMENDMENTS

By Jeff Alexander

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT IN GENERAL; AMENDING STATEHOOD CENTENNIAL LICENSE PLATE PROVISIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-1-503, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-408, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 30, 152, 174, AND 218, LAWS OF UTAH 1992
41-1A-1216, AS ENACTED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 174, 218, AND 250, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-1-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 1, Laws of Utah 1992, is amended to read:

9-1-503. Centennial license plates — Fees — Design.

(1) (a) Any person who is the owner or lessee of a motor vehicle as defined in Section 41-1a-102 may apply for statehood centennial license plates.

(b) [~~In~~] (i) Through December 31, 1996, in addition to the regular motor vehicle registration fees, the applicant shall pay a special fee of $25 at the time the centennial license plates are issued.

(ii) Beginning January 1, 1997, the applicant shall pay a special fee in accordance with Section 41-1a-1216.

(c) [~~In~~] For vehicles with registration years expiring on or before December 31, 1996, applicants for renewal of registration shall pay, in addition to the annual [~~renewal fees for license plates, each applicant shall pay~~] vehicle registration fees, a special annual renewal fee of $10 [~~upon each annual renewal of~~] for the centennial license plates.

(2) (a) [~~The~~] (i) Through December 31, 1996, the State Tax Commission shall deposit revenues from the special fees collected [~~from the sale or renewal of centennial license plates~~] under Subsection (1), less production and administrative costs as provided in this subsection, into the Utah Statehood Centennial Commission account.

(ii) Beginning January 1, 1997, the State Tax Commission shall deposit revenues from special fees collected under Subsection (1)(b)(ii) in accordance with Section 41-1a-1216.

(b) The special fees paid for purchase or renewal of centennial license plates shall be treated as a voluntary contribution that is not tax deductible for the funding of statehood centennial activities[~~;~~] and is not a motor vehicle registration fee.

(c) Before transferring revenues to the Utah Statehood Centennial Commission account, the State Tax Commission shall deduct the actual production and administrative costs associated with making and issuing the centennial license plates.

(3) (a) The State Tax Commission shall maintain a record by county of all centennial license plates issued or renewed.

(b) The [~~state~~] Utah Statehood Centennial Commission shall pay annually to the county centennial committees 20% of the special fees collected in each county after deduction of the production and administrative costs paid to the State Tax Commission.

(4) (a) The Utah Statehood Centennial Commission shall approve the color and design of the statehood centennial license plates consistent with the provisions of Sections 41-1a-401, 41-1a-402, and 41-1a-403 and with the concurrence of the State Tax Commission, the Utah Highway Patrol, and the Motor Vehicle Division.

(b) The Utah Statehood Centennial Commission shall hold all rights to the use of the statehood centennial slogan and statehood centennial license plate design and may license, for a fee to be determined by the commission, or otherwise authorize the use of the design for commercial or other purposes, provided the design is not used in a manner inconsistent with the provisions of Subsection 41-1a-1305 (10).

(5) Any person who applies for statehood centennial license plates may also apply for personalized numbers or letters on the centennial license plates as authorized by Section 41-1a-410 and after payment of the fees required by Section 41-1a-1214.

[~~(6) (a) Statehood centennial license plates may not be issued before January 1, 1992.~~]

[~~(b) Statehood centennial license plates may not be issued or renewed after December 31, 1996, nor may the plates be displayed after December 31, 1997.~~]

Section 2. Section Amended.

Section 41-1a-408, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 30, 152, 174, and 218, Laws of Utah 1992, is amended to read:

41-1a-408. Special group plates — Design — Application — Issuance.

(1) As used in this section:

(a) "Collegiate license plates" means license plates issued under this section to a contributor after payment of the appropriate fees.

(b) "Contributor" means a person who has donated or in whose name at least $25 has been donated to a scholastic scholarship fund of a single institution in the 12 months prior to registration and who has received a completed contribution verification form.

(c) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(d) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (b).

(b) Each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) [~~(i)~~] The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

[~~(ii)~~] (b) Collegiate license plates may not be redesigned under this section more frequently than every five years.

[~~(b) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.~~]

(4) Subject to [~~Subsection (10)~~] Subsections (8), (9), and (11), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a handicapped person or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) licensing a special interest vehicle;

(j) licensing a vintage vehicle;

(k) a licensed amateur radio operator; or

(l) licensing a farm vehicle.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection [~~(12)~~] (11), the division shall issue a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying disabled person; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a handicapped special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a handicapped special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form to the division at the time of application.

[~~(8)~~] (b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

[~~(a)~~] (i) the name of the contributor;

[~~(b)~~] (ii) the institution to which a donation was made;

[~~(c)~~] (iii) the date of the donation; and

[(d)] (iv) an attestation that the donation was for a scholastic scholarship.

[(9)] (c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(8) The division shall issue statehood centennial special group license plates.

[(10)] (9) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 50 applications with the fees required under Section 41-1a-1216.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

[(11)] (10) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

[(12)] (11) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard; [and]

(ii) establish the maximum number of numerals or characters for special group license plates; and

[(ii)] (iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and one year for a removable windshield placard; and

(C) the seal or other identifying mark of the division[; and].

[(iii) establish the maximum number of numerals or characters for special group license plates.]

(b) The qualifying criteria under Subsection (a) for a handicapped special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a disabled person be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

[(13) All existing temporary removable windshield placards and removable windshield placards shall be returned to the division by January 1, 1993, to implement the provisions of Subsection (12)(a)(ii).]

Section 3. Section Amended.

Section 41-1a-1216, Utah Code Annotated 1953, as enacted by Chapter 1 and last amended by Chapters 174, 218, and 250, Laws of Utah 1992, is amended to read:

41-1a-1216. Fees for special group license plates.

(1) (a) Except as provided in Subsections (c), (d), [and] (e), and (f) an applicant for special group license plates shall pay:

(i) the registration fee under Section 41-1a-1206; and

(ii) a $50 application fee for the special group license plates.

(b) Except as provided in Subsections (c), (d), [and] (e), and (f) to renew special group license plates, an applicant shall pay:

(i) the registration renewal fee under Section 41-1a-1206; and

(ii) a $10 annual renewal fee for special group license plates.

(c) In lieu of the $50 application fee and $10 renewal fee for special group license plates, a person who qualifies for a licensed amateur radio operator special group license plate shall only pay a $5 fee for an original set of license plates.

(d) Applicants for legislative, United States Congressional, handicapped, collegiate, National Guard, Purple Heart, Prisoner of War, survivor of the Japanese attack on Pearl Harbor, and farm vehicle special group license plates are exempt from paying an additional application or renewal fee.

(e) (i) In lieu of the registration and registration renewal fees under Section 41-1a-1206, the initial registration fee for a vintage vehicle is $10.

(ii) Applicants for vintage vehicle special group license plates shall pay the application fee for a special group license plate, but are exempt from paying additional renewal fees.

(iii) No annual renewal of registration is required; however, vintage vehicle special group license plates shall be renewed every five years at no additional cost.

(f) (i) Fees for statehood centennial special group license plates shall be collected and deposited:

(A) as provided in Title 9, Chapter 1, Part 5, Statehood Centennial Commission, through December 31, 1996; and

(B) in the Transportation Fund, less production and administrative costs incurred by the commission, beginning January 1, 1997.

(ii) For vehicles with registration years beginning on or after January 1, 1997, applicants for:

(A) statehood centennial special group license plates shall, in addition to the regular motor vehicle registration fees, pay a special fee of $25 at the time the centennial license plates are issued; and

(B) renewal of registration with statehood centennial special group license plates are exempt from paying an additional special annual renewal fee for the centennial license plates.

(2) (a) In addition to the registration and special group license plate application fees required under Subsection (1), an applicant for personalized special group license plates shall pay $50.

(b) In addition to the registration and special group license plate renewal fees required under Subsection (1), the renewal fee for personalized special group license plates is $10.

(3) [~~The~~] Except as provided in Subsection (f), the fees collected by the commission under this section for registration and special group license plates, less the actual cost incurred by the commission in purchasing decals for special group license plates, shall be deposited in the Transportation Fund.

CHAPTER 37
H. B. No. 31
Passed February 15, 1993
Approved March 10, 1993
Effective May 3, 1993

TELEPHONE FRAUD AMENDMENTS

By Fred R. Hunsaker

AN ACT RELATING TO COMMERCE AND TRADE; AMENDING THE TELEPHONE FRAUD PREVENTION ACT; AMENDING CERTAIN DEFINITIONS; REQUIRING TELEPHONE SOLICITORS TO OBTAIN A PERFORMANCE BOND; AMENDING EXEMPTIONS FROM REGISTRATION; CHANGING PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
13-26-2, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1990
13-26-3, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1990
13-26-4, AS LAST AMENDED BY CHAPTER 60, LAWS OF UTAH 1991
13-26-8, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 13-26-2, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1990, is amended to read:

13-26-2. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products. A continuity plan is distinguished from a subscription arrangement by no binding commitment period or purchase amount.

[~~(1)~~] (2) "Division" means the Division of Consumer Protection.

[~~(2)~~] (3) "Premium" means a gift, bonus, prize, award, certificate, or other document by which a prospective purchaser is given a right, chance, or privilege to purchase or receive goods or services with a stated or represented value of $25 or more as an inducement to a prospective purchaser to purchase other goods or services.

[~~(3)~~] (4) "Sale," "selling," or "solicitation of sale" means a sale or solicitation of goods or services in which:

(a) the seller solicits the sale over the telephone; [and]

(b) the purchaser's agreement to purchase is made over the telephone; and

(c) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services.

(5) "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, with the prior express request or consent of the buyer, for a specified period of time at a price dependent on the duration of service and to complement an initial purchase.

(6) "Telephone soliciting business" means a sole proprietorship, partnership, limited liability company, corporation, or other association of individuals engaged in a common effort to solicit sales regulated under this chapter.

[~~(4)~~] (7) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability company, corporation, or other entity [which] that makes or places telephone calls for the purpose of selling or [~~soliciting~~] solicitation of sales as defined in Subsection (4) over the telephone, whether the call originates in Utah or is received in Utah.

Section 2. Section Amended.

Section 13-26-3, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1990, is amended to read:

13-26-3. Registration and bond required.

(1)(a) [~~A person, partnership, corporation, or other entity which engages~~] Each telephone soliciting business engaging in telephone solicitation or sales in this state [~~must annually~~] shall register annually with the Division of Consumer Protection prior to doing or continuing to do business in this state.

(b) The registration form shall [~~also~~] designate an agent [~~or an individual~~] residing in this state who is authorized by the [~~solicitor~~] telephone soliciting business to receive service of process in any [~~civil~~] action brought by this state or a resident of this state.

(c) [~~Failure of~~] If a [~~solicitor~~] telephone soliciting business fails to designate an agent [~~or individual~~] to receive service or [~~the failure~~] fails to appoint a successor to the agent [~~or individual shall result in suspension of the registration or a denial of~~], the business's application for an initial or renewal registration shall be denied, and any current registration shall be suspended until an agent is designated.

(2) The division may impose a registration fee[~~; not~~] of up to [~~exceed~~] $50[~~;~~] pursuant to [~~the terms of~~] Subsection 63-38-3 (2).

(3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:

(i) a performance bond in the amount of $50,000 issued by a surety authorized to transact surety business in this state;

(ii) an irrevocable letter of credit in the amount of $50,000 issued by a financial institution authorized to do business in this state; or

(iii) a certificate of deposit in the amount of $50,000 held in this state in a depository institution regulated by the Department of Financial Institutions.

(b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales violation of this chapter.

(c) The division may recover from the bond, letter of credit, or certificate of deposit investigative costs, attorneys' fees, and other costs of collecting and distributing funds under this section and the costs of promoting consumer education under Subsection 13-2-5(5), but only if the consumer has first recovered full damages.

[~~(3)~~] (4) The division may establish by rule the registration requirements for [solicitors] telephone soliciting businesses under the terms of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act. Before the division can take any action under this chapter, it shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act.

Section 3. Section Amended.

Section 13-26-4, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1991, is amended to read:

13-26-4. Exemptions from registration.

The following are exempt from registration and bonding requirements under this chapter:

(1) a [~~licensed~~] broker [~~or an~~], agent, dealer, or [solicitor] sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his license;

(2) the solicitation of sales by:

(a) a public utility or motor carrier which is regulated [~~pursuant to~~] under Title 54 or by an affiliate of such a utility or motor carrier;

(b) a newspaper [~~or magazine~~] of general circulation[~~, or~~];

(c) any solicitation of sales made on behalf of a broadcaster licensed by any state or federal authority;

[~~(c)~~] (d) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of any private shareholder [~~or other person~~];

[~~(d)~~] (e) a person who periodically publishes and delivers a catalog of the solicitor's merchandise to prospective purchasers, if the catalog:

(i) contains the price and a written description [and] or illustration of each item offered for sale;

(ii) includes the business address of the solicitor;

(iii) includes at least [100] 24 pages of written material and illustrations;

(iv) is distributed in more than one state; and

(v) has an annual circulation by mailing of not less than 250,000;

(3) any publicly-traded corporation registered with the Securities and Exchange Commission, or any subsidiary of such a corporation;

(4) the solicitation of any commercial bank, bank building company, subsidiary or affiliate of a bank building company, trust company, savings and loan association, credit union, industrial loan company, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;

(5) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or his employer;

(6) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:

(a) the person is registered with or temporarily licensed by the commission to conduct that activity under the Commodity Exchange Act; and

(b) the registration or license has not expired or been suspended or revoked;

(7) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:

(a) who is making the solicitation; or

(b) on whose behalf the solicitation is made;

(8) the solicitation of previous customers of the business on whose behalf the call is made if the person making the call:

(a) does not offer any premium in conjunction with [the] a sale or offer;

(b) is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(c) is not regularly engaged in telephone sales;

[~~(9) the solicitation of a sale made as a result of a personal business meeting and transaction subsequent to a telephone solicitation;~~]

[~~(10)~~] (9) the solicitation of a sale which is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature;

[~~(11) the solicitation of sales which constitute less than 60% of a person's prior year's sales made as a result of a commercial telephone solicitation. Where more than 60% of a person's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the person shall be considered a commercial telephone solicitor; or~~]

[~~(12) the solicitation of sales by a telephone solicitor which has a uniform policy or procedure that allows for the refund or return of any unused goods or premium within seven days or more after receipt by the purchaser and which refunds any money paid by~~

the purchaser within 30 days after the goods or premium have been returned.]

(10) the solicitation of a person by a retail business establishment that has been in operation for at least five years under the same name as that used in connection with telemarketing if both of the following occur on a continuing basis:

(a) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and

(b) a majority of the seller's business involves the buyer obtaining the products or services at the seller's place of business.

(11) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, subscription, standing order arrangement, or supplement or series arrangement if:

(a) the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by sellers in commerce; or

(b) (i) the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and

(ii) the consumer retains the right to cancel at any time and receive a full refund for the unused portion; or

(12) a telephone marketing service company that provides telemarketing sales services under contract to sellers if:

(a) it has been operating continuously for at least five years under the same business name;

(b) at least 75% of its contracts are performed on behalf of persons exempted from registration under this chapter; and

(c) neither the company nor its principals have been enjoined from doing business or subjected to criminal actions for their business activities in this or any other state.

Section 4. Section Amended.

Section 13-26-8, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1990, is amended to read:

13-26-8. Prohibition against solicitation of purchasers on behalf of unregistered telephone soliciting business — Violation a misdemeanor.

(1) No salesperson may solicit prospective purchasers on behalf of a [telephonic solicitor] telephone soliciting business required to be registered under this chapter, who is not currently registered with the division pursuant to this chapter.

(2) Upon discovery of a person soliciting without being registered as required by this chapter, the division may first notify the solicitor of the requirements of this chapter before commencing any action under this section.

(3) (a) Any person who violates this section as a first offense is guilty of a class B misdemeanor [punishable by imprisonment in the county jail for not more than six months, by a fine not exceeding $2,500, or by both the fine and imprisonment].

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(d) In addition to other penalties under this subsection, the division director may impose an administrative fine of up to $1,000 for each violation of this chapter.

CHAPTER 38
H. B. No. 49
Passed February 11, 1993
Approved March 10, 1993
Effective May 3, 1993

COUNTY OPTION PROSECUTION DISTRICTS

By R. Lee Ellertson

AN ACT RELATING TO COUNTIES; ENABLING COUNTY GOVERNING BODIES TO EXERCISE THE OPTION TO CREATE A SINGLE COUNTY PROSECUTION DISTRICT BY ORDINANCE OR A MULTICOUNTY PROSECUTION DISTRICT BY INTERLOCAL AGREEMENT; CREATING THE ELECTIVE OFFICE OF DISTRICT ATTORNEY IN THE PROSECUTION DISTRICT AND SETTING REQUIREMENTS OF OFFICE; PROVIDING FOR ELECTION AND VACANCY; PROVIDING DUTIES AND POWERS OF DISTRICT ATTORNEY AND COUNTY ATTORNEY; AND MAKING NECESSARY CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

4-1-4, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
4-2-11, AS ENACTED BY CHAPTER 104, LAWS OF UTAH 1985
7-1-308, AS ENACTED BY CHAPTER 8, LAWS OF UTAH 1983
7-1-319, AS ENACTED BY CHAPTER 16, LAWS OF UTAH 1981
10-3-928, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
11-13-3, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
13-21-8, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991
17-15-17, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
17-16-1, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1990
17-16-2, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988
17-16-11, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
17-18-1, AS LAST AMENDED BY CHAPTER 219, LAWS OF UTAH 1992
17-18-5, AS ENACTED BY CHAPTER 120, LAWS OF UTAH 1990
17-19-1, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
17-24-19, UTAH CODE ANNOTATED 1953
17-25A-1, AS ENACTED BY CHAPTER 44, LAWS OF UTAH 1990
17-36-35, AS ENACTED BY CHAPTER 22, LAWS OF UTAH 1975
19-5-115, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
19-6-113, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
20-4-9, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992
20-14-12, AS LAST AMENDED BY CHAPTERS 21 AND 68, LAWS OF UTAH 1984, SPECIAL SESSION
20A-1-509, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-504, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-204, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
21-3-4, UTAH CODE ANNOTATED 1953
21-5-1.5, AS LAST AMENDED BY CHAPTER 219, LAWS OF UTAH 1992
21-7-16, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
26-4-3, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-6, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-8, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-9, AS LAST AMENDED BY CHAPTER 6, LAWS OF UTAH 1984, SECOND SPECIAL SESSION
26-4-11, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-12, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-14, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-17, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1985
26-4-19, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-20, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-21, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26-4-24, AS LAST AMENDED BY CHAPTER 136, LAWS OF UTAH 1991
26-23-1, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
26A-1-120, AS LAST AMENDED BY CHAPTER 112 AND RENUMBERED AND AMENDED BY CHAPTER 269, LAWS OF UTAH 1991
31A-2-108, AS LAST AMENDED BY CHAPTER 204, LAWS OF UTAH 1986
32A-1-119, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-13-103, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-13-104, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
34-23-302, AS ENACTED BY CHAPTER 8, LAWS OF UTAH 1990
34-23-402, AS ENACTED BY CHAPTER 8, LAWS OF UTAH 1990
34-40-204, AS ENACTED BY CHAPTER 8, LAWS OF UTAH 1990
39-1-50, AS REPEALED AND REENACTED BY CHAPTER 210, LAWS OF UTAH 1988

53B-5-111, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991
57-11-16, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1973
58-37-13, AS LAST AMENDED BY CHAPTER 121, LAWS OF UTAH 1992
59-14-406, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
61-1-21.5, AS ENACTED BY CHAPTER 284, LAWS OF UTAH 1983
62A-3-311, AS LAST AMENDED BY CHAPTER 270, LAWS OF UTAH 1989
62A-3-312, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-4-505, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-4-603, AS ENACTED BY CHAPTER 248, LAWS OF UTAH 1991
62A-9-126, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-9-134, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
63-11-64, AS ENACTED BY CHAPTER 305, LAWS OF UTAH 1983
63-27-118, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-27-120, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-63-2, AS A BY CHAPTERS 10 AND 84, LAWS OF UTAH 1991
65A-3-3, AS ENACTED BY CHAPTER 121, LAWS OF UTAH 1988
67-1-1, AS LAST AMENDED BY CHAPTER 67, LAWS OF UTAH 1984
67-5-1, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
67-5A-1, AS ENACTED BY CHAPTER 136, LAWS OF UTAH 1990
68-3-12, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
76-6-704, AS LAST AMENDED BY CHAPTER 123, LAWS OF UTAH 1986
76-6-705, AS ENACTED BY CHAPTER 123, LAWS OF UTAH 1986
76-6A-4, AS ENACTED BY CHAPTER 89, LAWS OF UTAH 1983
76-8-1002, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1975
76-10-1215, AS ENACTED BY CHAPTER 92, LAWS OF UTAH 1977
76-10-1225, AS ENACTED BY CHAPTER 93, LAWS OF UTAH 1977
76-10-1603.5, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
76-10-1605, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1989
76-10-1906, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1989
77-1A-1, AS LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
77-6-2, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
77-6-4, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-10A-2, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
77-10A-8, AS ENACTED BY CHAPTER 318, LAWS OF UTAH 1990
77-10A-12, AS ENACTED BY CHAPTER 318, LAWS OF UTAH 1990
77-22-2, AS LAST AMENDED BY CHAPTER 217, LAWS OF UTAH 1990
77-22-3, AS LAST AMENDED BY CHAPTER 123, LAWS OF UTAH 1989
77-22-4, AS ENACTED BY CHAPTER 123, LAWS OF UTAH 1989
77-22A-1, AS LAST AMENDED BY CHAPTER 217, LAWS OF UTAH 1990
77-22A-3, AS LAST AMENDED BY CHAPTER 217, LAWS OF UTAH 1990
77-23A-4, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1989
77-23A-8, AS LAST AMENDED BY CHAPTER 10, LAWS OF UTAH 1991
77-23A-10, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1989
77-23A-14, AS ENACTED BY CHAPTER 251, LAWS OF UTAH 1988
77-23B-6, AS ENACTED BY CHAPTER 251, LAWS OF UTAH 1988
77-27-5, AS LAST AMENDED BY CHAPTER 195, LAWS OF UTAH 1990
77-31-6, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-37-5, AS ENACTED BY CHAPTER 194, LAWS OF UTAH 1987
78-3A-20, AS LAST AMENDED BY CHAPTER 12, LAWS OF UTAH 1984
78-3A-20.5, AS LAST AMENDED BY CHAPTER 105, LAWS OF UTAH 1990
78-3A-21, AS LAST AMENDED BY CHAPTER 135, LAWS OF UTAH 1971
78-3A-22, AS LAST AMENDED BY CHAPTERS 30 AND 272, LAWS OF UTAH 1992
78-3A-25, AS LAST AMENDED BY CHAPTER 101, LAWS OF UTAH 1992
78-3A-35, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1992
78-3A-56, AS LAST AMENDED BY CHAPTER 83, LAWS OF UTAH 1983
78-3A-64, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
78-3F-104, AS ENACTED BY CHAPTER 221, LAWS OF UTAH 1992
78-4-11, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-5-111, AS ENACTED BY CHAPTER 157, LAWS OF UTAH 1989
78-27-50, AS LAST AMENDED BY CHAPTER 60, LAWS OF UTAH 1991

ENACTS:
17-16-2.5, UTAH CODE ANNOTATED 1953
17-16-6.6, UTAH CODE ANNOTATED 1953
17-16-6.7, UTAH CODE ANNOTATED 1953
17-16-6.8, UTAH CODE ANNOTATED 1953
17-18-1.5, UTAH CODE ANNOTATED 1953
17-18-1.7, UTAH CODE ANNOTATED 1953
17-18-1.9, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 4-1-4, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-1-4. Code enforcement — Inspection authorized — Condemnation or seizure — Injunctive relief — Costs awarded — County attorney to represent department — Criminal actions — Witness fee.

(1) For the purpose of enforcing any provision of this code, the department of agriculture may enter, at reasonable times, for the purpose of inspection, any public or private premises where agricultural products are located and may obtain samples of products at no charge to the department, unless otherwise specified within a particular chapter in this code.

(2) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

(3) The department is authorized in any court of competent jurisdiction to seek an order of seizure or condemnation of any agricultural product which violates any chapter contained within this code or, upon proper grounds, to obtain a temporary restraining order or temporary or permanent injunction to provent violation of any such chapter. No bond shall be required of the department in any injunctive proceeding brought under this section.

(4) If condemnation is ordered, the agricultural product shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the agricultural product an opportunity to apply to the court for permission to bring the product into conformance or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant.

(6) Unless otherwise specifically provided within the particular chapter governing the product sought to be seized or condemned or the conduct sought to be enjoined, the county attorney of the county in which the product is located or the act committed shall represent the department in any action commenced under authority of this section.

(7) In any criminal action brought by the department for violation of any provision contained within a chapter in this code, the county attorney [of] or district attorney in the county in which the alleged criminal activity occurred shall represent the [department] state; provided, that before any criminal action is commenced by the department, it shall first give written notice of its intent to file criminal charges to the person it intends to charge and afford such person an opportunity to present personally or through counsel, such person's views with respect to the contemplated action.

(8) Any witness subpoenaed by the department for whatever purpose, is entitled to a witness fee for each day of required attendance at proceedings initiated by the department and to mileage in accordance with the fees and mileage allowed witnesses appearing in the district courts of this state.

Section 2. Section Amended.

Section 4-2-11, Utah Code Annotated 1953, as enacted by Chapter 104, Laws of Utah 1985, is amended to read:

4-2-11. Attorney general legal advisor for department — County attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and its representatives in all actions and proceedings brought against it.

(2) The county attorney or the district attorney as provided under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title. If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

Section 3. Section Amended.

Section 7-1-308, Utah Code Annotated 1953, as enacted by Chapter 8, Laws of Utah 1983, is amended to read:

7-1-308. Suspension or removal of director or officer — Grounds — Procedure for issuance of order.

(1) (a) If the commissioner has determined that any officer or director of an institution or other person under the jurisdiction of the department has:

(i) violated any law, rule, regulation, or a cease and desist order which has become final[;];

(ii) engaged or participated in any unsafe or unsound practice in the conduct of the affairs of the institution or other person[;];

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as an officer or director[;];

(iv) been charged in any information, indictment, or complaint authorized by a county attorney, a district attorney, or the attorney general of the state relative to a violation of this title[;]; or

(v) been charged with the commission of or participation in a crime involving dishonesty or breach of trust[;]; and

(b) if the commissioner determines that:

(i) the institution or other person under the jurisdiction of the department has suffered or will suffer substantial financial loss or other damage due to such actions and that such action may impair the safety and soundness of the institution or other person or prejudice in any manner the interests of the depositors, members, creditors, or shareholders[;]; or

(ii) the director or officer has received financial gain by reason of any breach of fiduciary duty; the commissioner may, after notice and opportunity for hearing, serve upon such director or officer a written notice of suspension or removal of the individual from office or prohibition from further participation in the conduct of the affairs of the institution or other person.

(2) If the commissioner deems it necessary for the protection of an institution or other person under the jurisdiction of the department or the interests of its depositors, members, creditors, or shareholders, he may, by written notice served upon the officer or director, suspend that officer or director from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution or other person. The suspension or prohibition is effective upon service of the notice and, unless stayed by a court, shall remain in effect until the commissioner dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the officer or director, until the effective date of that order.

Section 4. Section Amended.

Section 7-1-319, Utah Code Annotated 1953, as enacted by Chapter 16, Laws of Utah 1981, is amended to read:

7-1-319. Notice to county attorney or district attorney of criminal violations — Attorney general to conduct actions commenced by commissioner — Assistance of county attorney.

The commissioner shall inform the county attorney [of] or district attorney in the county in which the principal office of an institution is located of any violation of any provision of law which constitutes a misdemeanor or felony by an officer, director, or employee of any institution under his jurisdiction which shall come to his notice, and upon receipt of such information the county attorney or district attorney shall institute proceedings to enforce the provisions of the law. The attorney general shall conduct all actions, suits, and proceedings begun by the commissioner under authority of law and may call to his assistance the county attorney or district attorney of the county in which the action, suit, or proceeding is conducted, and it shall be the duty of the county attorney or district attorney to render such assistance as the attorney general may require.

Section 5. Section Amended.

Section 10-3-928, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

10-3-928. Attorney duties — Deputy public prosecutor.

In cities with a city attorney, the city attorney may prosecute violations of city ordinances, and under state law, infractions and misdemeanors occurring within the boundaries of the municipality and has the same powers in respect to the violations as are exercised by a county attorney or district attorney, including, but not limited to, granting immunity to witnesses. The city attorney shall represent the interests of the state or the municipality in the appeal of any matter prosecuted in any trial court by the city attorney.

Section 6. Section Amended.

Section 11-13-3, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1992, is amended to read:

11-13-3. Definitions.

As used in this chapter:

(1) "Board" means the Permanent Community Impact Fund Board created by Section 9-4-304, and its successors.

(2) "Candidate" means the state of Utah and any county, municipality, school district, prosecution district, special district, or any other political subdivision of the state of Utah or its authorized agent or any one or more of them.

(3) "Direct impacts" means an increase in the need for any public facilities or services that is attributable to the project, except impacts resulting from the construction or operation of any facility owned by others that is used to furnish fuel, construction, or operation materials for use in the project.

(4) (a) "Facilities," "services," or "improvements" mean facilities, services, or improvements of any kind or character provided by a candidate with respect to any one or more of the following:

(i) flood control;

(ii) storm drainage;

(iii) government administration;

(iv) planning and zoning;

(v) buildings and grounds;

(vi) education;

(vii) health care;

(viii) parks and recreation;

(ix) police and fire protection;

(x) prosecution of violations of state criminal statutes;

(xi) defense of individuals prosecuted for violations of state criminal statutes;

[~~(x)~~] (xii) transportation;

[~~(xi)~~] (xiii) streets and roads;

[~~(xii)~~] (xiv) utilities;

[~~(xiii)~~] (xv) culinary water;

[~~(xiv)~~] (xvi) sewage disposal;

[~~(xv)~~] (xvii) social services;

[~~(xvi)~~] (xviii) solid waste disposal; and

[~~(xvii)~~] (xiv) economic development or new venture investment fund.

(b) "Facilities" and "improvements" includes entire facilities and improvements or interests in facilities or improvements.

(5) "Project" means an electric generating and transmission project owned by a legal or administrative entity created under this chapter and shall include any electric generating facilities, transmission facilities, fuel or fuel transportation facilities, or water facilities owned by that entity and required for that project.

(6) "Project entity" means a legal or administrative entity created under this chapter which owns a project and which sells the capacity, services, or other benefits from it.

(7) "Public agency" means:

(a) any political subdivision of this state including, but not limited to, cities, towns, counties, school districts, and special districts of various kinds;

(b) the state of Utah or any department, division, or agency of the state of Utah;

(c) any agency of the United States; and

(d) any political subdivision of another state.

(8) "State" means a state of the United States and the District of Columbia.

Section 7. Section Amended.

Section 13-21-8, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

13-21-8. Burden of proving exception — Penalties — Court's criminal and equitable jurisdiction — Prosecution.

(1) Breach of a contract under this chapter or of any obligation arising under it is a violation of this chapter.

(2) Any waiver by a buyer of any part of this chapter is void. Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.

(3) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(4) Any person who violates this chapter is guilty of a class B misdemeanor. Any district court of this state has jurisdiction in equity to restrain and enjoin the violation of this chapter.

(5) The attorney general, any county attorney, any district attorney, or any city attorney may prosecute misdemeanor actions or institute equity proceedings, or both, under this chapter.

(6) This section does not prohibit the enforcement by any person of any right provided by this or any other law.

Section 8. Section Amended.

Section 17-15-17, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-15-17. County expenses enumerated.

County charges are:

(1) those incurred against the county by any law;

(2) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by him in the prosecution of criminal cases, except jury and witness fees;

(3) the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail;

(4) the sums required by law to be paid to jurors in civil cases for counties not within the state district court administrative system;

(5) all charges and accounts for services rendered by any justice court judge for services in the trial and examination of persons charged with a criminal offense not otherwise provided for by law;

(6) the contingent expenses necessarily incurred for the use and benefit of the county;

(7) every other sum directed by law to be raised for any county purposes under the direction of the governing body of the county or declared a county charge;

(8) the fees of constables for services rendered in criminal cases;

(9) the necessary expenses of the sheriff and his deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and his deputies performing the duties imposed upon them by law; and

(10) the sums required by law to be paid by the county to jurors and witnesses serving at inquests and in criminal cases in justice courts.

Section 9. Section Amended.

Section 17-16-1, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1990, is amended to read:

17-16-1. Eligibility and residency requirements for county, district, precinct, or prosecution district office.

(1) A person filing a declaration of candidacy for a county, district, [or] precinct, or prosecution district office shall have been a resident of the county, district, [or] precinct, or prosecution district in which the person seeks office for at least one year immediately before the date of the election.

(2) Any person elected to a county, district, [or] precinct, or prosecution district office shall be a registered voter in the county, district, [or] precinct, or prosecution district in which he was elected.

(3)(a) A county, district, [or] precinct, or prosecution district officer shall maintain residency within the county, district, [or] precinct, or prosecution district in which he was elected during his term of office.

(b) If a county, district, [or] precinct, or prosecution district officer establishes his principal place of

residence as provided in Section 20-2-14 outside the county, district, [or] precinct, or prosecution district in which he was elected, the office is automatically vacant.

(4) If an elected county, district, [or] precinct, or prosecution district officer is absent from the county, district, [or] precinct, or prosecution district any time during his term of office for a continuous period of more than 60 days without the consent of the county legislative body or bodies, the county, district, [or] precinct, or prosecution district office is automatically vacant.

(5) The residency requirement of this section is inapplicable to the appointment of a county attorney or district attorney under the conditions prescribed in Section 17-5-21.

Section 10. Section Amended.

Section 17-16-2, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-16-2. County officers enumerated.

The officers of a county are: three county commissioners, a county treasurer, a sheriff, a county clerk, a county auditor, a county recorder, a county attorney, a district attorney in a county which is part of a prosecution district, a county surveyor, a county assessor, and any others provided by law; but in counties having a taxable value of less than $100,000,000 the county clerk shall be ex officio auditor of the county and shall perform the duties of the office without extra compensation.

Section 11. Section Enacted.

Section 17-16-2.5, Utah Code Annotated 1953, is enacted to read:

17-16-2.5. Creation of Office of District Attorney.

For each prosecution district created pursuant to Section 17-18-1.9, there is created the Office of District Attorney.

Section 12. Section Enacted.

Section 17-16-6.6, Utah Code Annotated 1953, is enacted to read:

17-16-6.6. Election of district attorney.

(1) Each district attorney shall be elected at the general election beginning in November, 1994, or any general election year thereafter.

(2) A district attorney shall hold office for four years, the term for which he is elected, beginning the first Monday of January following his election and until a successor is elected or appointed and qualified.

Section 13. Section Enacted.

Section 17-16-6.7, Utah Code Annotated 1953, is enacted to read:

17-16-6.7. Election of district attorney — Conditions precedent to filing of declaration of candidacy.

Before accepting a declaration of candidacy for the office of district attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(1) a United States Citizen;

(2) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(3) a registered voter in a county in the prosecution district in which he is seeking office; and

(4) a current resident of the prosecution district in which he is seeking office and has been a resident of that district for at least one year.

Section 14. Section Enacted.

Section 17-16-6.8, Utah Code Annotated 1953, is enacted to read:

17-16-6.8. District attorney candidates — Ballot placement procedures.

(1) When there is only one candidate for district attorney at the general election in a prosecution district that has three or fewer electors of the district who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of district attorney? Yes ____ No ____."

(2) If the number of "no" votes for the candidate exceeds the number of "yes" votes for the candidate, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(3) If no qualified person files for the office of district attorney as provided in Section 20-4-9, or if the only candidate is not retained by the voters pursuant to this section, the county governing body or bodies shall appoint the district attorney for a four-year term as provided in Section 17-5-21.

Section 15. Section Amended.

Section 17-16-11, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-16-11. Official bonds.

(1) The board of county commissioners shall prescribe by ordinance the amount in which the following county and precinct officers shall execute official bonds before entering upon the discharge of the duties of their respective offices, viz.: county clerk, county auditor, sheriff, county attorney, district attorney, county recorder, county assessor, county surveyor, justice court judge, and constable, and the board may by ordinance require any deputy or assistant of any such officer to execute an official bond before entering upon the discharge of the duties of his office. The amount in which the county treasurer shall execute an official bond shall be prescribed by the State Money Management Council. If surety company bonds are taken, the premium for such of

the bonds as the county commissioners shall specify by ordinance shall be paid out of the county funds. The judge or judges of the district court of the county shall prescribe the amount in which each member of the board of county commissioners of the county shall execute an official bond before entering upon the discharge of the duties of his office. If surety company bonds are taken and if the county commissioners shall so direct by ordinance, the premium for each such bond shall be paid out of the county funds. The bonds and sureties of county commissioners must, before the bonds can be recorded and filed, be approved by one of the judges. The bonds and sureties of all other county and precinct officers must be approved by the board of county commissioners before the bonds can be filed and recorded. All persons offered as sureties on official bonds shall be examined on oath touching their qualifications, and no person, other than a surety company, shall be admitted as surety on any bond unless he is a resident and freeholder within this state and is worth in real or personal property, or both, situate in this state the amount of his undertaking over and above all just debts and liabilities exclusive of property exempt from execution. All official bonds shall be recorded in the office of the county recorder and then filed and kept in the office of the county clerk. The official bond of the county clerk after being recorded shall be filed and kept in the office of the county treasurer.

(2) The district attorney of a multicounty prosecution district shall execute a bond in the amount specified in the interlocal agreement creating the prosecution district. The bond shall be recorded with the county recorder and filed with the county clerk specified in the agreement. The agreement shall provide for payment of the premium in accordance with Subsection (1).

Section 16. Section Amended.

Section 17-18-1, Utah Code Annotated 1953, as last amended by Chapter 219, Laws of Utah 1992, is amended to read:

17-18-1. Powers — Duties of county attorney — Prohibitions.

(1) [~~The~~] In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

(a) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and appeals from them;

(b) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(c) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved. All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance as required by the attorney general in all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court.

(3) The county attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;

(f) upon the order of the court, institute proceedings in the name of the state for recovery upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past-due amounts;

(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and

(c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) The county attorney shall:

(a) each year on the first business day of August file a report with the attorney general covering the

preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(7) The county attorney shall:

(a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency, dependency, or neglect;

(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with contributing to the delinquency, neglect, or dependency of a juvenile.

(8) The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(9) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(10) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

[~~(11) If in any section of this code reference is made to the district attorney, it shall be construed to mean the county attorney.~~]

Section 17. Section Enacted.

Section 17-18-1.5, Utah Code Annotated 1953, is enacted to read:

17-18-1.5. Powers — Duties of county attorney within a prosecution district — Prohibitions.

(1) In each county which is within a state prosecution district, the county attorney is a public prosecutor only for the purpose of prosecuting violations of county ordinances or as otherwise provided by law and shall:

(a) conduct on behalf of the county all prosecutions for violations of county ordinances committed within the county;

(b) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of violations of county ordinances when in possession of information that the violation has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(c) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(2) The county attorney:

(a) may appear and prosecute in all civil cases in which the state may be interested; and

(b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and shall prosecute the appeal from any violation of a county ordinance.

(3) The county attorney shall:

(a) draw all informations for violations of a county ordinance;

(b) cause all persons informed against to be speedily arraigned;

(c) cause all witnesses for the county to be subpoenaed to appear before the court;

(d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and

(e) perform other duties as required by law.

(4) The county attorney shall:

(a) receive from the clerk of the district court a record of past-due fines, penalties, costs, and forfeitures and take action to collect the past due amounts;

(b) at the close of every term of the district court prepare a statement of all fines, penalties, and forfeitures accruing to the state that have been collected or received by any officer required to collect or receive them, stating each case and the amount, and shall transmit the list to the state auditor; and

(c) proceed against any officer and sureties under this subsection for any neglect of duty.

(5) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(6) The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(7) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the county any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an information without the consent of the court.

(8) The county attorney or his deputy may be sworn as a deputy district attorney for the purpose of public convenience for a period of time and subject to limitations specified by the district attorney.

Section 18. Section Enacted.

Section 17-18-1.7, Utah Code Annotated 1953, is enacted to read:

17-18-1.7. Powers — Duties of district attorney — Prohibitions.

(1) The district attorney is a public prosecutor and shall:

(a) prosecute in the name of the state all violations of criminal statutes of the state;

(b) be a full-time county officer;

(c) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and appeals from them; and

(d) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any violation of state law when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required.

(2) The district attorney shall:

(a) appear and prosecute for the state in the district court all criminal actions for violation of state law;

(b) render assistance as required by the attorney general in all criminal matters or matters enumerated in Subsections (5) and (8) that may be appealed to the Court of Appeals or the Supreme Court and shall prosecute the appeal from any crime charged by the district attorney as a misdemeanor in the district court.

(3) The district attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county; and

(f) perform other duties as required by law.

(4) The district attorney shall:

(a) each year on the first business day of August file a report with the attorney general covering the preceding fiscal year, stating the number of criminal prosecutions in his office, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed. and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(5) The district attorney shall:

(a) appear and prosecute for the state in the juvenile court of the prosecution district in any proceeding involving delinquency, dependency, or neglect;

(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with contributing to the delinquency, neglect, or dependency of a juvenile.

(6) A district attorney may not:

(a) engage in private practice of law;

(b) engage in any occupation that may conflict with his duties as a district attorney;

(c) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(d) be qualified to prosecute or dismiss in the name of the state any case in which the district attorney has previously acted as counsel for the accused on the pending charge; or

(e) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(7) If at any time after investigation by the district judge involved, the judge finds and recommends that the district attorney in any prosecution district is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

(8) The district attorney may act as counsel to any state or local government agency or entity regarding only the following matters of civil law:

(a) bail bond forfeiture actions;

(b) actions for the forfeiture of property or contraband because of misuse of the property or possession of the contraband in violation of criminal statutes of the state;

(c) civil actions incidental to or appropriate to supplement the district attorney's duties as state prosecuting attorney including injunction, habeas corpus, declaratory actions, and extraordinary writ actions, in which the interests of the state in any criminal prosecution or investigation may be affected; and

(d) any civil duties otherwise provided by statute.

(9) The district attorney or his deputy may be sworn as a deputy county attorney for the purpose of public convenience for a period of time and subject to limitations specified by the county attorney.

Section 19. Section Enacted.

Section 17-18-1.9, Utah Code Annotated 1953, is enacted to read:

17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.

(1) The county governing body may create a countywide state prosecution district by ordinance.

(2) (a) Two or more counties, whether or not contiguous, may unite to create and maintain a state prosecution district by interlocal agreement pursuant to Title 11, Chapter 13.

(b) At the time of the creation of the prosecution district, the participating counties shall be located within the same judicial district.

(3) The county governing body or bodies shall not dissolve a prosecution district during the term of office of an elected or appointed district attorney.

Section 20. Section Amended.

Section 17-18-5, Utah Code Annotated 1953, as enacted by Chapter 120, Laws of Utah 1990, is amended to read:

17-18-5. Requirements of office.

(1) Any person elected to the office of county attorney or district attorney shall be:

(a) a United States citizen;

(b) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(c) a registered voter in the county or prosecution district in which he is elected to the office; and

(d) a current resident of the county or prosecution district in which he was elected and has been a resident of that county for at least one year.

(2) Any person appointed to the office of county attorney or district attorney shall be:

(a) a United States citizen; and

(b) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar.

Section 21. Section Amended.

Section 17-19-1, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-19-1. County auditor's powers and duties.

(1) All persons holding claims against a county shall present the claims to the county auditor.

(2) The county auditor shall:

(a) investigate and examine all of those claims;

(b) recommend approval or disapproval of each of those claims and endorse the recommendation upon each claim;

(c) report the claims and his recommendation to the county governing body at the next regular meeting after the investigation is completed; and

(d) keep, in a book kept for that purpose, a complete record of all claims, his recommendation on the claims, the reasons for the recommendation, and the action of the board on the claims.

(3) Before any warrant for the payment of any bills, claims, accounts, or charges for materials of any kind or nature that are purchased by or on behalf of the county by any of the county officers or contracted for by the county governing body may be paid, the county auditor shall:

(a) investigate, examine, and inspect the bills, claims, accounts, or charges; and

(b) recommend approval or disapproval of each bill, claim, account, or charge.

(4) (a) At least annually, the county auditor shall examine the books and accounts of the county gov-

erning body, the county assessor, county attorney, district attorney, county treasurer, county clerk, county recorder, county sheriff, and county surveyor.

(b) At least annually, the county auditor shall examine the books and accounts of the justice court judges.

(c) The county auditor may examine the books and accounts of all other county offices or administrative units of the county.

(d) In a multicounty prosecution district, the county auditor specified in the interlocal agreement creating the prosecution district may examine the books and accounts of the district attorney.

(5) (a) To fulfill the requirements of this section, each county officer, office, or administrative unit shall give the county auditor complete and free access to all books, records, and papers.

(b) (i) If the county auditor finds that the books and accounts of any county officer, office, or administrative unit are not kept according to law or that incorrect or improper reports have been made by those officers, offices, or administrative units, he shall report his findings to the county governing body at their next regular meeting.

(ii) If the county auditor finds that the records of a justice court judge are not kept according to law or that incorrect or improper reports have been made by the justice court judge, the county auditor shall provide a copy of his report to the state court administrator, in addition to reporting his findings to the county governing body.

Section 22. Section Amended.

Section 17-24-19, Utah Code Annotated 1953, is amended to read:

17-24-19. Examination of records.

The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners, the county attorney, the district attorney, the county auditor, and the grand jury.

Section 23. Section Amended.

Section 17-25a-1, Utah Code Annotated 1953, as enacted by Chapter 44, Laws of Utah 1990, is amended to read:

17-25a-1. Constables — Nomination — Appointment — Authority.

(1) (a) The legislative governing bodies of counties and cities of the first or second class shall determine whether to appoint constables. If a county or city of the first or second class decides to appoint constables, they shall be nominated and appointed under the provisions of this chapter.

(b) However, a constable holding office on the effective date of this act may complete his term. Any subsequent terms he may serve shall be under the provisions of this chapter.

(2) To nominate a constable, the county or city of the first or second class shall establish a nominating commission.

(a) The county nominating commission shall consist of one member of the county legislative governing body, one judge, the county attorney, the district attorney, the sheriff of the county, or their designees, and one private citizen.

(b) The city nominating commission shall consist of one member of the city legislative governing body, one judge, the city attorney, the chief of police, or their designees, and one private citizen.

(c) The nominating commission shall review each applicant's credentials and recommend to the legislative governing body of the county or city the nominees it finds most qualified by majority vote.

(3) The county or city legislative governing body shall either appoint or reject any nominee.

(4) The authority of a constable may be withdrawn by the county or city legislative governing body for cause, including if the constable's peace officer certification is suspended or revoked under Section 67-15-10.5.

Section 24. Section Amended.

Section 17-36-35, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1975, is amended to read:

17-36-35. Treasurer — Profit from public funds — County attorney.

If the governing body receives evidence that the treasurer is profiting from public money or uses it for any unauthorized purpose, the matter shall be promptly referred to the county attorney or district attorney for appropriate action. If convicted for any such offense, the treasurer shall immediately forfeit his office.

Section 25. Section Amended.

Section 19-5-115, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-5-115. Violations — Penalties — Civil actions by board — Ordinances and rules of political subdivisions.

(1) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject, in a civil proceeding, to a civil penalty not to exceed $10,000 per day.

(2) (a) A fine not exceeding $25,000 per day shall be assessed against any person who willfully or with gross negligence:

(i) discharges pollutants in violation of Subsection 19-5-107 (1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107 (2);

(ii) violates Section 19-5-113; or

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works.

(b) Any person twice convicted under this subsection shall be punished by a fine not exceeding $50,000 per day.

(3) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall be punished by a fine not exceeding $10,000 or by imprisonment for not more than six months, or by both.

(4)(a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(5)(a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney[,] or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

(6) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the board may, through its executive secretary, initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(7) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(8)(a) Except as provided in Subsection (b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 26. Section Amended.

Section 19-6-113, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-6-113. Violations — Penalties — Reimbursement for expenses.

(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest, any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4)(a)(i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections [~~76-2-203~~] 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c) (i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or (d), who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than $250,000 or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than $1,000,000.

(5) (a) Except as provided in Subsections (b) and (c), all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental enforcement activities.

(c) Notwithstanding the provisions of Sections 78-3-14.5 and 78-4-22, the department may reimburse itself and local governments from monies collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

(d) The department shall regulate reimbursements by making rules that define:

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general [or], the county attorney, or the district attorney as appropriate under Section 17-18-1 or 17-18-1.7 in any county where venue is proper.

Section 27. Section Amended.

Section 20-4-9, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992, is amended to read:

20-4-9. Declarations of candidacy — Balloting procedure — Party nominees — Rules of procedure.

(1) (a) (i) All persons intending to become candidates at a primary convention for any elective precinct, county, prosecution district, or district office solely within a county or prosecution district that is to be filled at the next general election shall file a declaration of candidacy with the county clerk between the March 15 and April 15 before the next general election.

(ii) All persons intending to become candidates for the office of district attorney within a multicounty prosecution district that is to be filled at the next general election shall file a declaration of candidacy with the clerk designated in the interlocal agreement creating the prosecution district between the March 15 and April 15 before the next general election. The designated clerk shall provide to the county clerk of each county in the prosecution district a certified copy of each declaration of candidacy for the office of district attorney.

(b) All persons intending to become candidates at a primary convention for all other offices except the office of lieutenant governor, including the offices of United States senator or representative, that are to be filled at the next general election shall file a declaration of candidacy with the lieutenant governor between the March 15 and April 15 before the next general election.

(c) If April 15 is a Saturday or Sunday, the filing time shall be extended until 5:00 p.m. on the following Monday.

(2) Before the filing officer accepts any declaration of candidacy, he shall:

(a) read to the candidate the constitutional and statutory requirements for candidacy; and

(b) require the candidate to state whether or not the candidate fulfills the requirements of candidacy.

(3) (a) If the candidate states that he does not meet the requirements of candidacy, the filing officer shall not accept the candidate's declaration of candidacy.

(b) If the candidate states that he meets the requirements of candidacy, the filing officer shall:

(i) accept the candidate's declaration of candidacy; and

(ii) provide a certified copy of the declaration of candidacy to the chairman of the county or state political party of which the candidate is a member.

(4) The form of the declaration of candidacy shall be substantially as follows:

State of Utah
County of ____

I, _____, hereby declare my intention of becoming a candidate for nomination by the ____ party for the office of ____. I do solemnly swear that I can qualify to hold said office, both legally and constitutionally, if selected, and I reside at No. ____

Street in the City or Town of ____, state of Utah, Zip Code ____, Phone No. ____, and that if nominated as a candidate of the ____ party at the ensuing election, I will accept the nomination and not withdraw; and that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state, and that I will qualify for the office if elected thereto.

_____

Subscribed and sworn before me this ____ day of ____, 19__.

_____
Notary Public (or other officer qualified to administer oath.)

(5) Any person who fails to file a declaration of candidacy within the time provided in this chapter is ineligible for nomination to office.

(6) At the time and place set for the state, district, county, or precinct primary conventions, the name of any person who has filed a declaration of candidacy may be placed in nomination for the office for which the declaration was filed.

(7) (a) Following all nominating and seconding speeches made on behalf of any candidate for governor at a state primary convention, the delegates shall proceed to vote as provided in this chapter.

(b) The gubernatorial candidate nominated by the convention shall nominate a candidate for lieutenant governor who meets the eligibility requirements of the statutes and constitution. If the convention fails to affirmatively ratify the nominee for lieutenant governor, the gubernatorial nominee shall nominate other candidates until the convention affirmatively ratifies a nominee.

(c) The governor and lieutenant governor nominated by the convention according to the requirements of this chapter shall run as a joint office in the primary and general elections.

(d) Within 120 days of nomination, the lieutenant governor candidate shall file a declaration of candidacy with the lieutenant governor and pay the fee required by Section 20-3-14. Any candidate for lieutenant governor who fails to file within 120 days shall be disqualified and another candidate shall be nominated by the gubernatorial candidate to replace the disqualified candidate.

(8) (a) Prior to any precinct, county, district, or state primary convention, the county clerk or lieutenant governor shall provide printed ballots to the convention that contain the names of all persons who have filed declarations of candidacy.

(b) If an elected delegate dies, resigns, or is disqualified prior to the convention, the county central committee of the delegate's political party shall appoint a replacement from the voting district of the deceased or disqualified delegate.

(c) Where the number of candidates filing declarations of candidacy is not greater than the number of nominees required for the next general election, those candidates shall be declared to be the party's nominees for those offices and shall not be required to run at either the primary convention or the primary election.

(d) (i) Following the nominating and seconding speeches made on behalf of any candidate for an office to be filled by a precinct, county, district, or state primary convention the delegates shall vote.

(ii) At the precinct, county, or district primary conventions, the delegates shall vote by secret ballot.

(iii) At the state primary convention, the delegates shall vote by secret ballot.

(iv) If the delegates to the state primary convention choose to vote by county, each county committee chairman shall poll his delegation for their votes and announce the county's total votes for each candidate when called upon by the secretary of the convention.

(v) Each convention shall provide adequate time and voting facilities so that all delegates may vote.

(e) Each delegate shall cast one vote for each office to be filled, except that if two or more candidates are to be elected to any office at the next general election, each delegate shall cast as many votes for candidates for the office as there are candidates to be elected to the office at the general election.

(f) After voting, the delegate shall fold the ballot so that no person can see the marks and shall deposit the ballot in a common ballot box.

(g) (i) The ballots shall be counted by judges selected by the primary convention.

(ii) (A) If there are less than four candidates, the two candidates receiving the highest number of votes for any office to be filled at the next general election shall be declared the party's nominees to run at the next primary election unless more than one candidate is to be elected to any office at the next general election.

(B) In that instance, the convention may nominate twice the number of the candidates to be elected at the next general election, and that number of candidates who receive the highest votes at the primary convention shall be declared the party's nominees to run at the next primary election.

(iii) (A) If there are four or more candidates for any office to be filled at the next general election, the convention may, after January 1, 1993, use multiple ballots.

(B) If multiple ballots are used, no more than four candidates may be placed on the second ballot.

(C) The candidate receiving the fewest number of votes cast on each successive ballot may not be placed on the next ballot, until two candidates remain.

(D) Those two candidates shall be declared the party's nominees to run at the next primary election.

(h) Where only one office is to be filled, a candidate for that office that receives 70% or more of the votes

cast at the primary convention shall become the party's candidate in the general election without the necessity of running in the primary election.

(i) The secretary of each primary convention shall immediately certify to the county clerk or the lieutenant governor, as appropriate, the names of the party's nominees.

(j) Each political primary convention shall establish rules to govern its procedure that are consistent with the laws of this state.

Section 28. Section Amended.

Section 20-14-12, Utah Code Annotated 1953, as last amended by Chapters 21 and 68, Laws of Utah 1984, Special Session, is amended to read:

20-14-12. Failure to file statement — Notice to and procedure by county attorney — Examination of books and records by Lieutenant governor — Extraordinary writ to enforce actions by state officers.

(1) Upon the failure of any candidate, candidate's personal campaign committee, party committee, or person to file a statement within five days after receiving notice under Section 20-14-11, or if any statement filed discloses any violation of any provision of this chapter, the filing officer shall notify a county attorney of a county whose registered voters are eligible to vote in the campaign to which the campaign receipts, promises, pledges, disbursements, and obligations are devoted, and shall furnish the county attorney copies of all papers relating thereto, and the county attorney, on that complaint or the complaint of any other person, shall enter forthwith the same in a docket kept for that purpose in the county attorney's office, and within 20 days thereafter shall examine every case. If the evidence is sufficient, the county attorney shall institute a civil or criminal proceeding in the name of the state or refer the evidence to the district attorney, whichever is appropriate.

(2) Upon the failure of any personal campaign committee of a candidate for governor, lieutenant governor, state auditor, state treasurer, or attorney general, or any party committee, to file a statement within five days after receiving notice under Section 20-14-11, or if, in the reasonable exercise of his discretion, the lieutenant governor questions the accuracy or completeness of the statement, the lieutenant governor shall examine all books and records of any personal campaign committee, party committee, or person, which books and records shall be furnished by the personal campaign committee, party committee, or person within two days of the receipt of the request by the lieutenant governor.

(3) In the event the filing officer [or], county attorney, or district attorney refuses to take the actions provided by Subsection 20-14-12(1), or the lieutenant governor by Subsection 20-14-12(2), any registered voter may institute appropriate proceedings for an extraordinary writ.

Section 29. Section Amended.

Section 20A-1-509, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-509. Midterm vacancies in the office of county attorney.

(1)(a)(i) If a vacancy occurs in the office of county attorney or district attorney, the county legislative body or bodies, as provided by interlocal prosecution district agreement, shall publish a notice of the vacancy and a request for applications in a newspaper of general circulation in the county or prosecution district.

(ii) If three or more registered voters in the county or prosecution district who are licensed active members in good standing of the Utah State Bar submit applications for the position within four weeks of the first publication of notice, the county legislative body shall appoint one of them to be county attorney or district attorney, or in cases of multicounty districts, the county legislative bodies shall appoint one of them to be district attorney as provided by interlocal agreement.

(b)(i) If [less] fewer than three resident attorneys submit applications, the county legislative body or bodies, if applicable, may publicly solicit and accept additional applications for the position from licensed active members in good standing of the Utah State Bar who are not electors of the county.

(ii) The county legislative body or bodies, if applicable, shall consider the applications submitted by the attorneys who are registered voters in the county and the applications submitted by the attorneys who are not registered voters in the county and shall appoint one of the applicants to be county attorney or district attorney.

(2) The county legislative body or bodies, if applicable, shall appoint a person to serve in any vacant position for the unexpired term and until the replacement is elected and qualified.

Section 30. Section Amended.

Section 20A-3-504, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-504. Violations — Penalties.

(1) Except as allowed by Section 20A-3-108, a person is guilty of a class C misdemeanor if:

(a) he allows his ballot to be seen by any other person with an intent to reveal how he is about to vote;

(b) he states falsely that he is unable to mark his ballot;

(c) he interferes or attempts to interfere with any person who is inside the voting booth or who is marking a ballot; or

(d) he induces or attempts to induce any voter who is inside a voting booth or who is marking a ballot to vote to show how he marked his ballot.

(2) The election judges and clerks shall report any person violating this section to the county attorney

or district attorney having state criminal jurisdiction for prosecution.

Section 31. Section Amended.

Section 20A-5-204, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-204. Registration agents — Verification of residency.

(1) (a) Before the Saturday immediately before election day, registration agents who have received notification of persons registering under the methods outlined in this chapter shall verify actual residency in the district.

(b) If the agent is unable to confirm residency, the agent shall notify the county clerk and enter the words: "To be challenged" opposite the registered name, together with the grounds for disqualification.

(2) (a) Upon finding duplicate registration, the county clerk shall first check for errors in the record.

(b) If duplicate registration does exist, the clerk shall give written notice to the county attorney or district attorney of alleged violations of this title.

Section 32. Section Amended.

Section 21-3-4, Utah Code Annotated 1953, Utah Code Annotated 1953, is amended to read:

21-3-4. Constables' fees in criminal cases — Procedure.

Accounts against the county filed by constables for services in criminal cases shall be certified as correct by the county attorney[;] or district attorney and shall be presented to the auditor. The board of county commissioners may reject such bills in all causes or proceedings in which the county attorney or district attorney has not in writing authorized the issuance of the warrant of arrest.

Section 33. Section Amended.

Section 21-5-1.5, Utah Code Annotated 1953, as last amended by Chapter 219, Laws of Utah 1992, is amended to read:

21-5-1.5. State payment for jurors and subpoenaed persons — Appropriations and costs — Expenses in justice court.

(1) The state is responsible for payment of all fees and expenses authorized by law for prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs in criminal actions in the courts of record and actions in the juvenile court. The state is responsible for payment of all fees and expenses authorized by law for jurors in the courts of record. For such payments, the Judicial Council shall receive an annual appropriation contained in a separate line item appropriation.

(2) If expenses exceed the line item appropriation, the administrator of the courts shall submit a claim against the state to the Board of Examiners and request the board to recommend and submit a supplemental appropriation request to the Legislature for the deficit incurred.

(3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney, and by the county if the action is prosecuted by the county attorney or district attorney.

Section 34. Section Amended.

Section 21-7-16, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

21-7-16. Witnesses or jurors — Certifying excessive fees a felony.

Every clerk of the district court, circuit court, county attorney, district attorney, justice court judge, or other officer who shall certify as a fact any matter which he knows to be untrue, whereby any witness or juror shall be allowed a greater sum than he would otherwise be entitled to under the provisions of this title, is guilty of a felony.

Section 35. Section Amended.

Section 26-4-3, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-3. Medical examiner committee — Members — Appointment — Terms — Organization — Meetings — Per diem — Advisory body to department.

(1) The Medical Examiner Committee established under Section 26-1-7 shall be composed of:

(a) a representative of the Utah state bar who is a practicing attorney;

(b) a representative of the Utah Funeral Directors and Embalmers Association who is a practicing and licensed funeral director and embalmer;

(c) a representative of the Utah Peace Officers Association who is experienced in criminal investigation;

(d) a representative of the Utah State Medical Association who is a qualified pathologist;

(e) a representative of the department who is not a physician;

(f) a representative of the Utah State Medical Association who is a licensed and practicing physician;

(g) a [~~county attorney or deputy county attorney~~] representative of the Statewide Association of Public Attorneys; and

(h) two representatives of the general public.

(2) All members of the committee shall be appointed by the governor. Not more than five members shall be of the same political party. The terms of office of members shall be four years. Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the formal expiration of

their terms. Members appointed to the committee shall serve for a term of four years except that any appointment to fill a vacancy shall be for the remainder of the term of the member whose office becomes vacant.

(3) Members of the Medical Examiner Committee created by Chapter 63, Laws of Utah 1975, as amended, immediately prior to the effective date of this act, shall serve as the members of the committee throughout the terms for which they were appointed.

(4) The members shall elect from their number a chairman and a vice chairman for terms agreed upon by the members. The committee shall meet regularly twice each year at times and places fixed by the committee at the first meeting of each year and specifically upon call of the chairman or upon a call signed by three members of the committee and served upon all members. Four members shall constitute a quorum for the transaction of business and the action of a majority of members present shall be the action of the committee.

(5) Members shall be eligible for reappointment, but may not serve more than two consecutive terms. Members shall serve without compensation, but may receive a per diem allowance approved by the governor and shall be reimbursed for their actual and necessary expenses incurred in carrying out their official duties.

(6) The committee shall be an advisory body to the department and shall advise it in matters relating to this chapter, and shall make recommendations and reports to the department concerning rules considered appropriate for formal adoption.

Section 36. Section Amended.

Section 26-4-6, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-6. Investigation of deaths by county attorney or district attorney — Requests for autopsies.

The district attorney or county attorney having criminal jurisdiction or his deputies and peace officers within [~~their jurisdictions~~] his jurisdiction shall have authority to investigate deaths described in Section 26-4-7 [~~as well as~~] and other cases which may be within their authority or which may involve any criminal liability. If, in the opinion of the medical examiner, an autopsy should be performed or if an autopsy is requested by the district attorney or county attorney having criminal jurisdiction, such autopsy shall be performed by the medical examiner or a regional pathologist.

Section 37. Section Amended.

Section 26-4-8, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-8. Discovery of dead body — Notice requirements — Procedure.

[Where] (1) When death occurs under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body shall immediately notify the nearest law enforcement agency. The law enforcement agency having jurisdiction over the case shall then proceed to the place where the body is and conduct an investigation concerning the cause and circumstances of death for the purpose of determining whether there exists any criminal responsibility for the death.

(2) On a determination by the law enforcement agency that death may have occurred in any of the ways described in Section 26-4-7, the death shall be reported to the district attorney or county attorney [~~of the~~] having criminal jurisdiction and to the medical examiner by the law enforcement agency having jurisdiction over the investigation.

(3) The report shall be made by the most expeditious means available. Failure to give notification or report to the district attorney or county attorney having criminal jurisdiction and medical examiner is a class B misdemeanor.

Section 38. Section Amended.

Section 26-4-9, Utah Code Annotated 1953, as last amended by Chapter 6, Laws of Utah 1984, Second Special Session, is amended to read:

26-4-9. Custody of dead body and personal effects — Examination of scene of death — Preservation of body — Autopsies.

(1) Upon notification of a death under Section 26-4-8, the medical examiner shall assume custody of the deceased body, clothing on the body, biological samples taken, and any article on or near the body which may aid him in determining the cause of death except those articles which will assist the investigative agency to proceed without delay with the investigation. In all cases the scene of the event shall not be disturbed until authorization is given by the senior ranking peace officer from the law enforcement agency having jurisdiction of the case and conducting the investigation. Where death appears to have occurred under circumstances listed in Section 26-4-7, the person or persons finding or having custody of the body, or jurisdiction over the investigation of the death, shall take reasonable precautions to preserve the body and body fluids so that minimum deterioration takes place. The body shall not be moved without permission of the medical examiner [~~or~~], district attorney, or county attorney having criminal jurisdiction, or [~~the county attorney's~~] his authorized deputy except in cases of affront to public decency or circumstances where it is not practical to leave the body where found, or in such cases where the cause of death is clearly due to natural causes. The body can under direction of a licensed physician or the medical examiner or his designated representative be moved to a place specified by a funeral director, the attending physician, the medical examiner, or his representative.

(2) In the event the body, where referred to the medical examiner, is moved, no cleansing or embalming of the body shall occur without the permission of the medical examiner. An intentional or knowing violation of this subsection is a class B misdemeanor.

(3) When the medical examiner assumes lawful custody of a body under Subsection 26-4-7(3) solely

because the death was unattended, an autopsy shall not be performed unless requested by the district attorney, county attorney[,] having criminal jurisdiction, or law enforcement agency having jurisdiction of the place where the body is found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a licensed physician. The county attorney or district attorney and law enforcement agency having jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In any such case concerning unattended deaths qualifying as exempt from autopsy, a death certificate may be certified by a licensed physician. In this case the physician may be established as the medical examiner's designated representative. Requested autopsies shall not be performed when the medical examiner or his designated representative deem the autopsy unnecessary.

Section 39. Section Amended.

Section 26-4-11, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-11. Records and reports of investigations.

A complete copy of all written records and reports of investigations and facts resulting from medical care treatment, autopsies conducted by any person on the body of the deceased who died in any manner listed in Section 26-4-7 and the written reports of any investigative agency making inquiry into the incident shall be promptly made and filed with the medical examiner. Failure to submit reports other than reports of a county attorney, district attorney, or law enforcement agency, upon written request from the medical examiner within [~~10~~] ten days is a class B misdemeanor.

Section 40. Section Amended.

Section 26-4-12, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-12. Order to exhume body — Procedure.

(1) In case of any death described in Section 26-4-7, when a body is buried without an investigation by the medical examiner as to the cause and manner of death, it shall be the duty of the medical examiner, upon being advised of the fact, to notify the district attorney or county attorney [~~of the~~] having criminal jurisdiction where the body is buried or death occurred. Upon notification, the district attorney or county attorney having criminal jurisdiction may file an action in the district court to obtain an order to exhume the body. A district judge may order the body exhumed upon an ex parte hearing.

(2) A body shall not be exhumed until notice of the order has been served upon the executor or administrator of the deceased's estate, or if no executor or administrator has been appointed, upon the nearest heir of the deceased, determined as if the deceased had died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then the next heir in succession within the jurisdiction may be served. The executor, administrator, or heir shall have 24 hours to notify the issuing court of any objection to the order prior to the time the body is exhumed. If no heirs can be located within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which may order that the body be exhumed forthwith. Notification to the executor, administrator, or heir shall specifically state the nature of the action and the fact that objection must be filed with the issuing court within 24 hours of the time of service. In the event an heir files an objection, the court shall set hearing on the matter at the earliest possible time and issue an order on the matter immediately at the conclusion of the hearing. Upon the receipt of notice of objection, the court shall immediately notify the county attorney who requested the order, so that the interest of the state may be represented at the hearing. When there is reason to believe that death occurred in a manner described in Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a motion that the court, upon ex parte hearing, order the body exhumed forthwith and without notice. Upon a showing of exigent circumstances the court may order the body exhumed forthwith and without notice. In any event, upon motion of the district attorney or county attorney having criminal jurisdiction and upon the personal appearance of the medical examiner, the court for good cause[;] may order the body exhumed forthwith and without notice.

(3) An order to exhume a body shall be directed to the medical examiner, commanding him to cause the body to be exhumed, perform the required autopsy, and properly cause the body to be reburied upon completion of the examination.

(4) The examination shall be completed and a return of the order to exhume shall be made to the issuing court within [~~10~~] ten days. The complete autopsy report shall be made to the district attorney or county attorney having criminal jurisdiction for any action the attorney deems appropriate.

Section 41. Section Amended.

Section 26-4-14, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-14. Certification of death by attending physician — Deaths without medical attendance — Cause of death uncertain — Notice requirements.

The physician in attendance at the last illness of a deceased person who, in the judgment of the physician, does not appear to have died in a manner described in Section 26-4-7, shall certify the cause of death to his best knowledge and belief. When there is no physician in attendance during the last illness or when an attending physician is unable to determine with reasonable certainty the cause of death, the physician or person with custody of the body shall so notify the medical examiner. If the medical examiner has reason to believe there may be criminal responsibility for the death, he shall notify the district attorney or county attorney having criminal jurisdiction or the head of the law enforcement agency having jurisdiction to make further investigation of the death.

Section 42. Section Amended.

Section 26-4-17, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1985, is amended to read:

26-4-17. Records of medical examiner — Reports to county attorney or district attorney — Copies furnished to next of kin, law enforcement officers, and attending physician — Confidentiality.

(1) The medical examiner shall keep and maintain full and complete original records, properly indexed, giving the name, if known, or otherwise identifying every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, the occupation of the decedent if available, and all other relevant information concerning the death. A full report and detailed findings of the autopsy or report of the investigation shall be part of the record in each case.

(2) The medical examiner shall promptly deliver to the district attorney or county attorney having criminal jurisdiction over the case copies of all pertinent records relating to a death.

(3) The county attorney, the district attorney, the attorney general, or other law enforcement official having jurisdiction may, upon written request, secure copies of the original records where necessary for the performance of their duties.

(4) The medical examiner shall promptly deliver copies of all reports, findings, and records gathered or compiled in the investigation of a death to the decedent's next of kin, legal representative, or physicians who attended the decedent during the year before death, upon their written request for the release of documents.

(5) The medical examiner shall maintain the confidentiality of the records which shall be released as provided herein and upon payment of fees prescribed by the department under Section 26-1-6.

Section 43. Section Amended.

Section 26-4-19, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-19. Personal property of deceased — Disposition.

(1) Personal property of the deceased not held as evidence shall be turned over to the legal representative of the deceased within 30 days after completion of the investigation of the death of the deceased. If no legal representative is known, the county attorney, district attorney, or the medical examiner shall, within 30 days after the investigation, turn the personal property over to the county treasurer to be handled pursuant to the escheat laws.

(2) An affidavit shall be filed with the county treasurer by the county attorney, district attorney, or the medical examiner within 30 days after investigation of the death of the deceased showing the money or other property belonging to the estate of the deceased person which has come into his possession and the disposition made of the property.

(3) Property required to be turned over to the legal representative of the deceased may be held longer than 30 days if, in the opinion of the county attorney, district attorney, or attorney general, the property is necessary evidence in a court proceeding. Upon conclusion of the court proceedings, the personal property shall be turned over as described in this section and in accordance with the rules of the court.

Section 44. Section Amended.

Section 26-4-20, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-20. Officials not liable for authorized acts.

Except as provided in this chapter, [no] a criminal or civil action shall not arise against the county attorney, district attorney, or his deputies, the medical examiner or his deputies, or regional pathologists for authorizing or performing autopsies authorized by this chapter or for any other act authorized by this chapter.

Section 45. Section Amended.

Section 26-4-21, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-21. Authority of county attorney or district attorney to subpoena witnesses and compel testimony — Determination if decedent died by unlawful means.

(1) The district attorney or county attorney having criminal jurisdiction may subpoena witnesses and compel testimony concerning the death of any person and have such testimony reduced to writing under his direction and may employ a stenographer for that purpose at the same compensation as is allowed to reporters in the district courts. When the testimony has been taken down by the stenographer, a transcript thereof, duly certified, shall constitute the deposition of the witness.

(2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

Section 46. Section Amended.

Section 26-4-24, Utah Code Annotated 1953, as last amended by Chapter 136, Laws of Utah 1991, is amended to read:

26-4-24. Autopsies — Persons eligible to authorize.

(1) Autopsies may be authorized:

(a) by the Industrial Commission or a member of it as provided in Section 35-1-92;

(b) by individuals by will or other written document;

(c) upon a decedent by the next of kin in the following order and as known: surviving spouse, child, if 18 years or older, otherwise the legal guardian of the child, parent, sibling, uncle or aunt, nephew or niece, cousin, others charged by law with the duty of burial, or friend assuming the obligation of burial;

(d) by the county attorney, district attorney, or his deputy, or a district judge; and

(e) by the medical examiner as provided in this chapter.

(2) Autopsies authorized under Subsections (1)(a) and (1)(d) shall be performed by a certified pathologist.

(3) No criminal or civil action arises against a pathologist or a physician who proceeds in good faith and performs an autopsy authorized by this section.

Section 47. Section Amended.

Section 26-23-1, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-23-1. Legal advice and representation for department.

(1) The attorney general shall be the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them. The county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil action[~~, civil or criminal,~~] requested by the executive director to abate a condition which exists in violation of[~~, or to prosecute for the violation of or for the enforcement of,~~] the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.

(2) The district attorney or county attorney having criminal jurisdiction shall prosecute for the violation of the public health laws or standards, orders, and rules of the department as provided in Section 26-23-6.

(3) If the county attorney or district attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or, with the approval of the attorney general, by special counsel.

Section 48. Section Amended.

Section 26A-1-120, Utah Code Annotated 1953, as last amended by Chapter 112 and renumbered and amended by Chapter 269, Laws of Utah 1991, is amended to read:

26A-1-120. County attorney or district attorney to represent and advise department, board, officers, and employees.

(1) The county attorney of the county [where] when a civil [~~or criminal~~] claim arises shall bring any action requested by a local health department to abate a condition that exists in violation of, or to restrain or enjoin any action which is in violation of[~~, or to prosecute for the violation of or for the enforcement of~~] the public health laws and rules of the Departments of Health and Environmental Quality, the standards, regulations, orders, and notices, of a local health department, and other laws, ordinances, and rules pertaining to health and sanitary matters.

(2) The district attorney or county attorney having criminal jurisdiction shall prosecute criminal violations of the public health laws and rules of the Departments of Health and Environmental Quality, the standards, regulations, orders, and notices, of a local health department, and other laws, ordinances, and rules pertaining to health and sanitary matters.

[~~(2)~~] (3) The county attorney of a county where an action arises shall:

(a) act as legal adviser to the local health department and the board; and

(b) defend all actions and proceedings brought against the local health department, the board, or the officers and employees of the local health department.

Section 49. Section Amended.

Section 31A-2-108, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-2-108. Legal services.

(1) The commissioner shall call upon the attorney general for the legal counsel and assistance necessary to enforce the provisions of this title. Upon the commissioner's request, or upon the attorney general's own initiative, the attorney general may hire special legal counsel under Section 67-5-5 to represent the Insurance Department.

(2) Upon the commissioner's request, or upon his own initiative, the attorney general may aid in any investigation, hearing, or other procedure under this title and may institute, prosecute, and defend proceedings relating to the enforcement or interpretation of this title, including any proceeding to which the state, or the commissioner or any employee of the department in an official capacity, is a party or is interested.

(3) The commissioner may refer such evidence as is available concerning violations of this title or of any rule or order under this title to the proper county attorney or district attorney, who may, with or without this reference, institute the appropriate criminal proceedings.

Section 50. Section Amended.

Section 32A-1-119, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-119. Adjudicative proceedings—Procedure.

(1)(a) The commission, director, and department may conduct adjudicative proceedings to inquire into any matter necessary and proper for the administration of this title and rules adopted under this title.

(b) The commission, director, and department shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(c) Except where otherwise provided by law, all adjudicative proceedings shall be conducted in accordance with Title 52, Chapter 4, [the] Open and Public Meetings Act.

(d) All adjudicative proceedings concerning departmental personnel shall be conducted in accordance with Title 67, Chapter 19, Utah State Personnel Management Act. All hearings that are informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures promulgated by the commission, director, or department.

(2) (a) Disciplinary proceedings shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on any disciplinary matter.

(b) (i) Nothing in this section precludes the commission from appointing necessary officers, including hearing examiners, from within or without the department, to administer the disciplinary hearing process.

(ii) Officers and examiners appointed by the commission may conduct hearings on behalf of the commission and submit findings of fact, conclusions of law, and recommendations to the commission.

(3) When the department has on file a report from any government agency, peace officer, examiner, or investigator alleging that a permittee or licensee or any of its officers or employees has violated this title or the rules of the commission, the department may initiate disciplinary proceedings to determine:

(a) whether or not the permittee or licensee is guilty of the violation; and

(b) if found guilty, the penalty to be imposed.

(4) (a) An adjudicative proceeding shall be held if required by law, and in all cases before revoking or suspending any license or permit issued under this title, unless waived by the respondent.

(b) Inexcusable failure of a respondent to appear at a scheduled evidentiary hearing after receiving proper notice is an admission of the charged violation.

(c) The validity of any hearing is not affected by the failure of any person to attend or remain in attendance.

(d) All evidentiary hearings shall be presided over by the commission or an appointed hearing examiner.

(e) A hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.

(f) The commission or its hearing examiner may administer oaths or affirmations, take evidence, take depositions within or without this state, require by subpoena from any place within this state the testimony of any person at a hearing, and the production of any books, records, papers, contracts, agreements, documents, or other evidence considered relevant to the inquiry.

(i) Persons subpoenaed shall testify and produce any books, papers, documents, or tangible things as required in the subpoena.

(ii) Any witness subpoenaed or called to testify or produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney or district attorney in the jurisdiction where the privilege was claimed or where the witness resides setting forth the circumstance of the claimed privilege.

(iii) A person is not excused from obeying a subpoena without just cause. Any district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to appear before the issuing party, and to produce documentary evidence if so ordered, or to give evidence regarding the matter in question. Failure to obey an order of the court may be punished by the court as contempt.

(g) In all cases heard by a hearing examiner, the hearing examiner shall prepare a report to the commission. The report may not recommend a penalty more severe than that initially sought by the department in the notice of violation. A copy of the report shall be served upon the respective parties, and the respondent shall be given reasonable opportunity to file any written objections to the report before final commission action.

(h) In all cases heard by the commission, it shall issue its final decision and order.

(5) (a) The commission shall render a decision and issue a written order on any disciplinary action, and serve a copy on all parties.

(b) Any order of the commission is considered final on the date it becomes effective.

(c) If the commission is satisfied that a permittee or licensee has committed a violation of this title, or the commission's rules, it may take emergency action suspending or revoking the permit or the license according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, and assess the costs of any hearing to the permittee or the licensee.

(d) If the permit or license is revoked, the commission may order the revocation of any compliance bond posted by the permittee or licensee.

(e) Any permittee or licensee whose permit or license is revoked may not reapply for a permit or license under this title for three years from the date the permit or license was revoked.

(f) All costs assessed by the commission shall be transferred into the General Fund in accordance with Section 32A-1-113.

(6)(a) The commission may also initiate disciplinary actions against employees of licensees.

(b) If any employee is found to have violated this title, the commission may prohibit the employee from serving, selling, or handling alcoholic beverages in the course of employment for a period of up to one month.

(c) Any employee who receives three suspensions by the commission within a consecutive 36-month period may not handle alcoholic beverages, in the course of employment, for one year.

Section 51. Section Amended.

Section 32A-13-103, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-13-103. Searches, seizures, and forfeitures.

(1) The following are subject to forfeiture and no property right exists in them:

(a) all alcoholic products possessed, used, offered for sale, sold, given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported, or distributed in violation of this title or commission rules;

(b) all packages or property used or intended for use as a container for an alcoholic product in violation of this title or commission rules;

(c) all raw materials, products, and equipment used, or intended for use, in manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic product in violation of this title or commission rules;

(d) all implements, furniture, fixtures, or other personal property used or kept for any violation of this title or commission rules;

(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Subsection (a), (b), (c), or (d), except that:

(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this title or commission rules;

(ii) a conveyance may not be forfeited under this section by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(iii) any forfeiture of a conveyance subject to a bona fide security interest shall be subject to the interest of the secured party upon the party's showing that the party could not have known in the exercise of reasonable diligence that a violation would take place in the use of the conveyance; and

(f) all books, records, receipts, ledgers, or other documents used or intended for use in violation of this title or commission rules.

(2) Any of the property subject to forfeiture under this title may be seized by any peace officer of this state or any other person authorized by law upon process issued by any court having jurisdiction over the property in accordance with the procedures provided in Title 77, Chapter 23, [~~Utah Code of Criminal Procedure~~] Search and Administrative Warrants. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title;

(c) the peace officer or other person authorized by law has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer or other person authorized by law has probable cause to believe that the property is being or has been used, intended to be used, held, or kept in violation of this title or commission rules.

(3) If the property is seized pursuant to a search or administrative warrant, the peace officer or other person authorized by law shall make a proper receipt, return, and inventory and ensure the safekeeping of the property as required by Sections 77-23-6 through 77-23-8, Utah Code of Criminal Procedure. If the magistrate who issued the warrant is a circuit court judge or justice court judge, upon the filing of the return the jurisdiction of the circuit or justice court shall cease and the magistrate shall certify the record and all files without delay to the district court of the county in which the property was located. From the time of this filing, the district court has jurisdiction of the case.

(4) In the event of seizure of property without process, the peace officer or other person authorized by law shall make a return of his acts without delay directly to the district court of the county in which the property was located, and the district court shall have jurisdiction of the case. The return shall describe all property seized, the place where it was seized, and any persons in apparent possession of the property. The officer or other person shall also promptly deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure was made, or post it in a conspicuous place at the premises. The inventory shall state the place where the property is being held.

(5) Any peace officer or other person authorized by law who seizes any property subject to seizure under this title shall notify the agency responsible for prosecuting the action without delay and shall file a report with the department detailing information

on the property seized, the location of the seizure, and any persons arrested.

(6) Property taken or detained under this section is not repleviable but is considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction. When property is seized under this title, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(7) When any property is subject to forfeiture, a determination for forfeiture to the state shall be made in the following manner:

(a) A complaint verified on oath or affirmation shall be prepared by the county attorney or, if within a prosecution district, the district attorney where the property was seized or is to be seized and shall be filed in the district court. The complaint shall describe with reasonable particularity:

(i) the property that is the subject of the proceeding;

(ii) the date and place of seizure, if known; and

(iii) the allegations that constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the district court shall issue a warrant for seizure of the property that is the subject matter of the action without delay and deliver it to the sheriff for service, unless the property has previously been seized.

(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, at the place where the property was or is about to be seized by conspicuous posting at the premises, and served upon all persons known to the county attorney or, if within a prosecution district, the district attorney to have a claim in the property by one of the following methods:

(i) upon each claimant whose name and address is known at the last-known address of the claimant: or

(ii) upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by registered mail to the address given upon the records of the Division of Motor Vehicles; and

(iii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Except as provided in Subsection (e), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) When property is seized under this title, any interested person or claimant of the property, before being served with a complaint under this section, may file a petition in the district court for release of the person's interest in the property. The petition shall specify the claimant's interest in the property and the claimant's right to have it released. A copy shall be served upon the county attorney or, if within a prosecution district, a district attorney in the county of the seizure, who shall answer the petition within 20 days. Any person petitioning is not required to answer a complaint of forfeiture. If no complaint or petition is filed within 60 days after seizure of the property or after the final disposition of any criminal proceedings involving the property, whichever occurs last, the property shall automatically escheat to the state and shall be delivered to the custody of the appropriate agency for disposition as provided in Subsection (8).

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record, and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of the claim and order forfeiture or release of the property as the court may determine. If the county attorney or district attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney or district attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At the hearing all interested parties may present evidence of their right of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines proper.

(h) Proceedings under this section are independent of any other proceedings, whether civil or criminal, under this title or the laws of this state.

(i) When the court determines that claimants have no right in the property, in whole or in part, it shall declare the property forfeited and direct it delivered to the custody of the department if the property is an alcoholic product or a package used as a container for an alcoholic product, or to the Department of Administrative Services in all other cases. The appropriate department shall dispose of the property as provided in Subsection (8).

(j) When the court determines that property, in whole or in part, is subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be properly divided for partial forfeiture and

release, the court shall order it sold and the proceeds distributed as follows:

(i) first, proportionally among the legitimate claimants;

(ii) second, to defray the costs of the action, including seizure, storage of the property, and costs of sale; and

(iii) third, to the state treasurer for the General Fund.

(k) In any proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as the court considers equitable.

(l) Any party to a forfeiture proceeding, including the state, has the right of appeal from any judgment of forfeiture or release as to the whole or any part of the property in issue in the forfeiture proceedings.

(8) When any property is forfeited under this title by a finding of the court that no person is entitled to recover the property:

(a) The property, if an alcoholic product or a package used as a container for an alcoholic product, shall be deposited in the custody of the department and disposition of the property shall be as follows:

(i) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in saleable condition, the department may sell the alcoholic product and any package or container used to contain the alcoholic product, as appropriate, and forward the proceeds to the state treasurer for deposit in the General Fund. The department shall first cover its own costs and then reimburse the appropriate agency or agencies for costs expended in seizing, storing, and obtaining forfeiture of the property.

(ii) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its package or container shall be destroyed by the department under competent supervision.

(b) The property, if other than an alcoholic product, package, or container used to contain the alcoholic product shall be deposited in the custody of the Department of Administrative Services and disposition of the property shall be as follows:

(i) Any state agency, bureau, county, or municipality that demonstrates a need for specific property or classes of property subject to forfeiture may make application for the property to the executive director of the Department of Administrative Services, and shall clearly state in the application its need for the property and the use for which the property is intended.

(ii) The executive director of the Department of Administrative Services shall review all applications for property submitted, make a determination based on necessity and advisability as to final disposition, and notify the designated applicant who may obtain the property upon payment of all costs to that department. That department shall reimburse the appropriate agency or agencies for costs expended in seizing, storing, and obtaining forfeiture of the property.

(iii) If no disposition is made upon an application, the executive director of the Department of Administrative Services shall dispose of the property by public bidding, or if considered appropriate by the executive director, by destruction. Proof of destruction shall be upon oath of two officers or employees of the Department of Administrative Services verified by the executive director of that department or the executive director's designee.

Section 52. Section Amended.

Section 32A-13-104, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-13-104. Prosecutions.

(1) All prosecutions for violations of this title or commission rules shall be in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance enacted in furtherance of this title shall be in the name of the governmental entity involved.

(2)(a) Prosecution for violation of any provision of this title or commission rule shall be brought by the county attorney of the county or district attorney of the prosecution district where the violation occurs. If any county attorney or district attorney fails to initiate or diligently pursue any prosecution authorized and warranted under this title, the attorney general shall exercise supervisory authority over the county attorney or district attorney to ensure prosecution is initiated and diligently pursued.

(b) If a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of city attorneys.

(c) Local city and town prosecutors also have the responsibility of initiating and diligently pursuing prosecutions for violations of any local ordinances enacted in furtherance of this title or commission rules.

(3) Prosecutions for violations of this title or commission rules shall be commenced by the return of an indictment or the filing of an information with the district court of the county in which the offense occurred or where the premises are located upon which any alcoholic product was seized, if the offense involves an alcoholic product. All other offenses prescribed by this title shall be filed before any court having jurisdiction of the offense committed.

(4) Unless otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor under this title unless authorized by a prosecuting attorney. This restriction does not apply in cases where the magistrate has reasonable cause to believe that the per-

son to be charged may avoid apprehension or escape before approval can be obtained.

(5) In describing an offense respecting the sale, keeping for sale, or other disposal of alcoholic products, or the having, keeping, giving, purchasing, or the consumption of alcoholic products in any information, indictment, summons, judgment, warrant, or proceeding under this title, it is sufficient to state the sale, keeping for sale, or disposal, having, keeping, giving, purchasing, or consumption of the alcoholic product without stating the name or kind of the alcoholic product or the price of the alcoholic product, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received. It is not necessary to state the quantity of alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it is sufficient to allege the sale or disposal of more or less than the quantity.

(6) If an offense is committed under a local ordinance enacted to carry out this title, it is sufficient if the charging document refers to the chapter and section of the ordinance under which the offense is committed.

Section 53. Section Amended.

Section 34-23-302, Utah Code Annotated 1953, as enacted by Chapter 8, Laws of Utah 1990, is amended to read:

34-23-302. Criminal Penalty — Enforcement.

(1)(a) Repeated violation of Section 34-23-301 is a class B misdemeanor.

(b) "Repeated violation" does not include separate violations as to individual employees arising out of the same investigation or enforcement action.

(2) Upon the third violation of Section 34-23-301 by the same employer within a three-year period, the commission may prosecute a criminal action in the name of the state.

(3) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

Section 54. Section Amended.

Section 34-23-402, Utah Code Annotated 1953, as enacted by Chapter 8, Laws of Utah 1990, is amended to read:

34-23-402. Violation — Criminal penalty.

(1) The Industrial Commission of Utah may prosecute a misdemeanor criminal action in the name of the state. The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission. It is a class B misdemeanor for a person, whether individually or as an officer, agent, or employee of any person, firm, or corporation to:

(a) knowingly employ a minor or permit a minor to work in a repeated violation of this chapter;

(b) refuse or knowingly neglect to furnish to the commission, or its authorized representative, any information requested by the commission under this chapter;

(c) refuse access to his place of business or employment to the commission or its authorized representative when access has been requested in conjunction with an investigation related to this section;

(d) hinder the commission or its authorized representative in the securing of any information authorized by this section;

(e) refuse or knowingly omit or neglect to keep any of the records required by this chapter;

(f) knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

(g) discharge an employee or threaten to or retaliate against an employee because:

(i) the employee has testified;

(ii) is about to testify; or

(iii) because the employer believes that the employee may testify in any investigation or proceedings relative to the enforcement of this chapter; and

(h) willfully violate any rule or order issued under this chapter.

(2) This section does not apply to violations of Section 34-23-301.

Section 55. Section Amended.

Section 34-40-204, Utah Code Annotated 1953, as enacted by Chapter 8, Laws of Utah 1990, is amended to read:

34-40-204. Criminal penalty — Enforcement.

(1)(a) Repeated violation of this chapter is a class B misdemeanor.

(b) "Repeated violations" does not include separate violations as to individual employees arising out of the same investigation or enforcement action.

(2) Upon the third violation by the same employer within a three-year period, the commission may prosecute a criminal action in the name of the state.

(3) The county attorney, district attorney, or attorney general shall provide assistance in prosecutions under this section at the request of the commission.

Section 56. Section Amended.

Section 39-1-50, Utah Code Annotated 1953, as repealed and reenacted by Chapter 210, Laws of Utah 1988, is amended to read:

39-1-50. Military court — Concurrent prosecutorial jurisdiction with county attorney.

(1) The county attorney or district attorney as appropriate under Sections 17-18-1 and 17-18-1.7 of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with the Utah Military Court to prosecute the accused person at the expense of the county.

(2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Section 57. Section Amended.

Section 53B-5-111, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

53B-5-111. Referral of suspected violations — Penalty.

(1) The board shall report any information concerning a possible violation of this chapter or of rules promulgated under this chapter to the attorney general [or], the county attorney, or district attorney of any county or prosecution district in which the activity is occurring or has occurred. The attorney shall investigate the complaint and immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter or regulations.

(2) A violation of this chapter is a class B misdemeanor.

Section 58. Section Amended.

Section 57-11-16, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1973, is amended to read:

57-11-16. Violations — Criminal penalty — Limitation — Duties of attorney general or county attorney.

(1) Any person who willfully violates any provision of this act or of a rule adopted under it or any person who willfully, in an application for registration under this act or under the federal act, makes any untrue statement of a material fact or omits to state a material fact may be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than $50,000; or he may be imprisoned for not more than two years; or both. No indictment or information may be returned or complaint filed under this act more than five years after the alleged violation.

(2) The attorney general shall advise the division and its staff in matters requiring legal counsel or services in the exercise of the division's power or performance of its duties. In the prosecution or defense of any action [~~in connection therewith~~] under this section, the attorney general [or], the county attorney, or the district attorney of the appropriate county shall perform all necessary legal services without compensation other than their regular salaries.

Section 59. Section Amended.

Section 58-37-13, Utah Code Annotated 1953, as last amended by Chapter 121, Laws of Utah 1992, is amended to read:

58-37-13. Property subject to forfeiture — Seizure — Procedure.

(1) The following are subject to forfeiture and no property right exists in them:

(a) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(b) all raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(c) all property used or intended for use as a container for property described in Subsections (1)(a) and (1)(b);

(d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used with health food supplements and herbs, used or intended for use to administer controlled substances in violation of this chapter;

(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or concealment of property described in Subsections (1)(a) and (1)(b), except that:

(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this chapter;

(ii) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and

(iii) any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance;

(f) all books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of this chapter;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to any violation of this chapter, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter; but:

(i) an interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act; and

(ii) there is a rebuttable presumption that all money, coins, and currency found in proximity to forfeitable controlled substances, drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances are forfeitable under this section; the burden of proof is upon claimants of the property to rebut this presumption;

(h) all imitation controlled substances as defined in Section 58-37b-1, Imitation Controlled Substances Act;

(i) all warehousing, housing, and storage facilities, or interest in real property of any kind used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or manufacturing any controlled substances in violation of this chapter, except that:

(i) any forfeiture of a housing, warehousing, or storage facility or interest in real property is subject to the bona fide security interest of a party who could not have known in the exercise of reasonable diligence that a violation would take place on the property;

(ii) an interest in property may not be forfeited under this subsection if the holder of the interest did not know of the act which made the property subject to forfeiture, or did not willingly consent to the act; and

(iii) unless the premises are used in producing, cultivating, or manufacturing controlled substances, a housing, warehousing, or storage facility or interest in real property may not be forfeited under this section unless cumulative sales of controlled substances on the property within a two-month period total or exceed $1,000, or the street value of any controlled substances found on the premises at any given time totals or exceeds $1,000. A narcotics officer experienced in controlled substances law enforcement may testify to establish the street value of the controlled substances for purposes of this subsection; and

(j) any firearm, weapon, or ammunition carried or used during or in relation to a violation of the Utah Controlled Substances Act, the Utah Drug Paraphernalia Act, or the Utah Controlled Substances Precursor Act or any firearm, weapon, or ammunition kept or located within the proximity of controlled substances or other property subject to forfeiture under any of those acts.

(2) Property subject to forfeiture under this chapter may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this chapter.

(3) In the event of seizure under Subsection (2), proceedings under Subsection (4) shall be instituted promptly.

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) All substances listed in Schedule I that are possessed, transferred, distributed, or offered for distribution in violation of this act are contraband and shall be seized and summarily forfeited to the state. Similarly, all substances listed in Schedule I which are seized or come into the possession of the state are contraband and shall be summarily forfeited to the state if the owners are unknown.

(6) All species of plants from which controlled substances in Schedules I and II are derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or are wild growths, may be seized and summarily forfeited to the state.

(7) Failure, upon demand by the department or its authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, is authority for the seizure and forfeiture of the plants.

(8) When any property is forfeited under this chapter by a finding of the court that no person is entitled to recover the property, it shall be deposited in the custody of the Division of Finance. Disposition of all property is as follows:

(a) The state may include in its complaint seeking forfeiture, a request that the seizing agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited property in the enforcement of controlled substances laws, the court having jurisdiction over the case shall award the property to the seizing agency. The seizing agency shall pay to the prosecuting agency the legal costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section may not be applied by the court to costs or fines assessed against any defendant in the case.

(b) The seizing agency, or if it makes no application, any state agency, bureau, county, or municipality, which demonstrates a need for specific property or classes of property subject to forfeiture shall be given the property for use in enforcement of controlled substances laws upon the payment of costs to the county attorney or, if within a prosecution district, the district attorney for legal costs for filing and pursuing the forfeiture and upon application for the property to the director of the Division of Finance. The application shall clearly set forth the need for the property and the use to which the property will be put.

(c) The director of the Division of Finance shall review all applications for property submitted under Subsection (8)(b) and, if the seizing agency makes no application, make a determination based on necessity and advisability as to final disposition and shall notify the designated applicant or seizing agency, where no application is made, who may obtain the property upon payment of all costs to the appropriate department. The Division of Finance shall in turn reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action, not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds remaining after payment shall be returned to the seizing agency or agencies.

(d) If no disposition is made upon an application under Subsection (8)(a) or (b), the director of the Division of Finance shall dispose of the property by public bidding or as considered appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees of the department having charge of the property, and verified by the director of the department or his designated agent.

(9) When any property is subject to forfeiture, a determination for forfeiture to the state shall be made as follows:

(a) A complaint verified on oath or affirmation shall be prepared by the county attorney, or if within a prosecution district, the district attorney where the property was seized or is to be seized. The complaint shall be filed in the circuit or district court if the property is not real property and the value is less than $10,000. The complaint shall be filed in the district court if the value of property other than real property is $10,000 or more or the property is real property. If the complaint includes property under the jurisdiction of the circuit court and also property under the exclusive jurisdiction of the district court, the complaint shall be filed in the district court. The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the proceeding;

(ii) the date and place of seizure, if known; and

(iii) the allegations which constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to the sheriff for service, unless the property has previously been seized without a warrant under Subsection 58-37-13 (2).

(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the county attorney or district attorney to have a claim in the property by one of the following methods:

(i) upon each claimant whose name and address is known, at the last-known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is considered complete even though the mail is refused or cannot be forwarded; and

(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Except under Subsection (8)(c), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) When property is seized under this chapter, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney or, if within a prosecution district, the district attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If the county attorney or district attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney or district attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.

(h) Proceedings of this section are independent of any other proceedings, whether civil or criminal, under this chapter or the laws of this state.

(i) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered to the custody of the Division of Finance. The division shall dispose of the property under Subsection (8).

(j) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject

to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:

(i) first, proportionally among the legitimate claimants;

(ii) second, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale; and

(iii) third, to the Division of Finance for the General Fund.

(k) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.

Section 60. Section Amended.

Section 59-14-406, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-14-406. Assistance for commission.

The commission may call to its aid the attorney general, any city [~~or~~], county, or district attorney, or any peace officer to enforce any tax laws which it administers.

Section 61. Section Amended.

Section 61-1-21.5, Utah Code Annotated 1953, as enacted by Chapter 284, Laws of Utah 1983, is amended to read:

61-1-21.5. Legal counsel — Prosecutions.

(1) The attorney general shall advise and represent the division and its staff in all civil matters, administrative or judicial, requiring legal counsel or services in the exercise or defense of the division's power or the performance of its duties.

(2) In the prosecution of all criminal actions under this chapter, the attorney general, [~~or~~] county attorney, or district attorney of the appropriate jurisdiction, shall provide all legal services for the division and its staff. The division may refer such evidence as is available concerning violations of this chapter to the attorney general or the appropriate county attorney or district attorney for criminal prosecution.

Section 62. Section Amended.

Section 62A-3-311, Utah Code Annotated 1953, as last amended by Chapter 270, Laws of Utah 1989, is amended to read:

62A-3-311. Reports and information confidential — Exceptions — Anonymity of person making report — Exceptions — Violation — Penalty — Limitation on privilege.

(1) Any report made pursuant to this part and other information obtained as a result of a report in the possession of the division is confidential and not open to public inspection. However, a report, any part of a report, or any information obtained as a result of a report may be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected adult abuse or neglect;

(b) a physician licensed to practice medicine in this state under Sections 58-12-26 through 58-12-43, [~~the~~] Utah Medical Practice Act, who reasonably believes that a disabled adult may be the subject of abuse or neglect;

(c) any agency of this state that has responsibility or authority to care for, treat, or supervise an adult who is the subject of a report;

(d) the person who is the subject of the report or the guardian of that person;

(e) a court, upon finding that access to the records may be necessary for the determination of an issue before it;

(f) the appropriate county attorney, district attorney, or [~~the~~] attorney general's office; and

(g) a person engaged in bona fide research, when approved by the director of the division.

(2) (a) The anonymity of the person or persons making the initial report and any others involved in its subsequent investigation shall be preserved and may only be released in accordance with the rules of the division.

(b) The division's rules may only provide for release of identifying information as provided in Subsection (a), if the division finds that the:

(i) release would prevent a public injustice; and

(ii) benefit to the public substantially outweighs any private right affected by the release.

(3) Any person who willfully permits or aids and abets the release of any report or information in violation of this part is guilty of a class C misdemeanor.

(4) The physician-patient privilege is not a ground for excluding evidence regarding an adult's injuries or the cause of those injuries in any proceeding resulting from a report made in good faith pursuant to this part.

Section 63. Section Amended.

Section 62A-3-312, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-312. Enforcement by division — Duty of county attorney or district attorney.

(1) The division may take action as may be necessary to enforce the provisions of this part. It is the duty of the county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 to represent the division in that action.

(2) In the event When the county attorney or district attorney fails to act upon the request of the division within 30 days of the request, the division may request the attorney general to act and, in his discretion, he may assume the responsibilities and carry the action forward in place of the county attorney or district attorney.

(3) Upon receiving a report of a disabled adult who is the victim of abuse, neglect, or exploitation, the division shall notify the county attorney or district attorney, who may initiate legal proceedings and take action as necessary to prosecute the alleged offender.

Section 64. Section Amended.

Section 62A-4-505, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-4-505. Death of child — Reporting requirements.

Any person who has reason to believe that a child has died as a result of child abuse or neglect shall report that fact to the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section 17-18-1 or 17-18-1.7 and to the appropriate medical examiner in accordance with [~~the Utah Medical Examiner Act,~~] Title 26, Chapter 4, Utah Medical Examiner Act. The medical examiner shall investigate and report his findings to the police, the appropriate county attorney or district attorney, the division, and if the institution making the report is a hospital, to that hospital.

Section 65. Section Amended.

Section 62A-4-603, Utah Code Annotated 1953, as enacted by Chapter 248, Laws of Utah 1991, is amended to read:

62A-4-603. Appropriation and funding — Requirements.

(1) Funding for centers under this section is intended to be broad-based, provided by a line item appropriation by the Legislature to the division, and is intended to include federal grant monies, local government monies, and private donations.

(2) The money appropriated shall be used to contract with intergovernmental bodies that qualify under Subsection (3) to provide a comprehensive, multidisciplinary, nonprofit, intergovernmental response to abused children.

(3) To qualify for contracting as a Children's Justice Center, a comprehensive, multidisciplinary, nonprofit, intergovernmental body consisting of two or more public agencies and other persons shall enter into written agreements with one another for joint or cooperative action pursuant to this part. The cooperating public agencies and other persons shall make up the center's advisory board, which shall comprise the following people from the county or area:

(a) the Office of Social Services regional director or his designee;

(b) a district attorney or county attorney having criminal jurisdiction or his designee;

(c) a county sheriff or a chief of police or his designee;

(d) a chairman of a county commission or his designee;

(e) a physician licensed to practice medicine and surgery under Sections 58-12-26 through 58-12-43, Utah Medical Practice Act;

(f) a licensed mental health professional;

(g) a criminal defense attorney; and

(h) at least four members of the community at large.

(4) The advisory board shall not supersede the authority of the contracting public agency as designated in Subsection 62A-4-604 (1)(e).

(5) Appointees and designees shall serve at the request and upon written agreement of the creating public agencies and persons.

Section 66. Section Amended.

Section 62A-9-126, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-9-126. Enforcement of provisions — County attorney or district attorney — Attorney general.

The office may take legal action necessary to enforce this chapter. At the request of the office, it is the duty of the county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 to represent the office in any legal actions. The county attorney, district attorney, or attorney general, upon being advised of violation of this chapter, shall institute legal proceedings necessary to enforce this chapter. If the county attorney or district attorney fails to act within 30 days after request, the office may request the attorney general to act and he shall assume the responsibilities and carry the action forward in place of the county attorney or district attorney.

Section 67. Section Amended.

Section 62A-9-134, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-9-134. County attorney and attorney general responsibilities.

It is the duty of each county attorney, district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7, and the attorney general to carry out the mandates set forth in this chapter.

Section 68. Section Amended.

Section 63-11-64, Utah Code Annotated 1953, as enacted by Chapter 305, Laws of Utah 1983, is amended to read:

63-11-64. Heritage trees — Enforcement — Prosecution of violations.

County sheriffs, police, and other law enforcement officers within their respective jurisdictions

are responsible for the enforcement of this act. The county attorney or district attorney shall prosecute any violation of this act.

Section 69. Section Amended.

Section 63-27-118, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

63-27-118. Fire investigations by fire marshal.

(1) If the state fire marshal is of the opinion that further investigation of any fire is necessary, the state fire marshal, his deputy, or representative may:

(a) join the investigation in cooperation with the officers who have been conducting it;

(b) upon the request of the chief fire official of the political subdivision, assume control of the investigation and direct it; or

(c) conduct an independent investigation if necessary.

(2) An officer who has conducted or is conducting the investigation shall cooperate in every possible way with the state fire marshal, his deputy, and representative to further the purpose of the investigation. The county attorney or district attorney of the county in which the fire occurred shall, upon the request of the state fire marshal, his deputy, or representative, assist in the investigation.

Section 70. Section Amended.

Section 63-27-120, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

63-27-120. Criminal charges resulting from investigation — Procedure.

If the state fire marshal, his deputy, or representative, or any other officer participating in the investigation of any fire thinks that there is evidence sufficient to charge a person with arson, burning with intent to defraud or prejudice the insurer, or a similar crime, he shall furnish the county attorney or district attorney of the county in which the crime occurred with his evidence and request the county attorney or district attorney to commence the proper procedures to charge the person with the appropriate crime.

Section 71. Section Amended.

Section 63-63-2, Utah Code Annotated 1953, as a by Chapters 10 and 84, Laws of Utah 1991, is amended to read:

63-63-2. Definitions.

As used in this chapter:

(1) "Allowable expense" means reasonable and necessary charges incurred for products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The expenses include:

(a) mental health counseling for victims of criminally injurious conduct subject to limitations prescribed by the reparations board;

(b) as a consequence of personal injury:

(i) inpatient and outpatient medical treatment and physical therapy;

(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute; and

(iii) care of minor children enabling a victim or his spouse, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;

(c) as a consequence of death:

(i) funeral and burial expenses;

(ii) loss of support to a dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute; and

(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury at a rate as determined under rules established by the board; and

(d) pecuniary loss does not include loss attributable to pain and suffering, except as otherwise provided in this chapter.

(2) "Board" means the Crime Victims' Reparations Board created under Section 63-63-4.

(3) "Claimant" means any of the following claiming reparations under this chapter:

(a) a victim;

(b) a dependent of a deceased victim;

(c) a representative other than a collateral source; or

(d) an authorized person acting on behalf of any of them.

(4) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to him, from:

(a) the offender;

(b) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages considers them excess or secondary to benefits under this chapter;

(c) Social Security, Medicare, and Medicaid;

(d) state-required temporary nonoccupational disability insurance;

(e) workers' compensation;

(f) wage continuation programs of any employer;

(g) proceeds of a contract of insurance payable to the victim for the loss he sustained because of the criminally injurious conduct; or

(h) a contract providing prepaid hospital and other health care services, or benefits for disability.

(5) "Contested case" means a case the claimant contests, claiming the award was either inadequate or denied, or a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.

(6) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(a) is or would be subject to prosecution in this state under Section 76-1-201 and is or would be punishable under the Criminal Code; or

(b) under Subsection 63-63-11 (9) occurs to a resident of the state while he is outside the state, and is conduct that is or would be subject to criminal prosecution under the laws of the location where the conduct occurred.

(7) (a) "Criminally injurious conduct" includes, but is not limited to, the following crimes:

(i) arson or aggravated arson;

(ii) assault or aggravated assault;

(iii) mayhem;

(iv) threats to do bodily harm;

(v) lewd acts;

(vi) a sexual offense against a child;

(vii) kidnapping or aggravated kidnapping;

(viii) aggravated murder or murder;

(ix) manslaughter;

(x) rape;

(xi) aggravated sexual abuse;

(xii) robbery or aggravated robbery;

(xiii) aggravated burglary; or

(xiv) any other crime involving violence against a person.

(b) "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when the conduct:

(i) causes personal injury or death with criminal intent; or

(ii) constitutes the offense of driving while under the influence of alcohol or any drug.

(8) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after his death.

(9) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to his dependent, not including services the dependent would have received from the victim if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

(10) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for his benefit if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

(11) "Director" means the director of the Reparations Office.

(12) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(13) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(14) "Elderly victim" means a person 60 years of age or older who is a victim.

(15) "Essential personal property" means personal property necessary and essential to the health or safety of the victim.

(16) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible.

(17) "Intervenor" means any person who suffers physical injury or death as a direct result of his acting in good faith to:

(a) prevent the commission of a crime;

(b) lawfully apprehend a person reasonably suspected of having committed a crime; or

(c) aid the victim of a crime.

(18) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

(19) "Personal injury" means any personal injury sustained as a result of criminally injurious conduct. In the case of a victim of criminally injurious conduct involving a sexual offense, "personal injury" also includes any harm which results in a need for medical treatment, or any psychological or psy-

chiatric counseling, or both. When mental health counseling is necessary for a victim of a sexual offense, reparations awards shall be made for the counseling for the victim, as necessary, under Subsection 63-63-11 (11).

(20) "Reparations Office" means the office of the reparations staff for the purpose of carrying out this chapter.

(21) "Reparations officer" means a person employed by the Reparations Office to investigate claims of victims and award reparations under this chapter, and includes the director when he is acting as a reparations officer.

(22) "Reparations staff" means the director, the reparations officers, and any other staff employed to administer the Crime Victims' Reparations Act.

(23) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of himself or his dependents if he had not been injured.

(24) "Representative" means one who represents or stands in the place of another person, including but not limited to, an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor, or an heir of another person, or a parent of a minor.

(25) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

(26) "Trust fund" means the Crime Victim Reparation Trust Fund under Title 63, Chapter 63a.

(27) (a) "Victim" means a person who suffers personal injury, including injury which may require mental health counseling, suffers death, or is a dependent of a person who suffers death, any of which is a result of:

(i) criminally injurious conduct;

(ii) acting as an intervenor; or

(iii) the production of pornography in violation of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise determined by statute or rule.

(28) "Work loss" means loss of income from work the injured victim would have performed if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work he was capable of performing but unreasonably failed to undertake.

Section 72. Section Amended.

Section 65A-3-3, Utah Code Annotated 1953, as enacted by Chapter 121, Laws of Utah 1988, is amended to read:

65A-3-3. Enforcement of laws on state lands — County attorney or district attorney to prosecute.

(1) It is the duty of the division, county sheriffs, their deputies, police officers, and other law enforcement officers within their jurisdiction to enforce the provisions of this chapter and to investigate and gather evidence that may indicate a violation under this chapter.

(2) The county attorney or district attorney as appropriate under Sections 17-18-1 17-18-1.5, and 17-18-1.7 shall prosecute any criminal violations of this chapter and shall initiate a civil action to recover suppression costs incurred by the county or state for suppression of fire on private land.

Section 73. Section Amended.

Section 67-1-1, Utah Code Annotated 1953, as last amended by Chapter 67, Laws of Utah 1984, is amended to read:

67-1-1. General powers and duties.

In addition to those prescribed by the constitution, the governor has the following powers and must perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed, or in default thereof, apply such remedy as the law allows, and, if the remedy is imperfect, acquaint the Legislature therewith at its next session.

(3) He shall make appointments and fill vacancies as required by law.

(4) He is the sole official organ of communication between the government of this state and the government of any other state and of the United States.

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or the county attorney or district attorney of any county to inquire into the affairs or management of any corporation doing business in this state.

(7) He may require the attorney general to aid any county attorney or district attorney in the discharge of his duties.

(8) He may offer rewards, not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or any person who has committed, or is charged with the commission of, a felony.

(9) He must perform such duties respecting fugitives from justice as are prescribed by law.

(10) He must issue and transmit election proclamations as prescribed by law.

(11) He must issue land warrants and patents as prescribed by law.

(12) He must, prior to each regular meeting of the Legislature, deliver to the Division of Archives for publication all biennial reports of officers, commissions, and boards for the two preceding years.

(13) He may require any officer, commission, or board to make special reports to him in writing.

(14) He must discharge the duties of a member of all boards of which he is or may be made a member by the constitution or by law.

(15) He shall each year issue a proclamation recommending the observance of Arbor day, by the planting of trees, shrubs, and vines, in the promotion of forest growth and culture, and in the adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of such holiday.

(16) He has such other powers and must perform such other duties as are devolved upon him by law.

Section 74. Section Amended.

Section 67-5-1, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

67-5-1. General duties.

The attorney general shall:

(1) except as provided in Sections 10-3-928, 17-18-1, and 78-4-11, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

(2) after judgment on any cause referred to in Subsection (1), direct the issuance of process as necessary to execute the judgment;

(3) account for, and pay over to the proper officer, all moneys which come into his possession, that belong to the state;

(4) keep a file of all cases in which he is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to his successor in office;

(5) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(6) give his opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(7) when required by the public service or directed by the governor, assist any district or county attorney in the discharge of his duties;

(8) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(9) when the property of a judgment debtor in any judgment mentioned in Subsection (8) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(10) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(11) discharge the duties of a member of all official boards of which he is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(12) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs; and

(13) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose he may cite any persons before any of the district courts to answer inquiries and render accounts concerning any property, may examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, the attorney general shall institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state.

Section 75. Section Amended.

Section 67-5a-1, Utah Code Annotated 1953, as enacted by Chapter 136, Laws of Utah 1990, is amended to read:

67-5a-1. Utah Prosecution Council — Duties — Membership.

(1) There is created within the Office of the Attorney General the Utah Prosecution Council, referred to as the council in this chapter.

(2) The [~~Utah Prosecution~~] council shall:

(a) provide training and continuing legal education for state and local prosecutors;

(b) provide assistance to local prosecutors; and

(c) as funds are available, provide reimbursement for unusual expenses related to prosecution for violations of state laws.

(3) The council shall be composed of nine members, selected as follows:

(a) the attorney general or his designated representative;

(b) the commissioner of public safety or his designated representative;

(c) four elected and acting county or district attorneys designated by the county or district attorneys' section of the Utah Association of Counties; a county or district attorney's term expires when a successor is designated by the county or district attorneys' section or when he is no longer an elected and acting county attorney or district attorney, whichever occurs first;

(d) two city prosecutors designated by the Utah League of Cities and Towns; a city prosecutor's term expires when a successor is designated by the association or when he is no longer employed as a city prosecutor, whichever occurs first; and

(e) the chairman of the Advisory Board of the Statewide Association of Prosecutors of Utah.

Section 76. Section Amended.

Section 68-3-12, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

68-3-12. Rules of construction.

(1) In the construction of these statutes, the following general rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute:

(a) The singular number includes the plural, and the plural the singular.

(b) Words used in one gender comprehend the other.

(c) Words used in the present tense include the future.

(2) In the construction of these statutes, the following definitions shall be observed, unless the definition would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute:

(a) "Adjudicative proceeding" means:

(i) all actions by a board, commission, department, officer, or other administrative unit of the state that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(ii) judicial review of all such actions.

(b) "Councilman" includes a town trustee or a city commissioner, and "city commissioner" includes a councilman.

(c) "Executor" includes administrator, and the term "administrator" includes executor, when the subject matter justifies such use.

(d) "Guardian" includes a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and a person who is appointed by a court to manage the estate of a minor or incapacitated person.

(e) "Highway" and "road" include public bridges, and may be held equivalent to the words "county way," "county road," "common road," and "state road."

(f) "Him," "his," and other masculine pronouns include "her," "hers," and similar feminine pronouns unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(g) "Insane person" include idiots, lunatics, distracted persons, and persons of unsound mind.

(h) "Land," "real estate," and "real property" include land, tenements, hereditaments, water rights, possessory rights, and claims.

(i) "Man" or "men" when used alone or in conjunction with other syllables as in "workman," includes "woman" or "women" unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(j) "Month" means a calendar month, unless otherwise expressed, and the word "year," or the abbreviation "A.D." is equivalent to the expression "year of our Lord."

(k) "Oath" includes "affirmation," and the word "swear" includes "affirm." Every oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose."

(l) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

(m) "Personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein.

(n) "Personal representative," "executor," and "administrator" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(o) "Population" shall be as shown by the last preceding state or national census, unless otherwise specially provided.

(p) "Property" includes both real and personal property.

(q) "Sheriff," "county attorney," "district attorney," "clerk," or other words used to denote an executive or ministerial officer, may include any deputy, or other person performing the duties of such officer, either generally or in special cases; and the words "county clerk" may be held to include "clerk of the district court."

(r) "Signature" includes any name, mark, or sign written with the intent to authenticate any instrument or writing.

(s) "State," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and the territories.

(t) "Town" may mean incorporated town and may include city, and the word "city" may mean incorporated town.

(u) "Vessel," when used with reference to shipping, includes steamboats, canal boats, and every structure adapted to be navigated from place to place.

(v) "Will" includes codicils.

(w) "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer; and "process" means a writ or summons issued in the course of judicial proceedings.

(x) "Writing" includes printing, handwriting, and typewriting.

Section 77. Section Amended.

Section 76-6-704, Utah Code Annotated 1953, as last amended by Chapter 123, Laws of Utah 1986, is amended to read:

76-6-704. Computer Crimes Act — Attorney general, county attorney, or district attorney to prosecute — Conduct violating other statutes.

(1) The attorney general, district attorney, or the county attorney shall prosecute suspected criminal violations of this part.

(2) Prosecution under this part does not prevent any prosecutions under any other law.

Section 78. Section Amended.

Section 76-6-705, Utah Code Annotated 1953, as enacted by Chapter 123, Laws of Utah 1986, is amended to read:

76-6-705. Reporting violations.

Every person, except those to whom a statutory or common law privilege applies, who has reason to believe that the provisions of Section 76-6-703 are being or have been violated shall report the suspected violation to the attorney general, or [to the] county attorney, or, if within a prosecution district, the district attorney of the county or prosecution district in which part or all of the violations occurred.

Section 79. Section Amended.

Section 76-6a-4, Utah Code Annotated 1953, as enacted by Chapter 89, Laws of Utah 1983, is amended to read:

76-6a-4. Operation as felony — Investigation — Prosecution.

(1) Any person who knowingly organizes, establishes, promotes, or administers a pyramid scheme is guilty of a third degree felony.

(2) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting criminal violations of this chapter.

Section 80. Section Amended.

Section 76-8-1002, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1975, is amended to read:

76-8-1002. Habitual criminal — Procedure — Punishment.

(1) In charging a person with being a habitual criminal, the information or complaint filed before the committing magistrate shall allege the felony committed within the state of Utah and the two or more felony convictions relied upon by the state of Utah.

(2) If the defendant is bound over to the district court for trial, the county attorney or district attorney shall in the information or complaint [~~set forth~~] specify the felony committed within the state of Utah and the two or more previous felony convictions relied upon for the charge of being a habitual criminal. If a jury is impaneled, it shall not be told of the previous felony convictions or charge of being a habitual criminal. The trial on the felony committed within the state of Utah shall proceed as in other cases.

(3) If the court or jury finds the defendant guilty of the felony charged, then the defendant shall be tried immediately by the same judge and jury, if a jury was impaneled, on the charge of being a habitual criminal, unless the defendant has entered or enters a plea of guilty to the charge of being a habitual criminal.

(4) No conviction may be admissible to establish the status of a habitual criminal if it was set aside on the basis of the defendant's innocence.

Section 81. Section Amended.

Section 76-10-1215, Utah Code Annotated 1953, as enacted by Chapter 92, Laws of Utah 1977, is amended to read:

76-10-1215. Prosecution by county, district, or city attorney — Fines payable to county or city.

Prosecution for violation of any section of this part, including a felony violation, shall be brought by the county attorney or, if within a prosecution district, the district attorney of the county where the violation occurs. If the violation occurs, however, in a city of the first or second class, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of city attorneys. All fines imposed for the violation of this part shall be paid to the county or city of the prosecuting attorney, as the case may be.

Section 82. Section Amended.

Section 76-10-1225, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1977, is amended to read:

76-10-1225. Prosecution of pornographic film violations by county attorney, district attorney, or city attorney.

The county attorney of the county where the violation occurred or within a prosecution district where the violation occurred, the district attorney shall file and prosecute any action for violations of this act unless the violation occurs in a city of the first or second class. If the violation occurs in such a city, the action may be commenced and prosecuted by either the city attorney or the county attorney. All fines imposed for any violation of this act shall be paid to the political subdivision employing the prosecuting attorney.

Section 83. Section Amended.

Section 76-10-1603.5, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

76-10-1603.5. Violation a felony — Costs — Forfeiture — Fines — Divestiture — Restrictions — Dissolution or reorganization — Restraining orders and injunctions — Hearings — Special verdict — Findings — Judgment and order of forfeiture — Seizure of property — Sale — Proceeds — Petitions for remission or mitigation of forfeiture — Hearing — Disposition.

(1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree felony. In addition to penalties prescribed by law, the court may order the person found guilty of the felony to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section. The person shall forfeit to the state or the county:

(a) any interest acquired or maintained in violation of any provision of Section 76-10-1603;

(b) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of Section 76-10-1603; and

(c) any property constituting or derived from any proceeds which the person obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or from any act or conduct constituting the pattern of unlawful activity proven as part of the violation of any provision of Section 76-10-1603.

(2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Article I, Sec. 15 of the Utah Constitution, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives profits or other proceeds from a conduct prohibited by Section 76-10-1603, may be fined not more than twice the amount of the gross profits or other proceeds.

(4) Except under Subsection (2), property subject to criminal forfeiture under this section includes:

(a) real property, including things growing on, affixed to, and found in land; and

(b) tangible and intangible personal property including money, rights, privileges, interests, claims, and securities of any kind;

(c) but does not include property legitimately exchanged for services rendered in connection with a defendant's exercise of his rights under the Sixth Amendment to the Constitution of the United States and the right to appear and be defended by counsel in criminal prosecutions guaranteed by Article I, Sec. 12 of the Utah Constitution.

(5) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law and in addition to any forfeitures provided for in this section, the court may do any or all of the following:

(a) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

(b) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(c) order the dissolution or reorganization of any enterprise.

(6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's

rights under the First Amendment to the Constitution of the United States or Article I, Sec. 15 of the Utah Constitution.

(7)(a) All rights, title, and interest in forfeitable property described in Subsections (1) and (2) vest in the state if the action was brought by the attorney general or in the county if the action was brought by a county attorney or district attorney, upon the commission of the act or conduct giving rise to the forfeiture under this section.

(b) Any forfeitable property that is subsequently transferred to a person other than the defendant may be the subject of a special proceeding and an order that the property be forfeited to the state or the county, unless the transferee establishes in a hearing held under Subsection (16) that he is a bona fide purchaser for value of the property who at the time of purchase reasonably believed that the property was not subject to forfeiture under this section.

(8) (a) Upon application of the attorney general [or], the county attorney, or district attorney, the court may enter restraining orders or injunctions, require the execution of satisfactory performance bonds, or take any other action to preserve for forfeiture under this section any forfeitable property described in Subsections (1) and (2):

(i) upon filing of an indictment or an information charging a violation of Section 76-10-1603 and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(ii) prior to the filing of the indictment or information, if, after notice to persons appearing to have an interest in the property and after affording them an opportunity for a hearing, the court determines that:

(A) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(B) the need to preserve the availability of the property or prevent its sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

(iii) an order entered under Subsection (ii) is effective for no more than 90 days, unless extended by the court for good cause shown or unless an indictment or information as described in Subsection (i) has been filed.

(b) A temporary restraining order may be entered upon application of the attorney general [~~or a~~], county attorney, or a district attorney without notice or opportunity for a hearing, when an information or indictment has not yet been filed with respect to the property, if the attorney general [~~or~~], county attorney, or a district attorney demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation. The temporary order expires not more than ten days after it is entered unless extended for good cause shown or unless the party against whom it is entered consents to an extension. A hearing concerning an order entered under this subsection shall be held as soon as possible, and prior to the expiration of the temporary order.

(c) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing held under this subsection.

(9) (a) Upon conviction of a person for violating any provision of Section 76-10-1603, the jury, if the case was tried to a jury, shall be instructed and asked to return a special verdict as to whether any of the property identified in the information or indictment is forfeitable under Subsections 76-10-1603.5 (1) and (2).

(b) If the case is tried without a jury, the judge shall make specific written findings if he determines that the property identified in the information or indictment is forfeitable under Subsections 76-10-1603.5 (1) and (2). Whether property is forfeitable shall be proven beyond a reasonable doubt.

(10) (a) Upon conviction of a person for violating any provision of Section 76-10-1603 and upon the jury's special verdict or the judge's finding that the property is forfeitable, the court shall enter a judgment and order of forfeiture of the property to the state or the county and shall authorize the attorney general [or], the county attorney, or, if within a prosecution district, the district attorney to seize all property ordered forfeited upon the terms stated by the court in its order. Following the entry of an order declaring property forfeited, the court may, upon application of the attorney general [or], the county attorney, or the district attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state or county in property ordered forfeited.

(b) Any income accruing to, or derived from, an enterprise or an interest in an enterprise or property which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the state or county or third parties.

(11) (a) After seizure of property ordered forfeited under this section, the attorney general [or], the county attorney, or the district attorney shall direct the disposition of the property by sale or any other commercially feasible means, making provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the state or the county, expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property

at any sale held by the attorney general or the county attorney.

(b) The court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property would result in irreparable injury, harm, or loss to him.

(c) The proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited may be used first to pay expenses of the forfeiture and the sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs.

(12) Regarding property ordered forfeited under this section, the attorney general [or], the county attorney, or, if within a prosecution district, the district attorney may:

(a) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons in the interest of justice and as is consistent with the provisions of this section;

(b) compromise claims arising under this section;

(c) award compensation to persons providing information resulting in a forfeiture under this section;

(d) direct the disposition by the state or the county of all property ordered forfeited under this section by public sale or any other commercially feasible means, making provision for the rights of innocent persons;

(e) destroy or otherwise dispose of property determined to be obscene or pornographic; and

(f) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(13) Except under Subsection (16), a party claiming an interest in property subject to forfeiture under this section:

(a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and

(b) may not commence an action at law or equity against the state or the county concerning the validity of his alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.

(14) The district court of the state which has jurisdiction of a case under this part may enter orders under this section without regard to location of any property which may be subject to forfeiture under this section, or which has been ordered forfeited under this section.

(15) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state or county, the court may, upon application of the attorney general [or], the county attorney, or the district attorney order that the testimony of any witness relating to the property forfeited be taken by deposition, and that any book, paper, document, record, recording, or other material not privileged shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.

(16) (a) Following the entry of an order of forfeiture under this section, the attorney general [or], the county attorney, or the district attorney shall publish notice of the order and of its intent to dispose of the property as the court may direct. The attorney general [or], the county attorney, or the district attorney may also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture, as a substitute for published notice as to those persons so notified.

(b) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the state or to the county under this section may, within 30 days of the final publication of notice or his receipt of notice under Subsection (a), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing is held before the court without a jury.

(c) The petition shall be in writing and signed by the petitioner under penalty of perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and any additional facts supporting the petitioner's claim, and the relief sought.

(d) The hearing on the petition shall, to the extent practicable, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition and any petition filed by any other person under this section, other than the defendant.

(e) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf and cross-examine witnesses who appear at the hearing. The attorney general [or], county attorney, or district attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture. The court is not bound by the Utah Rules of Evidence at a hearing held under this subsection.

(f) The court shall amend the order of forfeiture in accordance with its determination, if after the hearing the court determines that the petitioner has established by a preponderance of the evidence that:

(i) the petitioner has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested

in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct which gave rise to the forfeiture of the property under this section; or

(ii) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and at the time of purchase reasonably believed that the property was not subject to forfeiture under this section.

(g) Following the court's disposition of all petitions filed under this subsection, or if no petitions are filed following the expiration of the period provided in Subsection (b) for the filing of petitions, the state or the county has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Section 84. Section Amended.

Section 76-10-1605, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1989, is amended to read:

76-10-1605. Remedies of person injured by a pattern of unlawful activity — Double damages — Costs, including attorney's fee — Arbitration — Agency — Burden of proof — Actions by attorney general or county attorney — Dismissal — Statute of limitations — Authorized orders of district court.

(1) A person injured in his person, business, or property by a person engaged in conduct forbidden by any provision of Section 76-10-1603 may sue in an appropriate district court and recover twice the damages he sustains, regardless of whether:

(a) the injury is separate or distinct from the injury suffered as a result of the acts or conduct constituting the pattern of unlawful conduct alleged as part of the cause of action; or

(b) the conduct has been adjudged criminal by any court of the state or of the United States.

(2) A party who prevails on a cause of action brought under this section recovers the cost of the suit, including a reasonable attorney's fee.

(3) All actions arising under this section which are grounded in fraud are subject to arbitration under Title 78, Chapter 31a.

(4) In all actions under this section, a principal is liable for actual damages for harm caused by an agent acting within the scope of either his employment or apparent authority. A principal is liable for double damages only if the pattern of unlawful activity alleged and proven as part of the cause of action was authorized, solicited, requested, commanded, undertaken, performed, or recklessly tolerated by the board of directors or a high managerial agent acting within the scope of his employment.

(5) In all actions arising under this section, the burden of proof is clear and convincing evidence.

(6) The attorney general [~~or any~~], county attorney, or, if within a prosecution district, the district attorney may maintain actions under this section on behalf of the state, the county, or any person injured by a person engaged in conduct forbidden by any provision of Section 76-10-1603, to prevent, restrain, or remedy injury as defined in this section and may recover the damages and costs allowed by this section.

(7) In all actions under this section, the elements of each claim or cause of action shall be stated with particularity against each defendant.

(8) If an action, claim, or counterclaim brought or asserted by a private party under this section is dismissed prior to trial or disposed of on summary judgment, or if it is determined at trial that there is no liability, the prevailing party shall recover from the party who brought the action or asserted the claim or counterclaim the amount of its reasonable expenses incurred because of the defense against the action, claim, or counterclaim, including a reasonable attorney's fee.

(9) An action or proceeding brought under this section shall be commenced within three years after the conduct prohibited by Section 76-10-1603 terminates or the cause of action accrues, whichever is later. This provision supersedes any limitation to the contrary.

(10) (a) In any action brought under this section, the district court has jurisdiction to prevent, restrain, or remedy injury as defined by this section by issuing appropriate orders after making provisions for the rights of innocent persons.

(b) Before liability is determined in any action brought under this section, the district court may:

(i) issue restraining orders and injunctions;

(ii) require satisfactory performance bonds or any other bond it considers appropriate and necessary in connection with any property or any requirement imposed upon a party by the court; and

(iii) enter any other order the court considers necessary and proper.

(c) After a determination of liability, the district court may, in addition to granting the relief allowed in Subsection (1), do any one or all of the following:

(i) order any person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

(ii) impose reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(iii) order the dissolution or reorganization of any enterprise.

(d) However, if an action is brought to obtain any relief provided by this section, and if the conduct prohibited by Section 76-10-1603 has for its pattern of unlawful activity acts or conduct illegal under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exer-

cise of an affected party's rights under the First Amendment to the Constitution of the United States, or Article I, Sec. 15 of the Utah Constitution. The court shall, upon the request of any affected party, and upon the notice to all parties, prior to the issuance of any order provided for in this subsection, and at any later time, hold hearings as necessary to determine whether any materials at issue are obscene or pornographic and to determine if there is probable cause to believe that any act or conduct alleged violates Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222. In making its findings the court shall be guided by the same considerations required of a court making similar findings in criminal cases brought under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, including, but not limited to, the definitions in Sections 76-10-1201, 76-10-1203, and 76-10-1216, and the exemptions in Section 76-10-1226.

Section 85. Section Amended.

Section 76-10-1906, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1989, is amended to read:

76-10-1906. Reporting by financial institutions — Criminal and civil penalties — Enforcement.

(1)(a) All financial institutions required to file reports under Title 31, [~~Section~~] Sections 5311 through 5313, United States Code Annotated, as prescribed by 31 Code of Federal Regulations Section 103.22, shall file a duplicate copy of the required report with the Utah Division of Investigation.

(b) All persons engaged in a trade or business, except financial institutions referred to in Subsection (1)(a), who receive more than $10,000 in domestic or foreign currency in one transaction, or who receive this amount through two or more related transactions during any one business day, shall complete and file with the Utah Division of Investigation the information required by 26 U.S.C. Section 6050I concerning returns relating to currency received in trade or business.

(c) Any person who knowingly and intentionally fails to comply with the reporting requirements of this subsection is:

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

(ii) on a second or subsequent conviction, guilty of a class A misdemeanor.

(d) A person is guilty of a third degree felony who knowingly and intentionally violates any part of this subsection and the violation is committed either:

(i) in furtherance of the commission of any other violation of state law; or

(ii) as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period.

(2) In addition to the criminal penalties which may be imposed for violation of this Subsection (d), the person is liable for a civil penalty of not more than the greater of the value of the amount of the currency transaction or $10,000.

(3) The Utah Division of Investigation shall enforce compliance with Subsection (1) and is custodian of all information and documents filed under Subsection (1). The information is confidential except any law enforcement agency, county attorney, district attorney, or the attorney general, when establishing a clear need for the information for investigative purposes, shall have access and shall maintain the information in a confidential manner except as otherwise provided by the Utah Rules of Criminal Procedure.

Section 86. Section Amended.

Section 77-1a-1, Utah Code Annotated 1953, as last amended by Chapter 234, Laws of Utah 1992, is amended to read:

77-1a-1. Peace officer.

(1) "Peace officer" means any employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(a) "Peace officer" specifically includes the following:

(i) any sheriff or deputy sheriff, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any sworn member of the Department of Public Safety;

(iii) all persons specified in Section 23-20-1.5;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators for the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law; and

(viii) school district police officers as designated by the board of education for the school district.

(b) Any police force established by a private college or university shall, prior to exercising its police power, apply to and be certified by the commissioner of public safety according to the rules of the Department of Public Safety.

(2) Peace officers have statewide peace officer authority, but the authority extends to other counties, cities, or towns only when they are acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit. This limitation does not apply to any peace officer employed by the state.

(3) (a) Peace officers shall, prior to exercising peace officer authority, satisfactorily complete the

basic course at a certified peace officer training academy or pass a certification examination as provided in Section 67-15-8, and be certified.

(b) In addition, peace officers shall satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the Division of Peace Officer Standards and Training, with the advice and consent of the Council on Peace Officer Standards and Training.

Section 87. Section Amended.

Section 77-6-2, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

77-6-2. Commencement of action for removal.

An action for the removal of a justice court judge or officer of a city, county, or other political subdivision of this state shall be commenced by presenting a sworn, written accusation to the district court. The accusation may be initiated by any taxpayer, grand jury, county attorney, or district attorney for the county in which the officer was elected or appointed, or by the attorney general.

Section 88. Section Amended.

Section 77-6-4, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-6-4. Presentation of accusation — Service on defendant.

When the accusation is initiated by (1) a grand jury, it shall be presented to the court by the foreman in the presence of the grand jurors and shall be filed with the clerk; or (2) a taxpayer, the county attorney, district attorney, or the attorney general, it shall be presented to the presiding judge of the district court for filing with the clerk. Except when initiated by the county attorney or district attorney, the court shall cause a copy of the accusation to be furnished to the county attorney[;] or, if within a prosecution district, the district attorney who shall prosecute the accusation and cause a copy of it to be served on the defendant, together with a summons which requires him to appear before the district court of the county in which he serves and answer the accusation. The time fixed for appearance shall not be less than ten days from the date of service of summons. The service of the accusation and summons, and the return of service shall be made in the manner provided by law for service of civil process.

Section 89. Section Amended.

Section 77-10a-2, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

77-10a-2. Panel of judges — Appointment — Membership — Ordering of grand jury.

(1)(a) The presiding officer of the Judicial Council shall appoint a panel of five judges from the district courts of the state to hear in secret all persons claiming information that would justify the calling of a grand jury. The presiding officer may appoint senior status district court judges to the panel. The presiding officer shall designate one member of the panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the authority of the district court.

(b) To ensure geographical diversity on the panel one judge shall be appointed from the first or second district for a five-year term, one judge shall be appointed from the third district for a four-year term, one judge shall be appointed from the fourth district for a three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year term, and one judge shall be appointed from the third district for a one-year term. Following the first term, all terms on the panel are for five years.

(c) The panel shall hold hearings every three years and may meet at any location within the state. Three members of the panel constitute a quorum for the transaction of panel business. The schedule for the hearings shall be set by the panel and published by the Office of the Court Administrator. Persons appearing before the panel shall be placed under oath and examined by the judges conducting the hearings. Hearsay evidence may be presented at the hearings only under the same provisions and limitations that apply to preliminary hearings. If after the hearings a majority of the panel finds good cause to believe a grand jury is necessary, the panel shall make its findings in writing and the supervising judge shall order a grand jury to be summoned.

(2) When the attorney general, a county attorney, a district attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the supervising judge upon good cause shown and with the concurrence of a majority of the panel quorum shall order a grand jury to be summoned.

(3) The supervising judge may at the time the grand jury is summoned:

(a) order that it be drawn from the state at large as provided in this chapter or from any district within the state; and

(b) retain authority to supervise the grand jury or delegate the supervision of the grand jury to any judge of any district court within the state.

Section 90. Section Amended.

Section 77-10a-8, Utah Code Annotated 1953, as enacted by Chapter 318, Laws of Utah 1990, is amended to read:

77-10a-8. Challenge of prospective grand jurors — Failure to comply in selection of jurors — Remedies.

(1) The attorney general, county attorney, district attorney, or special prosecutor may challenge:

(a) the array of grand jurors on the ground the grand jury was not selected, drawn, or summoned in accordance with law; and

(b) an individual juror on the ground the juror is not legally qualified.

(2) Challenges shall be made before the administration of the oath to the jurors and shall be tried to the court managing the grand jury.

(3) A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge.

(4) In criminal cases the defendant or attorney for the state may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with this chapter in selecting the grand jury. However, he must do so before the voir dire examination begins or within seven days after the defendant or attorney for the state discovered or could have discovered the grounds by the exercise of diligence, whichever is earlier, or the motion is considered waived.

(5) (a) Any motion filed under Subsection (1), (3), or (4) must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this chapter. The moving party may present in support of the motion the testimony of the clerk if he is available, any relevant records and papers used by the clerk that were not made public or otherwise available, and any other relevant evidence.

(b) If the managing judge determines there has been a substantial failure to comply with the provisions of this chapter in selecting the grand jury, he shall stay the proceedings pending the selection of a grand jury in conformity with this chapter or dismiss the indictment, whichever is appropriate.

(6) (a) The procedures prescribed by this section are the exclusive means by which a party accused of a crime or an attorney for the state may challenge any grand jury on the ground it was not selected in conformity with this chapter.

(b) An indictment may not be dismissed in any case on the ground that one or more members of the grand jury that returned the indictment were not legally qualified if it appears from the record kept by the grand jury that eight or more jurors, after deducting the number not qualified, concurred in finding the indictment.

Section 91. Section Amended.

Section 77-10a-12, Utah Code Annotated 1953, as enacted by Chapter 318, Laws of Utah 1990, is amended to read:

77-10a-12. Representation of state — Appointment and compensation of special prosecutor.

(1) The state may be represented before any grand jury summoned in the state by the attorney general and his assistants, county [~~attorneys~~] attorney or district attorney and [~~their~~] his deputies [~~or assistants~~], and special prosecutors appointed under this chapter and their assistants.

(2) The supervising judge shall determine if a special prosecutor is necessary. He may appoint a special prosecutor only upon good cause shown and after making a written finding that a conflict of interest exists in the office of the attorney general or the office of the county attorney or district attorney who would otherwise represent the state before the grand jury.

(3) In selecting a special prosecutor, the supervising judge shall give preference to the attorney general and his assistants, and the county [~~attorneys~~] attorney or district attorney and [~~their~~] his deputies [~~and assistants~~].

(4) (a) The compensation of a special prosecutor appointed under this chapter who is an employee of the Office of the Attorney General or the office of a county attorney or district attorney is only the current compensation he receives in that office.

(b) The compensation for an appointed special prosecutor who is not an employee of a prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a deputy or assistant attorney general having similar experience to that of the special prosecutor.

Section 92. Section Amended.

Section 77-22-2, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1990, is amended to read:

77-22-2. Investigations — Right to subpoena witnesses and require production of evidence — Contents of subpoena — Rights of witnesses — Interrogation before closed court — Disclosure of information.

(1) (a) In any matter involving the investigation of a crime or malfeasance in office, or any criminal conspiracy or activity, the attorney general [~~or any~~], county attorney, or district attorney as provided under Sections 17-18-1 and 17-18-1.7 may upon application and approval of the district court and for good cause shown conduct a criminal investigation.

(b) The application and statement of good cause shall state whether any other investigative order related to the investigation at issue has been filed in another court.

(2) (a) The attorney general [~~or~~], county attorney, or district attorney may subpoena witnesses, compel their attendance and testimony under oath to be recorded by a suitable electronic recording device or to be given before any certified court reporter, and require the production of books, papers, documents, recordings, and any other items that constitute evidence or may be relevant to the investigation.

(b) The attorney general [~~or~~], county attorney, or district attorney shall first apply to the district court for each subpoena and shall show that the requested information is reasonably related to the criminal investigation authorized by the court.

(3) The prosecutor shall state in each subpoena:

(a) the time and place of the interrogation;

(b) that the subpoena is issued in aid of a criminal investigation; and

(c) the right of the person subpoenaed to have counsel present.

(4) The prosecutor shall also personally inform each witness at the beginning of each compelled interrogation:

(a) of the general subject matter of the investigation;

(b) of the privilege at any time during the proceeding to refuse to answer any question or produce any evidence of a communicative nature that may result in self-incrimination;

(c) that any information provided may be used against the witness in a subsequent criminal proceeding; and

(d) of the right to have counsel present.

(5) If the attorney general [or], county attorney, or district attorney has substantial evidence that the subpoenaed witness has committed a crime that is under investigation, he shall inform that witness in person prior to interrogation of that witness's target status and of the nature of the charges under consideration against him.

(6) (a) The subpoena need not disclose the names of possible defendants but shall state the time and place of the examination, which may be conducted anywhere within the jurisdiction of the prosecutor issuing the subpoena.

(b) Witness fees and expenses shall be paid as in a civil action.

(7) (a) The attorney general [~~or any~~], county attorney, or district attorney may make written application to any district court showing a reasonable likelihood that publicly releasing information about the identity of a witness or the substance of the evidence resulting from a subpoena or interrogation would pose a threat of harm to a person or otherwise impede the investigation. Upon a finding of reasonable likelihood the court may order the:

(i) interrogation of a witness be held in secret;

(ii) occurrence of the interrogation and other subpoenaing of evidence, the identity of the person subpoenaed, and the substance of the evidence obtained be kept secret; and

(iii) record of testimony and other subpoenaed evidence be kept secret unless the court for good cause otherwise orders.

(b) After application, the court may by order exclude from any investigative hearing or proceeding any persons except the attorneys representing the state, members of their staffs, persons who in the judgment of the attorneys representing the state are reasonably necessary to assist in the investigative process, the court reporter or operator of the electronic recording device, and the attorney for the witness.

(c) This chapter does not prevent attorneys representing the state or members of their staff from disclosing information obtained pursuant to this chapter for the purpose of furthering any official governmental investigation.

(d) If a secrecy order has been granted by the court regarding the interrogation or disclosure of evidence by a witness under this subsection, and if the court finds a further restriction on the witness is appropriate, the court may order the witness not to disclose the substance of the witness's testimony or evidence given by the witness to others. Any order to not disclose made under this subsection shall be served with the subpoena. In an appropriate circumstance the court may order that the witness not disclose the existence of the investigation to others. Any order under this subsection must be based upon a finding by the court that one or more of the following risks exist:

(i) disclosure by the witness would cause destruction of evidence;

(ii) disclosure by the witness would taint the evidence provided by other witnesses;

(iii) disclosure by the witness to a target of the investigation would result in flight or other conduct to avoid prosecution;

(iv) disclosure by the witness would damage a person's reputation; or

(v) disclosure by the witness would cause a threat of harm to any person.

(e) If the court imposes an order under Subsection (d) authorizing an instruction to a witness not to disclose the substance of testimony or evidence provided and the prosecuting agency proves by a preponderance of the evidence that a witness has violated that order, the court may hold the witness in contempt. An order of secrecy imposed on a witness under this subsection may not infringe on the attorney-client relationship between the witness and his attorney or on any other legally recognized privileged relationship.

(8) If the state's application and good cause showing for the order authorizing the investigation and the order itself contain the identities of witnesses and targets of the investigation, the attorney general [or], county attorney, or district attorney may submit an application to any district court showing a reasonable likelihood that publicly releasing information about those identities would pose a threat of harm to a person or otherwise impede the investigation. The court may order that the application, for good cause shown, and order for the entire investigation be kept secret unless the court for good cause otherwise orders.

Section 93. Section Amended.

Section 77-22-3, Utah Code Annotated 1953, as last amended by Chapter 123, Laws of Utah 1989, is amended to read:

77-22-3. Immunity granted to witness — False testimony — Refusal of witness to testify or produce evidence.

(1) In any investigation or prosecution of a criminal case, the attorney general [~~and any~~], county attorney, and district attorney as provided under Sections 17-18-1 and 17-18-1.7 may grant transactional immunity from prosecution to any person who is called or who is intended to be called as a witness on behalf of the state when the attorney general [or], county attorney, or district attorney finds that the testimony of the person is necessary to the investigation or prosecution of the case.

(2)(a) A prosecution may not be instituted against the person for any crime disclosed by his testimony pursuant to this chapter, unless the evidence is volunteered by such person or is not responsive to a question.

(b) However, if the person testifies falsely, immunity granted under this section does not prevent prosecution for perjury.

(3)(a) If during the investigation or prosecution any person refuses to answer a question or produce evidence of any kind on the ground that he may be incriminated, the attorney issuing the subpoena may file an application in writing with the district court in which the examination is being conducted for an order requiring that person to answer the question or produce the evidence requested.

(b) The court shall set a time for hearing and order the person to appear to show cause why the question should not be answered or the evidence produced.

(c) The court shall order the question answered or the evidence produced unless it finds that it would be clearly contrary to the public interest or could subject the witness to a criminal prosecution in another jurisdiction.

(d) If the witness still refuses to answer or produce the evidence, he is guilty of contempt of court and shall be punished accordingly.

(e) If the witness complies with the order and he would have been privileged to withhold the answer given or the evidence produced by him except for this section, he may not be prosecuted or subjected to penalty or forfeiture on account of any fact or act concerning which he was ordered to answer or produce evidence. However, he may be prosecuted or subjected to penalty for any perjury, false swearing or contempt committed in answering, failing to answer, or for producing or failing to produce any evidence in accordance with the order.

Section 94. Section Amended.

Section 77-22-4, Utah Code Annotated 1953, as enacted by Chapter 123, Laws of Utah 1989, is amended to read:

77-22-4. Investigation records to be filed with court.

In all investigations under Section 77-22-2, the attorney general [or], county attorney, or district attorney shall maintain and file with the district court the following records of the criminal investigation, unless otherwise ordered by the court:

(1) a copy of the good cause statement and application for the authorization of the criminal investigation;

(2) a copy of all motions made to the court by the attorney general [or], the county attorney, or the district attorney;

(3) a copy of all court orders;

(4) a copy of all subpoenas issued;

(5) detailed descriptions of all documents and other evidence produced in response to subpoenas;

(6) a copy of all transcripts of testimony taken pursuant to the subpoena; and

(7) a copy of all written communications between the court and the attorney general [or], county attorney, or district attorney, and staff.

Section 95. Section Amended.

Section 77-22a-1, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1990, is amended to read:

77-22a-1. Administrative subpoenas — Controlled substances investigations — Procedures — Witness fees.

(1)(a) The administrative subpoena process of this chapter may be used only to obtain third party information under circumstances where it is clear that the subpoenaed information is not subject to a claim of protection under the Fourth, Fifth, or Sixth Amendment, United States Constitution, or a similar claim under Article I, Sec. 12 and Sec. 14, Utah Constitution.

(b) [~~Also,~~ a] A party subpoenaed under this chapter shall be advised by the subpoena that he has a right to challenge the subpoena by motion to quash filed in the appropriate district court named in the subpoena before compliance is required.

(2) In any investigation relating to his functions under this chapter regarding controlled substances, the attorney general or a deputy or assistant attorney general [or] the county attorney or [~~an assistant or~~] a deputy county attorney, or the district attorney or deputy district attorney may subpoena witnesses, compel the attendance and testimony of witnesses, or require the production of any records including books, papers, documents, and other tangible things that constitute or contain evidence found by the attorney general or a deputy or assistant attorney general or the county attorney or [assistant] district attorney as provided under Sections 17-18-1 and 17-18-1.7 or his deputy [~~county attorney~~] to be relevant or material to the investigation. The attendance of witnesses or the production of records may be required from any place within the state.

(3) Witnesses subpoenaed under this section shall be paid the same fees and mileage costs as witnesses in the state district courts.

(4) If the attorney general or a deputy or assistant attorney general or the county attorney or [~~an assistant~~] district attorney or his deputy [~~county attorney determines~~] determine that disclosure of the existence of an administrative subpoena or of the information sought or of the existence of the investigation under which it is issued would pose a threat of harm to a person or otherwise impede the investigation, the subpoena shall contain language on its face directing that the witness not disclose to any person the existence or service of the subpoena, the information being sought, or the existence of an investigation.

Section 96. Section Amended.

Section 77-22a-3, Utah Code Annotated 1953, as last amended by Chapter 217, Laws of Utah 1990, is amended to read:

77-22a-3. Compliance with administrative subpoena.

(1) In the case of contumacy by or refusal to obey a subpoena issued to any person, the attorney general or a deputy or assistant attorney general or the county attorney or [~~an assistant~~] district attorney or his deputy [county-attorney] may compel compliance with the subpoena through the district court:

(a) in the jurisdiction where the investigation is carried on;

(b) where the subpoenaed person is an inhabitant;

(c) where he carries on business; or

(d) where he may be found.

(2) The court may issue an order requiring the person subpoenaed to produce records or to appear before the attorney general or deputy or assistant attorney general, or the county attorney or [assistant] district attorney or his deputy [county-attorney] who issued the subpoena testimony touching the matter under investigation.

(3) Any failure to obey the court order may be punished by the court as contempt. All process in the case may be served in any judicial district in which the person may be found within the state.

(4) A witness may not be held liable in any civil or criminal proceeding for producing records or disclosing information to the person issuing the administrative subpoena as commanded by the subpoena.

Section 97. Section Amended.

Section 77-23a-4, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1989, is amended to read:

77-23a-4. Offenses — Criminal and civil — Lawful interception.

(1)(a) Except as otherwise specifically provided in this chapter, any person who violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection (10), or when applicable, the person is subject to civil action under Subsection (11).

(b) A person commits a violation of this subsection who:

(i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(ii) intentionally or knowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication, when the device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication or when the device transmits communications by radio, or interferes with the transmission of the communication;

(iii) intentionally or knowingly discloses or endeavors to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section; or

(iv) intentionally or knowingly uses or endeavors to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section.

(2) The operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication may intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(3)(a) Providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other persons may provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance if the provider and its officers, employees, or agents, and any landlords, custodians, or other specified persons have been provided with:

(i) a court order directing the assistance signed by the authorizing judge; or

(ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by the attorney general [~~of the state~~] or an assistant attorney general, or by a county attorney or district attorney or his deputy [~~county attorney~~] that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(b) The order or certification under this subsection shall set the period of time during which the provision of the information, facilities, or technical assistance is authorized and shall specify the information, facilities, or technical assistance required.

(4)(a) The providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other specified persons may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance regarding which the person has been furnished an order or certification under this section except as is otherwise required by legal process, and then only after prior notification to the attorney general [~~of the state~~] or

to the county attorney or district attorney of the county in which the interception was conducted, as is appropriate.

(b) Any disclosure in violation of this subsection renders the person liable for civil damages under Section 77-23a-11.

(5) A cause of action does not lie in any court against any provider of wire or electronic communications service, its officers, employees, or agents, or any landlords, custodians, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(6) Subsections (3), (4), and (5) supersede any law to the contrary.

(7)(a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.

(c) An employee of a telephone company may intercept a wire communication for the sole purpose of tracing the origin of the communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The telephone company and its officers, employees, and agents shall release the results of the interception, made under this subsection, upon request of the local law enforcement authorities.

(8) A person may:

(a) intercept or access an electronic communication made through an electronic communications system that is configured so that the electronic communication is readily accessible to the general public;

(b) intercept any radio communication transmitted by:

(i) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(ii) any government, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(iii) a station operating on an authorized frequency within the bands allocated to the amateur, citizens' band, or general mobile radio services; or

(iv) by a marine or aeronautics communications system;

(c) intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference; or

(d) as one of a group of users of the same frequency, intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(9)(a) Except under Subsection (b), a person or entity providing an electronic communications service to the public may not intentionally divulge the contents of any communication, while in transmission of that service, to any person or entity other than an addressee or intended recipient of the communication or his agent.

(b) A person or entity providing electronic communications service to the public may divulge the contents of any communication:

(i) as otherwise authorized under this section or Section 77-23a-9;

(ii) with lawful consent of the originator or any addressee or intended recipient of the communication;

(iii) to a person employed or authorized or whose facilities are used to forward the communication to its destination; or

(iv) that is inadvertently obtained by the service provider and appears to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.

(10)(a) Except under Subsection (b) or Subsection (11), a violation of Subsection (1) is a third degree felony.

(b) If the offense is a first offense under this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication regarding which the offense was committed is a radio communication that is not scrambled or encrypted; and

(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or paging service communication, and the conduct is not under Subsection (11), the offense is a class A misdemeanor; and

(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a class B misdemeanor.

(c) Conduct otherwise an offense under this section is not an offense if the conduct was not done for the purpose of direct or indirect commercial advantage or private financial gain, and consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled, and is either transmitted:

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but in any event not including data transmissions or telephone calls.

(11)(a) A person is subject to civil suit initiated by the state in a court of competent jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

(i) private satellite video communication that is not scrambled or encrypted, and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(ii) radio communication that is transmitted on frequencies allocated under Subpart D, Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(b) In an action under Subsection (a):

(i) if the violation of this chapter is a first offense under this section and the person is not found liable in a civil action under Section 77-23a-11, the state may seek appropriate injunctive relief;

(ii) if the violation of this chapter is a second or subsequent offense under this section, or the person has been found liable in any prior civil action under Section 77-23a-11, the person is subject to a mandatory $500 civil penalty.

(c) The court may use any means within its authority to enforce an injunction issued under Subsection (b)(i), and shall impose a civil fine of not less than $500 for each violation of the injunction.

Section 98. Section Amended.

Section 77-23a-8, Utah Code Annotated 1953, as last amended by Chapter 10, Laws of Utah 1991, is amended to read:

77-23a-8. Court order to authorize or approve interception — Procedure.

(1) The attorney general of the state or any assistant attorney general, or any county attorney or [~~deputy county~~] district attorney or his deputy may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state or of any political subdivision that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when:

(a) the interception sought may provide or has provided evidence of the commission of the offense of homicide, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana, or other dangerous drugs, or other offense dangerous to life, limb, or property, and the offense is punishable by imprisonment for more than one year; or

(b) the interception sought may provide or has provided evidence of a conspiracy to commit any of the offenses under Subsection (2)(a).

Section 99. Section Amended.

Section 77-23a-10, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1989, is amended to read:

77-23a-10. Application for order — Authority of order — Emergency action — Application — Entry — Conditions — Extensions — Recordings — Admissibility or suppression — Appeal by state.

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge of competent jurisdiction, and shall state the applicant's authority to make the application. Each application shall include:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(i) details regarding the particular offense that has been, is being, or is about to be committed;

(ii) except as provided in Subsection (12), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communication sought to be intercepted; and

(iv) the identity of the person, if known, committing the offense and whose communication is to be intercepted;

(c) a full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained, and if the investigation is of a nature that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and the individual making the application, made to any judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in

the application, and the action taken by the judge on each application;

(f) when the application is for the extension of an order, a statement setting forth the results so far obtained from the interception, or a reasonable explanation of the failure to obtain results; and

(g) additional testimony or documentary evidence in support of the application as the judge may require.

(2) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense under Section 77-23a-8;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous; and

(d) except under Subsection (12), there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

(3) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify:

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) except as provided in Subsection (12), the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the persons authorizing the application; and

(e) the period of time during which the interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

(4) An order authorizing the interception of a wire, electronic, or oral communication shall, upon request of the applicant, direct that a provider of wire or electronic communications service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian, or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses involved in providing the facilities or systems.

(5) (a) An order entered under this chapter may not authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization, but in any event for no longer than 30 days. The 30-day period begins on the day the investigative or law enforcement officer first begins to conduct an interception under the order, or ten days after the order is entered, whichever is earlier.

(b) Extensions of an order may be granted, but only upon application for an extension made under Subsection (1), and if the court makes the findings required by Subsection (2). The period of extension may be no longer than the authorizing judge considers necessary to achieve the purposes for which it was granted, but in no event for longer than 30 days.

(c) Every order and extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event within 30 days.

(d) If the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, the minimizing of the interception may be accomplished as soon as practicable after the interception.

(e) An interception under this chapter may be conducted in whole or in part by government personnel or by an individual under contract with the government and acting under supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) When an order authorizing interception is entered under this chapter, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. These reports shall be made at intervals the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer who is specially designated by either the attorney general [of the state], an assistant attorney general, a county attorney[,] or [a] district attorney as provided under Sections 17-18-1 and 17-18-1.7 or his deputy [county attorney] may intercept wire, electronic, or oral communication if an application for an order approving the interception is made in accordance with this section and within 48 hours af-

ter the interception has occurred or begins to occur, when the investigative or law enforcement officer reasonably determines that:

(a) an emergency situation exists that involves:

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the national security interest; or

(iii) conspiratorial activities characteristic of organized crime, that require a wire, electronic, or oral communication to be intercepted before an order authorizing interception can, with diligence, be obtained; and

(b) there are grounds upon which an order could be entered under this chapter to authorize the interception.

(8)(a) In the absence of an order under Subsection (7), the interception immediately terminates when the communication sought is obtained or when the application for the order is denied, whichever is earlier.

(b) If the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in Subsection (9) (d) on the person named in the application.

(9)(a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done so as to protect the recording from editing or other alterations. Immediately upon the expiration of the period of an order, or extension, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be where the judge orders. The recordings may not be destroyed, except upon an order of the issuing or denying judge. In any event, it shall be kept for ten years. Duplicate recordings may be made for use or disclosure under Subsections 77-23a-9 (1) and (2) for investigations. The presence of the seal provided by this subsection, or a satisfactory explanation for the absence of one, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived from it under Subsection 77-23a-9 (3).

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and may not be destroyed, except on order of the issuing or denying judge. But in any event they shall be kept for ten years.

(c) Any violation of any provision of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time, but not later than 90 days after the filing of an application for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the period of an order or extensions, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and other parties to the intercepted communications as the judge determines in his discretion is in the interest of justice, an inventory, which shall include notice of:

(i) the entry of the order or application;

(ii) the date of the entry and the period of authorization, approved or disapproved interception, or the denial of the application; and

(iii) that during the period wire, electronic, or oral communications were or were not intercepted.

(e) The judge, upon filing of a motion, may in his discretion make available to the person or his counsel for inspection the portions of the intercepted communications, applications, and orders the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(10) The contents of any intercepted wire, electronic, or oral communication, or evidence derived from any of them, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(11)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision may move to suppress the contents of any intercepted wire, electronic, or oral communication, or evidence derived from any of them, on the grounds that:

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

(b) The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, elec-

tronic, or oral communication, or evidence derived from any of them, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection portions of the intercepted communication or evidence derived from them as the judge determines to be in the interests of justice.

(c) In addition to any other right to appeal, the state or its political subdivision may appeal from an order granting a motion to suppress made under Subsection (a), or the denial of an application for an order of approval, if the attorney bringing the appeal certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(12) The requirements of Subsections (1) (b) (ii), and (2) (d), and (3) (b) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) in the case of an applicant regarding the interception of an oral communication;

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application contains a full and complete statement of why the specification is not practical, and identifies the person committing the offense and whose communications are to be intercepted; or

(iii) the judge finds that the specification is not practical; and

(b) in the case of an application regarding wire or electronic communication;

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that the purpose has been adequately shown.

(13)(a) An interception of a communication under an order regarding which the requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection (12), does not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order.

(b) A provider of wire or electronic communications service that has received an order under Subsection (12) (b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide the motion expeditiously.

Section 100. Section Amended.

Section 77-23a-14, Utah Code Annotated 1953, as enacted by Chapter 251, Laws of Utah 1988, is amended to read:

77-23a-14. Court order for installation — Application.

(1) The attorney general, a deputy attorney general, a county attorney or district attorney, a deputy county attorney or deputy district attorney, or a prosecuting attorney for a political subdivision of the state, or a law enforcement officer, may make application for an order or extension of an order under Section 77-23a-15 authorizing or approving the installation and use of a pen register or trap and trace device, in writing and under oath or equivalent affirmation, to a court of competent jurisdiction.

(2) An application under Subsection (1) shall include:

(a) the identity of the attorney for the government or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

Section 101. Section Amended.

Section 77-23b-6, Utah Code Annotated 1953, as enacted by Chapter 251, Laws of Utah 1988, is amended to read:

77-23b-6. Notifying subscriber or customer of court order — Requested delay — Grounds — Limits.

(1)(a) The governmental entity acting under Subsection 77-23b-4 (2) may:

(i) if a court order is sought, include in the application a request for an order delaying the notification requirement under Subsection 77-23b-4 (2) for not to exceed 90 days and, if the court determines there is reason to believe that notification of existence of the court order may have an adverse result under Subsection (1)(b), the court shall grant the order; or

(ii) if an administrative subpoena authorized by a state or federal statute or a state or federal grand jury subpoena is obtained, delay the notification required under Subsection 77-23b-4 (2) for not to exceed 90 days, upon the execution of a written certification of a supervisory official that there is reason to believe that the notification of the existence of the subpoena may have an adverse result under Subsection (1) (b).

(b) An adverse result under Subsection (1)(a) is:

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) The governmental entity shall maintain a true copy of certification under Subsection (1)(a)(ii).

(d) Extensions of the delay of notification under Section 77-23b-4 of up to 90 days each, may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with Subsection (2).

(e) On expiration of the period of delay of notification under Subsection (1)(a) or (d), the governmental entity shall serve upon, or deliver by registered or first class mail, to the customer or subscriber a copy of the process or request together with a notice:

(i) stating with reasonable specificity the nature of the law enforcement inquiry; and

(ii) informing the customer or subscriber:

(A) that information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that governmental authority and the date the supplying or request took place;

(B) that notification of the customer or subscriber was delayed;

(C) which governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) which provision of this chapter allows the delay.

(f) As used in this subsection, "supervisory official" means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigative agency's headquarters or regional office; a county sheriff or chief deputy sheriff, or police chief or assistant police chief; the officer in charge of an investigative task force or the assistant officer in charge; or the attorney general, an assistant attorney general, a county attorney or district attorney, [~~an assistant~~] a deputy county attorney or deputy district attorney, or the chief prosecuting attorney of any political subdivision of the state.

(2) A governmental entity acting under Section 77-23b-4, when not required to notify the subscriber or customer under Subsection 77-23b-4(2)(a), or to the extent that it may delay notice under Subsection (1), may apply to a court for an order commanding the provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for a period of time the court considers appropriate, to not notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter the order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in:

(a) endangering the life or physical safety of an individual;

(b) flight from prosecution;

(c) destruction of or tampering with evidence;

(d) intimidation of potential witnesses; or

(e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Section 102. Section Amended.

Section 77-27-5, Utah Code Annotated 1953, as last amended by Chapter 195, Laws of Utah 1990, is amended to read:

77-27-5. Board of Pardons authority.

(1)(a) The Board of Pardons shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, restitution ordered, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chairperson shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chairperson may participate on any panel and when doing so is chairperson of the panel. The chairperson of the board may designate the chairperson for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(2)(a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and place of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the Board of Pardons in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the Board of Pardons shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence.

Section 103. Section Amended.

Section 77-31-6, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-31-6. Conditions of interstate rendition.

(1) Before making the demand on the governor of any other state for the surrender of a person charged in this state with the crime of failing to provide for the support of any person, the governor of this state may require [any] a county attorney [of ~~this state~~] or district attorney to satisfy him that at least sixty days prior thereto the obligee brought an action for the support under this act, or that the bringing of an action would be of no avail.

(2) When under this or a substantially similar act, a demand is made upon the governor of this state by the governor of another state for the surrender of a person charged in the other state with the crime of failing to provide support, the governor may call upon any county attorney or district attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this act or would be effective.

(3) If an action for the support would be effective and no action has been brought, the governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(4) If an action for support has been brought and the person demanded has prevailed in that action, the governor may decline to honor the demand.

(5) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the governor may decline to honor the demand so long as the person demanded is complying with the support order.

Section 104. Section Amended.

Section 77-37-5, Utah Code Annotated 1953, as enacted by Chapter 194, Laws of Utah 1987, is amended to read:

77-37-5. Remedies — Victims' Rights Committee.

Remedies available are:

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

(a) a county attorney or district attorney;

(b) a sheriff;

(c) a corrections field services administrator;

(d) an appointed victim advocate;

(e) a municipal attorney;

(f) a municipal chief of police;

(g) other representatives as appropriate.

(2) This committee shall meet at least semiannually to review progress and problems related to this chapter. Victims and other interested parties may submit matters of concern to the victims' rights committee. These matters shall also be considered at the meetings of the victims' rights committee. The minutes of the semiannual meeting shall be forwarded to the Commission on Criminal and Juvenile Justice.

(3) A violation of this chapter is not a criminal offense, but is subject to civil remedies under Subsection (4).

(4) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. Failure to provide the rights enumerated above does not constitute cause for a judgment for monetary damage or an attorney's fee.

(5) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Section 105. Section Amended.

Section 78-3a-20, Utah Code Annotated 1953, as last amended by Chapter 12, Laws of Utah 1984, is amended to read:

78-3a-20. Offenses against children by adults — Practice and procedure in juvenile court.

(1) In proceedings in adult cases except in relation to the issuance and enforcement of a protective or-

der under this chapter, the practice and procedure of the juvenile court shall conform to the practice and procedure provided by law or rule of court for criminal proceedings in the district court, except that the proceedings may be commenced by complaint and a trial jury shall consist of four jurors. The county attorney or district attorney as provided under Section 17-18-1 and 17-18-1.7 shall prosecute any case brought under this section and Section 78-3a-19.

(2) The court may have a preliminary investigation made by the probation department or other agency designated by the court, and with the consent of the defendant or person involved may permit such nonjudicial adjustment as may be practicable, without prosecution.

(3) If the defendant in proceedings under this section demands a jury trial, the court may transfer the case to a circuit court.

Section 106. Section Amended.

Section 78-3a-20.5, Utah Code Annotated 1953, as last amended by Chapter 105, Laws of Utah 1990, is amended to read:

78-3a-20.5. Petition for protective order for abused child — Filing — Guardian ad litem — Assistance to petitioner — Forms.

(1) A person, official, or institution having an interest in an abused child as defined in Section 78-3a-2 may petition the juvenile court for a protective order to prevent or restrain abuse of the child. The petition for a protective order shall be verified.

(2) The petition for a protective order may be filed in the juvenile court district where the person accused or suspected of the abuse resides or in the district where the abuse has taken place or may take place.

(3) (a) After the petition is filed, the court shall appoint a guardian ad litem to represent the child if the court considers the appointment necessary for the welfare of the child.

(b) The county attorney or district attorney shall represent any public agency that files a petition for a protective order.

(4) (a) Juvenile court clerks shall provide forms and nonlegal assistance to a petitioner seeking to proceed under this section.

(b) Forms for the petition, protective order, and ex parte protective order provided by the juvenile court clerks shall be standardized under the direction of the Utah Judicial Council.

Section 107. Section Amended.

Section 78-3a-21, Utah Code Annotated 1953, as last amended by Chapter 135, Laws of Utah 1971, is amended to read:

78-3a-21. Felony against or involving child — County, district, or city attorney to notify juvenile court.

Whenever a felony or other crime has been committed against a child or involving a child, and the case is within the jurisdiction of a district court or other court of this state, it shall be the duty of the county attorney, district attorney as provided under Sections 17-18-1 and 17-18-1.7 or city attorney who handles the proceedings to inform the juvenile court immediately upon receiving knowledge of the offense so that the juvenile court may take any protective measures which may be within its jurisdiction.

Section 108. Section Amended.

Section 78-3a-22, Utah Code Annotated 1953, as last amended by Chapters 30 and 272, Laws of Utah 1992, is amended to read:

78-3a-22. Petition — Preliminary inquiry — Nonjudicial adjustments — Citation — Failure to appear.

(1) As used in this section, "nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the juvenile, the parent, legal guardian or custodian, and the assigned probation officer.

(2) Proceedings in children's cases are commenced by petition.

(3) (a) When the court is informed by a peace officer or other person that a child is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the interests of the public or of the child require that further action be taken.

(b) Based on the preliminary inquiry the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a petition. In its discretion, the court may, through its probation department, enter into a written consent agreement with the juvenile and the juvenile's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional two months. The probation department may not in connection with any nonjudicial adjustment compel any person to appear at any conference, produce any papers, or visit any place.

(c) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than $50 to the Juvenile Court;

(ii) payment of victim restitution;

(iii) satisfactory completion of community service;

(iv) referral to an appropriate provider for counseling or treatment;

(v) attendance at substance abuse programs or counseling programs;

(vi) compliance with specified restrictions on activities and associations; and

(vii) other reasonable actions that are in the interest of the child and the community.

(d) Proceedings involving offenses under Section 78-3a-39.5 are governed by that section regarding suspension of driving privileges.

(4) (a) In cases of violations of fish and game laws, boating laws, and other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, a petition is not required and the issuance of a citation is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) In cases designated as appropriate by general order of the Board of Juvenile Court Judges, a peace officer or any public official of any county, city, or town charged with the enforcement of the laws of the local jurisdiction may, in lieu of taking a juvenile into custody, issue and deliver a citation requiring any juvenile subject to arrest or prosecution on the designated charge to appear at the juvenile court. In addition to the authority of peace officers and public officials to issue and deliver citations in all designated cases, compliance officers may issue and deliver citations, but only for policing violations of Section 76-10-105 on school property.

(c) A child receiving a citation described in this subsection shall appear at the juvenile court designated in the citation on or before the time and date specified in the citation. A citation may not require a child to appear sooner than five days following its issuance. A child who receives a citation and fails to appear on or before the time, date, and at the juvenile court specified is subject to arrest. The court may issue a warrant of arrest for the child.

(d) If a citation is issued under this section, the peace officer, public official, or compliance officer, in the case of Section 76-10-105 violations committed on school property, shall issue one copy to the child cited and shall, within five days, file a duplicate copy with the juvenile court specified in the citation.

(e) Each copy of the citation shall contain:

(i) the name and address of the juvenile court before which the child is to appear;

(ii) the name of the child cited;

(iii) a brief description of the offense charged;

(iv) the date, time, and place at which the offense is alleged to have occurred;

(v) the date the citation was issued;

(vi) the name of the peace officer or public official who issued the citation;

(vii) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested child into custody as provided in Section 78-3a-29; and

(viii) the date and time on or before and after which the child is to appear, or that the child and parent are to appear when notified by the juvenile court.

(f) When a citation is issued under Subsection (4), bail may be posted and forfeited under Subsection 78-3a-30 [~~(7)~~] (10) with the consent of the parent or legal guardian of the child cited.

(g) Any child who willfully fails to appear before the juvenile court pursuant to a citation issued under Subsection (4) may be found in contempt of court and may be dealt with in any manner provided by law regardless of the disposition of the offense upon which he was originally cited.

Section 109. Section Amended.

Section 78-3a-25, Utah Code Annotated 1953, as last amended by Chapter 101, Laws of Utah 1992, is amended to read:

78-3a-25. Felony committed by juvenile — Hearing and certification to district court — Factors considered as to waiver of jurisdiction by juvenile court — Jurisdiction of juvenile court — Termination and recall of jurisdiction.

(1) (a) If the petition in the case of a juvenile 14 years of age or older alleges he committed an act which would constitute a felony if committed by an adult, and if the court after full investigation and a hearing finds that it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction, the court may enter an order certifying that finding and directing that the juvenile be held for criminal proceedings in the district court and that a hearing be held before a committing magistrate as in other felony cases.

(b) The provisions of Section 78-3a-35 and other provisions relating to proceedings in juvenile's cases are applicable to the hearing held under this section to the extent they are pertinent.

(2) In considering whether or not to waive jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the juvenile in concert with two or more persons under circumstances which would subject the juvenile to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(e) the maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the juvenile;

(g) the likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the juvenile uses a firearm in the commission of an offense; and

(j) whether the juvenile possesses a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(3) The amount of weight to be given to each of the factors listed in Subsection (2) is discretionary with the court.

(4) The juvenile court judge may enter an order certifying a juvenile to stand trial as an adult upon making a finding of any one or more of those factors set forth in Subsection (2).

(5) (a) The certification hearing is a dispositional proceeding, and while the juvenile court may hear evidence of the crime to establish there is a reasonable relationship between the charge and the juvenile, the court need not hold a preliminary hearing to establish probable cause that the juvenile committed the offense.

(b) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history shall be considered by the court, but the court, if requested by the juvenile, his parent, guardian, or other interested party, shall require the person, if reasonably available, or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) (a) When a petition in the case of a juvenile 16 years of age or older alleges any class of criminal homicide, attempted criminal homicide, or any other offense that would be a capital offense or a first degree felony if committed by an adult, the juvenile is subject to the jurisdiction of the juvenile court except under Subsection (6)(b).

(b) If an indictment on the charge is returned by a grand jury or a criminal information is filed by a county attorney or district attorney, the juvenile court is divested of jurisdiction under Section 78-3a-16. The charge shall be made and the proceedings regarding the charge shall be conducted in every respect as if the juvenile were an adult. A copy of the information or indictment shall be filed forthwith in the juvenile court as notice to that court.

(7) When a juvenile has been certified to the adult judicial system or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the juvenile with an offense under Subsection (6), the jurisdiction of the Division of Youth Corrections is terminated, and the jurisdiction of the juvenile court over the juvenile is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsections (9) and (10).

(8) (a) Upon conviction a judge, may impose the penalties set forth in the criminal code or with the approval of the Division of Youth Corrections, the judge may commit the juvenile to the care, custody, and jurisdiction of the Division of Youth Corrections under the conditions specified by the division.

(b) A juvenile may be convicted under this section on the charges filed or on any other offense arising out of the same criminal episode.

(9) The juvenile court under Section 78-3a-16 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the juvenile when:

(a) a magistrate determines there is insufficient probable cause for the juvenile to stand trial on the allegation or amended allegation;

(b) there is an acquittal or finding of not guilty or dismissal of the charges; or

(c) the matter is recalled under Subsection (10).

(10) (a) The juvenile or his parents, guardian, or custodian may request a hearing in juvenile court to recall jurisdiction to the juvenile court by filing a motion in the juvenile court. The motion shall be filed within ten calendar days from the date of the filing of the information. Upon receiving the motion, the juvenile court has jurisdiction to conduct a hearing and rule upon the motion to recall juvenile court jurisdiction. A hearing shall be held on the request within 15 calendar days of the filing.

(b) In determining whether or not to recall jurisdiction the juvenile court judge shall consider:

(i) the juvenile's chronological age;

(ii) the juvenile's legal record; and

(iii) the seriousness of the charge.

(c) The juvenile court judge may deny the motion upon a finding of one or more of the factors listed in Subsection (10)(b).

(d) If the juvenile court recalls jurisdiction under this subsection, the juvenile shall be returned to the juvenile court for further proceedings, which may include certification.

Section 110. Section Amended.

Section 78-3a-35, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1992, is amended to read:

78-3a-35. Hearings — Record — Right to counsel — Appointment of counsel for indigent — Cost — County attorney or district attorney to represent state — Special rules for certain violations — Admissibility of evidence.

(1) A verbatim record of the proceedings shall be taken by a court stenographer or by means of a mechanical recording device in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(2) (a) Parents, guardians, the child's custodian, and the child, if competent, shall be informed that

they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and, except in any private proceeding for deprivation of parental rights in which neither the county nor the state is the plaintiff, if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court as provided in Section 78-3a-35.1. The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the child or of other parties.

(b) The cost of appointed counsel, including the cost of counsel and expense of appeal, shall be paid by the county in which the hearing is held. Counties may levy and collect taxes for these purposes. The court may order a child, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for the cost of appointed counsel.

(c) If the child and other parties were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to appeal.

(3) The county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a child's case.

(4) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, fish and game laws, and boating laws. However, proceedings involving offenses under Section 78-3a-39.5 are governed by that section regarding suspension of driving privileges.

(5) For the purpose of determining proper disposition of the child and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the child's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(6) For the purpose of establishing the fact of neglect or dependency, the court may in its discretion consider evidence of statements made by a child under eight years of age to a person in a trust relationship.

Section 111. Section Amended.

Section 78-3a-56, Utah Code Annotated 1953, as last amended by Chapter 83, Laws of Utah 1983, is amended to read:

78-3a-56. Expungement of juvenile court record — Petition — Procedure.

Any person who has been adjudicated in a children's case under this act, may after the expiration of one year from the date of termination of the continuing jurisdiction of the juvenile court, or, in case he was committed to a secure youth corrections facility, one year from the date of his unconditional release from the facility, petition the court for the expungement of his record in the juvenile court. Upon the filing of such petition, the court shall set a date for a hearing and shall notify the county attorney or, if within the prosecution district, district attorney of the pendency of the petition and of the date of the hearing. The county attorney or district attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

If the court finds upon the hearing that the petitioner has not been convicted of a felony or of a misdemeanor involving moral turpitude since the termination of the court's jurisdiction or his unconditional release from a secure youth corrections facility and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds that the rehabilitation of the petitioner has been attained to the satisfaction of the court, it shall order sealed all records in the petitioner's case in the custody of the juvenile court and any such records in the custody of any other agency or official. Copies of such order shall be sent to each agency or official named in the order. Upon the entry of such order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of such records may thereafter only be permitted by the court upon petition by the person who is the subject of such records, and only to persons named in such petition.

Section 112. Section Amended.

Section 78-3a-64, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

78-3a-64. Abuse, neglect, or dependency of child — Coordination of proceedings.

(1) In each case where an information or indictment has been filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition has been filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate the prosecution of both cases between the courts.

(2) Law enforcement personnel, division personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel shall make reasonable efforts to facilitate the coordination required by this section.

(3) Members of interdisciplinary child protection teams, established under Section 62A-4-509, may participate in the coordination required by this section.

Section 113. Section Amended.

Section 78-3f-104, Utah Code Annotated 1953, as enacted by Chapter 221, Laws of Utah 1992, is amended to read:

78-3f-104. Petition — Who may file.

(1) The following persons or entities may file a petition for termination of the parent-child relationship with regard to a child in the custody of the division:

(a) the division;

(b) the child's guardian ad litem;

(c) a parent, blood relative, or adoptive relative of the child; or

(d) the child's foster parent, so long as that foster parent intends to pursue adoption and has had physical custody of the child for one year or longer. A foster parent does not lose standing to file a petition under this section solely because the division removes the child from that home.

(2) The division may request either the attorney general or an appropriate county attorney or district attorney to file a petition for termination of parental rights under this part.

Section 114. Section Amended.

Section 78-4-11, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-4-11. Appeals to Court of Appeals — Prosecuting attorney to represent state — City attorney to represent municipality.

Except as otherwise directed by Section 78-2-2, appeals from final civil and criminal judgments of the circuit courts are to the Court of Appeals. The county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 shall represent the interests of the state as public prosecutor in any appeals of criminal matters prosecuted by the county attorney in the circuit court. City attorneys shall represent the interests of the state in any appeals of criminal matters prosecuted by the city attorney and the interests of municipalities in any appeals involving violations of municipal ordinances.

Section 115. Section Amended.

Section 78-5-111, Utah Code Annotated 1953, as enacted by Chapter 157, Laws of Utah 1989, is amended to read:

78-5-111. Justice court staff to be provided.

(1) Each county, city, or town creating and maintaining a justice court shall provide:

(a) sufficient staff public prosecutors to attend the court and perform the duties of prosecution before the justice court;

(b) adequate funding for the costs of defense for persons charged with a public offense who are determined by the court to be indigent under Title 77, Chapter 32; and

(c) sufficient local law enforcement officers to attend the justice court when required and provide security for the court.

(2) The county attorney or district attorney may appoint city prosecutors as deputies to prosecute state offenses in municipal justice courts.

Section 116. Section Amended.

Section 78-27-50, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1991, is amended to read:

78-27-50. Financial information privacy — Chapter inapplicable to certain official investigations.

(1) [Nothing in this] This chapter [applies] shall not apply where an examination of [said] records is a part of an official investigation by any local police, sheriff, peace officer, city attorney, county attorney, district attorney, the attorney general, the Department of Public Safety, the Office of Recovery Services of the Department of Human Services, or the Department of Commerce.

(2) Any financial institution or its agent or employee making a disclosure of financial records pursuant to any court order, subpoena, administrative subpoena, or other legal process, is not liable to the customer for disclosure.

CHAPTER 39
H. B. No. 93
Passed February 12, 1993
Approved March 10, 1993
Effective May 3, 1993

UTAH CONTROLLED SUBSTANCE ACT AMENDMENTS

By Marda Dillree

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; DELETING SCHEDULE III AND V CONTROLLED SUBSTANCES TO COMPLY WITH REVISED FEDERAL SCHEDULE; AND AMENDING LICENSING PROVISIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-37-4, AS LAST AMENDED BY CHAPTER 198, LAWS OF UTAH 1991
58-37-6, AS LAST AMENDED BY CHAPTER 198, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 58-37-4, Utah Code Annotated 1953, as last amended by Chapter 198, Laws of Utah 1991, is amended to read:

58-37-4. Schedules of controlled substances — Schedules I through V — Findings required — Specific substances included in schedules.

(1) There are established five schedules of controlled substances known as Schedules I, II, III, IV, and V which shall consist of substances listed in this section.

(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:

(a) Schedule I:

(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alphamethylfentanyl;

(B) Acetylmethadol;

(C) Allylprodine;

(D) Alphacetylmethadol;

(E) Alphameprodine;

(F) Alphamethadol;

(G) Alpha-methiofentanyl;

(H) Alpha-methylfentanyl;

(I) Benzethidine;

(J) Beta-hydroxy-3-methylfentanyl;

(K) Beta-hydroxyfentanyl;

(L) Betacetylmethadol;

(M) Betameprodine;

(N) Betamethadol;

(O) Betaprodine;

(P) Clonitazene;

(Q) Dextromoramide;

(R) Diampromide;

(S) Diethylthiambutene;

(T) Difenoxin;

(U) Dimenoxadol;

(V) Dimepheptanol;

(W) Dimethylthiambutene;

(X) Dioxaphetyl butyrate;

(Y) Dipipanone;

(Z) Ethylmethylthiambutene;

(AA) Etonitazene;

(BB) Etoxeridine;

(CC) Furethidine;

(DD) Hydroxypethidine;

(EE) Ketobemidone;

(FF) Levomoramide;

(GG) Levophenacylmorphan;

(HH) Morpheridine;

(II) Mppp (1-methyl-4-phenyl-4-propionoxpipiridine);

(JJ) Noracymethadol;

(KK) Norlevorphanol;

(LL) Normethadone;

(MM) Norpipanone;

(NN) Para-fluorofentanyl;

(OO) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(PP) Phenadoxone;

(QQ) Phenampromide;

(RR) Phenomorphan;

(SS) Phenoperidine;

(TT) Piritramide;

(UU) Proheptazine;

(VV) Properidine;

(WW) Propiram;

(XX) Racemoramide;

(YY) Thiofentanyl;

(ZZ) Tilidine;

(AAA) Trimeperidine;

(BBB) 3-menthylthiofentanyl; and

(CCC) 3-methylfentanyl.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Drotebanol;

(J) Etorphine (except hydrochloride salt);

(K) Heroin;

(L) Hydromorphinol;

(M) Methyldesorphine;

(N) Methylhydromorphine;

(O) Morphine methylbromide;

(P) Morphine methylsulfonate;

(Q) Morphine-N-Oxide;

(R) Myrophine;

(S) Nicocodeine;

(T) Nicomorphine;

(U) Normorphine;

(V) Pholcodine; and

(W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (iii) only, "isomer" includes the optical, position, and geometric isomers:

(A) 4-bromo-2,5-dimethoxy-amphetamine;

(B) 2,5-dimethoxyamphetamine;

(C) 3,4-methylenedioxy amphetamine;

(D) 3,4-methylenedioxy methamphetamine (MDMA);

(E) 5-methoxy-3,4-methylenedioxy amphetamine;

(F) 4-methoxyamphetamine;

(G) 3,4,5-trimethoxy amphetamine;

(H) Bufotenine;

(I) Diethyltryptamine;

(J) Dimethyltryptamine;

(K) 4-methyl-2,5-dimethoxy-amphetamine;

(L) Ibogaine;

(M) Lysergic acid diethylamide;

(N) Marijuana;

(O) Mescaline;

(P) Parahexyl;

(Q) Peyote;

(R) N-ethyl-3-piperidyl benzilate;

(S) N-methyl-3-piperidyl benzilate;

(T) Psilocybin;

(U) Psilocyn;

(V) Tetrahydrocannabinols;

(W) Ethylamine analog of phencyclidine;

(X) Pyrrolidine analog of phencyclidine;

(Y) 1-1-(2-Thieny) Cyclohexyl Pyrrolidine; and

(Z) Thiophene analog of phencyclidine.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Fenethylline;

(B) 4-Methylaminorex; and

(C) N-ethylamphetamine.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including:

(I) Raw opium;

(II) Opium extracts;

(III) Opium fluid extracts;

(IV) Powdered opium;

(V) Granulated opium;

(VI) Tincture of opium;

(VII) Codeine;

(VIII) Ethylmorphine;

(IX) Etorphine hydrochloride;

(X) Hydrocodone;

(XI) Hydromorphone;

(XII) Metopon;

(XIII) Morphine;

(XIV) Oxycodone;

(XV) Oxymorphone; and

(XVI) Thebaine;

(B) Any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these substances may not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of these substances, and includes cocaine, its isomers and salts of isomers, whether derived from the coca plant or synthetically produced, except the substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation, except dextrorphan:

(A) Alphaprodine;

(B) Alfentanil;

(C) Anileridine;

(D) Bezitramide;

(E) Bulk dextropropoxyphene (nondosage forms);

(F) Carfentanil;

(G) Dihydrocodeine;

(H) Diphenoxylate;

(I) Fentanyl;

(J) Isomethadone;

(K) Levomethorphan;

(L) Levorphanol;

(M) Metazocine;

(N) Methadone;

(O) Methadone - Intermediate, 4 - cyano - 2 - dimethylamino - 4, 4 - diphenyl butane;

(P) Methyl-Fentanyl;

(Q) Moramide - Intermediate, 2 - methyl - 3 - morpholino - 1, 1 - diphenylpropane - carboxylic acid;

(R) Pethidine (meperidine);

(S) Pethidine- Intermediate-A, 4-cyano-1-methyl- 4- phenylpiperidine;

(T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine- 4-carboxylate;

(U) Pethidine - Intermediate - C, 1 - methyl - 4 - phenylpiperidine - 4 - carboxylic acid;

(V) Phenazocine;

(W) Piminodine;

(X) Racemethorphan;

(Y) Racemorphan; and

(Z) Sufentanil.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Methamphetamine, its salts, isomers, and salts of its isomers;

(C) Phenmetrazine and its salts; and

(D) Methylphenidate.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amobarbital;

(B) N,N,Dimethylamphetamine;

(C) Glutethimide;

(D) Pentobarbital;

(E) Phencyclidine;

(F) Phencyclidine immediate precursors:
1-phenyl- cyclohexylamine and
1-piperidinocyclohexanecarbonitrile (PCC); and

(G) Secobarbital.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(A) immediate precursor to amphetamine and methamphetamine;

(1) Phenylacetone.

Some of these substances may be known by trade or other names:
phenyl-2-propanone, P2P; benzyl methyl ketone, methyl benzyl ketone.

(vi) (A) Dranabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a Fulnal Food and Drug Administration approved drug product; and

(B) Nabinol.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitive composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine;

(E) Mazindol; and

(F) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chorhexadol;

(E) Lysergic acid;

(F) Lysergic acid amide;

(G) Methyprylon;

(H) Sulfondiethylmethane;

(I) Sulfonethylmethane;

(J) Sulfonmethane; and

(K) Tiletamine and zolazepam or any of their salts.

(iii) Nalorphine.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts of any of them:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(v) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

(A) Clostebol;

(B) Chorionic gonadotropin;

(C) Dehydroclormethyltestosterone;

(D) Ethylestrenol;

(E) Fluxymesterone;

(F) Mesterolone;

(G) Methandrenone;

(H) Methandrostenolone;

(I) Methenolone;

(J) Methyltestosterone, except when combined with esterified estrogens;

(K) Nandrolone decanoate;

(L) Nandrolone phenpropionate;

(M) Norethandrolone;

(N) Oxandrolone;

(O) Oxymesterone;

(P) Oxymetholone;

(Q) Stanozolol; and

(R) Testosterone propionate.

Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Food and Drug Administration for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them;

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Alprazolam;

(B) Barbital;

(C) Bromazepam;

(D) Camazepam;

(E) Chloral betaine;

(F) Chloral hydrate;

(G) Chlordiazepoxide;

(H) Clobazam;

(I) Clonazepam;

(J) Clorazepate;

(K) Clotiazepam;

(L) Cloxazolam;

(M) Delorazepam;

(N) Diazepam;

(O) Estazolam;

(P) Ethchlorvynol;

(Q) Ethinamate;

(R) Ethyl loflazepate;

(S) Fludiazepam;

(T) Flunitrazepam;

(U) Flurazepam;

(V) Halazepam;

(W) Haloxazolam;

(X) Ketazolam;

(Y) Loprazolam;

(Z) Lorazepam;

(AA) Mebutamate;

(BB) Medazepam;

(CC) Medazolam;

(DD) Methohexital;

(EE) Meprobamate;

(FF) Methylphenobarbital (mephobarbital);

(GG) Nemetazepam;

(HH) Nitrazepam;

(II) Nordiazepam;

(JJ) Oxazepam;

(KK) Oxazolam;

(LL) Paraldehyde;

(MM) Penazepam;

(NN) Pentazocine;

(OO) Petrichloral;

(PP) Phenobarbital;

(QQ) Prazepam;

(RR) Quazepam;

(SS) Tempazepam;

(TT) Tetrazepam; and

(UU) Treazolam.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Cathine;

(B) Diethylpropion;

(C) Fencamfamine;

(D) Fenproprex;

(E) Mazidole;

(F) Mefenorex;

(G) Phentermine;

(H) Pemoline, including organometallic complexes and chelates thereof;

(I) Pipradrol; and

(J) SPA ((-)-1-climethylamino-1,2 diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(c) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or salts of any of them, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(vii) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains [~~any quantity of the following substances~~] Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers[~~:~~].

[~~(A) Propylhexedrine; and~~]

[~~(B) Pyrovalerone.~~]

Section 2. Section Amended.

Section 58-37-6, Utah Code Annotated 1953, as last amended by Chapter 198, Laws of Utah 1991, is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research — Issuance by department — Denial, suspension, or revocation — Records required — Prescriptions.

(1)(a) The department may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The department may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Subsection 63-38-3 (2).

(c) The director of the department may delegate to any division or agency within the department, authority to perform the responsibilities and functions prescribed to the department under this chapter if the delegated authority is consistent with the function of the division or agency provided by law.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the department.

(ii) Each license issued under this chapter, whether an original or renewal license, shall expire on December 31 of each even-numbered year.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules II and V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of his business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of his employer's registered and licensed place of business;

(ii) a common or contract carrier or warehouseman, or an employee of a common or contract carrier or warehouseman, who possesses any controlled substance in the usual course of his business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The department may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The department may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) Upon proper application, the department shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest. The department shall not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance. In determining public interest, the department shall consider whether or not the applicant has:

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

(iii) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(iv) past experience in the manufacture of controlled dangerous substances;

(v) established effective controls against diversion; and

(vi) complied with any other factors that the department establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The department need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this act in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the department by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the department prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately his supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the department evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The department shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the department upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal license denied, suspended, or revoked by competent federal authority and is no long-

er authorized to engage in the manufacturing, distribution, or dispensing of controlled substances;

(v) had his license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any department rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of his professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The department may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the department is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct such proceedings.

(d) (i) The department may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the department or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the department.

(ii) No disposition may be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The department shall notify promptly the Bureau of Narcotics and Dangerous Drugs of all orders suspending or revoking a license and all forfeitures of controlled substances.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the department.

(b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with Subsection (5)(b) if he keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with department rules or a lawful order under the rules and regulations of the United States.

(7) (a) No person may write or authorize a prescription for a controlled substance unless he is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) No person other than a pharmacist licensed under the laws of this state, or his licensed intern, as required by Sections 58-17-7 and 58-17-8, may dispense a controlled substance.

(c) (i) No controlled substance may be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by department rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the department and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the department, no person may issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed in ink or

indelible pencil by the prescriber and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) No prescription may be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) A prescription for a Schedule II substance may be refilled only upon the written prescription of an authorized practitioner, and no prescription for a Schedule II controlled substance may be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II, III, and IV substance that is not presented to a pharmacist for dispensing by a pharmacist, or, if an oral prescription, that is not obtained within ten days of the date the prescription was written or authorized, may not be filled or dispensed.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of Subsection (7) if the order is:

(i) authorized by the physician treating the patient and designates the quantity ordered;

(ii) entered upon the record of the patient, the record is signed by the prescriber affirming his authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iii) filled and dispensed by a pharmacist practicing his profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(8) No information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is considered to be a privileged communication.

CHAPTER 40
H. B. No. 151
Passed March 3, 1993
Approved March 10, 1993
Effective May 3, 1993

TESTING FOR HIV INFECTION OF CONVICTED SEXUAL OFFENDERS AND VICTIMS OF SEXUAL OFFENSES

By Afton B. Bradshaw

AN ACT RELATING TO CRIMINAL CODE; REQUIRING MANDATORY TESTING FOR HIV INFECTION OF A PERSON CONVICTED OF A SEXUAL OFFENSE OR AN ATTEMPTED SEXUAL OFFENSE UPON REQUEST OF THE VICTIM; PROVIDING FOR VOLUNTARY TESTING OF THE VICTIM; PROVIDING NOTICE TO VICTIM AND CONVICTED SEXUAL OFFENDER OF TEST RESULTS; PROVIDING COUNSELING AND REFERRAL TO THE VICTIM; AMENDING THE VICTIM BILL OF RIGHTS; AND DEFINING CERTAIN TERMS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-1-30, AS LAST AMENDED BY CHAPTER 170, LAWS OF UTAH 1992
26A-1-114, AS LAST AMENDED BY CHAPTER 112 AND RENUMBERED AND AMENDED BY CHAPTER 269, LAWS OF UTAH 1991
77-37-3, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1988
77-37-5, AS ENACTED BY CHAPTER 194, LAWS OF UTAH 1987
78-3A-55, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1988

ENACTS:
76-5-501, UTAH CODE ANNOTATED 1953
76-5-502, UTAH CODE ANNOTATED 1953
76-5-503, UTAH CODE ANNOTATED 1953
76-5-504, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 26-1-30, Utah Code Annotated 1953, as last amended by Chapter 170, Laws of Utah 1992, is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard considered dangerous or important or which may affect the public health;

(e) report to the public major causes of injury, sickness, death, and disability and the major risk factors that contribute to the major causes of injury, sickness, death, and disability within the state;

(f) prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state except that the programs shall not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the Industrial Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(o) cooperate with the local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense;

[~~(o)~~] (p) investigate the cause of maternal and infant mortality;

[~~(p)~~] (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

[~~(q)~~] (r) provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection [~~(p)~~] (q) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this subsection;

[~~(r)~~] (s) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

[~~(s)~~] (t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

[~~(t)~~] (u) adopt rules and enforce minimum sanitary standards for the operation and maintenance of: orphanages; boarding homes; summer camps for children; lodging houses; hotels; restaurants and all other places where food is handled for commercial purposes, sold, or served to the public; tourist and trailer camps; service stations; public conveyances and stations; public and private schools; factories; private sanatoria; barber shops; beauty shops; physicians' offices; dentists' offices; workshops; industrial, labor, or construction camps; recreational resorts and camps; swimming pools, public baths, and bathing beaches; state, county, or municipal institutions including hospitals and other buildings, centers, and places used for public gatherings; and of any other facilities in public buildings and on public grounds;

[~~(u)~~] (v) conduct health planning for the state and perform the health planning functions of the state required under P.L. 93-641 and subsequent amendments;

[~~(v)~~] (w) monitor the costs of health care in the state and foster price competition in the health care delivery system;

[~~(w)~~] (x) adopt rules for the licensure of health facilities within the state pursuant to the provisions of Title 26, Chapter 21; and

[~~(x)~~] (y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment fee imposed under Title 26, Chapter 35, and adopt rules for the enforcement and administration of the nursing facility assessment consistent with the provisions of Title 26, Chapter 35.

Section 2. Section Amended.

Section 26A-1-114, Utah Code Annotated 1953, as last amended by Chapter 112 and renumbered and amended by Chapter 269, Laws of Utah 1991, is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the Uniform Plumbing Code established by Section 58-56-4;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law that:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) (i) establish and collect appropriate fees;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law that are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups; [and]

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards[.]; and

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of convicted sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance;

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

[(d)] (4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

[(4)] (5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

Section 3. Section Enacted.

Section 76-5-501, Utah Code Annotated 1953, is enacted to read:

76-5-501. Definitions.

For purposes of this part:

(1) "Convicted sexual offender" means a person or a juvenile as provided in Subsection 76-5-502(1).

(2) "Department of Health" means the state Department of Health as defined in Section 26-1-2.

(3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(4) "HIV positive individual" means a person who is HIV positive as determined by the State Health Laboratory.

(5) "Local department of health" means the department as defined in Subsection 26A-1-102(5).

(6) "Positive" means an indication of the HIV infection as defined in Subsection (3).

(7) "Sexual offense" means a violation of state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4.

(8) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health.

Section 4. Section Enacted.

Section 76-5-502, Utah Code Annotated 1953, is enacted to read:

76-5-502. Mandatory testing — Retention of offender medical file — Civil liability.

(1) (a) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, a plea of not guilty by reason of insanity or been found guilty for violation of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, or a juvenile who is adjudicated to have violated or attempted to violate state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, shall be required to submit to a mandatory test upon the request of a victim or the parent or legal guardian of the minor victim or victim of a sexual offense within six months of conviction to determine if the offender is an HIV positive individual.

(b) The court shall order the convicted sexual offender to submit to the test upon sentencing or as a condition of probation. The order to the convicted sexual offender shall not include the identity and address of the victim requesting the test. The court shall forward the order to the Department of Health, including separate information about the victim's identity and address for notification and counseling purposes.

(2) If the mandatory test has not been conducted, and the convicted offender or adjudicated juvenile is already confined in a county jail, state prison, or a secure youth corrections facility, the person shall be tested while in confinement.

(3) The secure youth corrections facility or county jail shall cause the blood specimen of the offender as defined in Subsection (1) confined in that facility to be taken and shall forward the specimen to the Department of Health.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and shall forward the specimen to the Department of Health as provided in Section 64-13-36.

(5) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the Department of Health from the General Fund.

Section 5. Section Enacted.

Section 76-5-503, Utah Code Annotated 1953, is enacted to read:

76-5-503. Voluntary testing — Victim to request — Costs paid by Crime Victim Reparations.

(1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5, Part 4, may request a test for the HIV infection.

(2) (a) The local health department shall obtain the blood specimen from the victim and forward the specimen to the Department of Health.

(b) The Department of Health shall analyze the specimen of the victim.

(3) The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense.

(4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if the victim provides a substantiated claim of the sexual offense, does not test HIV positive at the base-line testing phase, and complies with eligibility criteria established by the Crime Victim Reparations Act.

Section 6. Section Enacted.

Section 76-5-504, Utah Code Annotated 1953, is enacted to read:

76-5-504. Victim notification and counseling.

(1) The Department of Health shall provide the victim who requests testing of the convicted sexual offender's human immunodeficiency virus status counseling regarding HIV disease and referral for appropriate health care and support services. If the local health department where the victim resides and the Department of Health agree, the Department of Health shall forward a report of the convicted sexual offender's human immunodeficiency virus status to the local health department and the local health department shall provide the victim who requests the test with the test results, counseling regarding HIV disease, and referral for appropriate health care and support services.

(2) Notwithstanding the provisions of Section 26-25a-101, the Department of Health and a local health department acting pursuant to an agreement made under Subsection (1) may disclose to the victim the results of the convicted sexual offender's human immunodeficiency virus status as provided in this section.

Section 7. Section Amended.

Section 77-37-3, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1988, is amended to read:

77-37-3. Bill of Rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form that is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims are entitled to restitution or reparations, including medical costs, as provided in Title 63, Chapter 63, and Sections [~~63-63-1,~~] 77-27-6, 62A-7-122, and 76-3-201. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board[,] and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement[,] or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

Section 8. Section Amended.

Section 77-37-5, Utah Code Annotated 1953, as enacted by Chapter 194, Laws of Utah 1987, is amended to read:

77-37-5. Remedies — Victims' Rights Committee.

Remedies available are:

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

(a) a county attorney;

(b) a sheriff;

(c) a corrections field services administrator;

(d) an appointed victim advocate;

(e) a municipal attorney;

(f) a municipal chief of police; and

(g) other representatives as appropriate.

(2) [~~This~~] The committee shall meet at least semiannually to review progress and problems related to this chapter. Victims and other interested parties may submit matters of concern to the victims' rights committee. These matters shall also be considered at the meetings of the victims' rights committee. The minutes of the semiannual meeting shall be forwarded to the Commission on Criminal and Juvenile Justice.

(3) [~~A violation of this chapter is not a criminal offense, but is subject to civil remedies under Subsection (4).~~] The Office of Crime Victims' Reparations shall provide materials to local law enforcement to inform every victim of a sexual offense of his right to request testing of the convicted sexual offender and of himself as provided in Section 76-5-502.

(4) If a person acting under color of state law willfully or wantonly fails to perform duties so that the

rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. Failure to provide the rights enumerated above does not constitute cause for a judgment for monetary damage or an attorney's fee.

(5) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

Section 9. Section Amended.

Section 78-3a-55, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1988, is amended to read:

78-3a-55. Court records — Inspection — When testing for HIV infection, fingerprints, or photographs may be taken — Expungement.

(1) (a) The court and the probation department shall keep records as required by the board and the presiding judge.

(b) Court records shall be open to inspection by the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a child has been transferred.

(c) With the consent of the judge, court records may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(d) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(2) Photographs may be taken of a child 14 years of age or older who is taken into custody for the alleged commission of an offense under Section 78-3a-16 that would also be an offense if the child were 18 years of age or older.

(3) Fingerprints may be taken of a child 14 years of age or older who is taken into custody for the alleged commission of an offense that would be a felony if the child were 18 years or older.

(4) HIV testing may be conducted on a child who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, upon the request of the victim or the parent or guardian of the minor victim.

[~~(4) Photographs~~] (5) HIV tests, photographs, and fingerprints may not be taken of a child younger than 14 without the consent of the court.

[~~(5)~~] (6) Photographs and fingerprints shall be filed together in a separate juvenile file.

[~~(6)~~] (7) Photographs and fingerprints may not be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies.

[~~(7)~~] (8) When a child's juvenile record is expunged, all photographs, and fingerprints, and other records as ordered shall upon court order be destroyed by the law enforcement agency.

Section 10. Severability Clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

CHAPTER 41
H. B. No. 153
Passed March 3, 1993
Approved March 10, 1993
Effective May 3, 1993

ACCESS TO BUREAU OF CRIMINAL IDENTIFICATION

By Melvin R. Brown

AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURE; AMENDING PROVISION ON CRIMINAL IDENTIFICATION; PROVIDING PRIVATE SECURITY AGENCIES WITH ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; PROVIDING A USER FEE; PROVIDING A COORDINATING CLAUSE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-26-16, AS LAST AMENDED BY CHAPTERS 167 AND 233, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 77-26-16, Utah Code Annotated 1953, as last amended by Chapters 167 and 233, Laws of Utah 1992, is amended to read:

77-26-16. Definitions — Restrictions on access, use, and contents of bureau records — Challenging accuracy of records — Usage fees.

(1) As used in this chapter:

(a) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(b) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(i) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and

(ii) sentencing, correctional supervision, and release.

(c) "Criminal justice agency" means courts or a government agency or subdivision of a government agency that administers criminal justice under a statute, executive order, or local ordinance and which allocates greater than 50% of its annual budget to the administration of criminal justice.

(d) "Executive order" means an order of the president of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access to it.

(2) Dissemination of criminal history record and warrant of arrest information from bureau files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; and

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with requirements of Section 78-30-3.5;

(f) (i) agencies and individuals as authorized by the commissioner for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency[; and ~~(ii) the agreement~~] which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data; and

(ii) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees; and

(g) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution.

(3) Any criminal history record information obtained from bureau files may be used only for the purposes for which it was provided and may not be further disseminated.

(4) Criminal history record information contained in the bureau's computerized criminal history files may not include arrest or disposition data concerning individuals who have been acquitted, their charges dismissed, or when no complaint against them has been filed if they have had no prior criminal convictions.

(5) (a) This section does not preclude the use of the Division of Information Technology Services' central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored in a manner so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the

bureau's files shall be limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) (a) The commissioner shall establish:

(i) procedures to allow an individual to review his criminal history record information; and

(ii) a processing fee established under Subsection 63-38-3 (2) for the services.

(b) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the bureau's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(8) The private security agencies as provided in Subsection (2)(f)(ii):

(a) shall be charged for access; and

(b) shall be registered with the State Bureau of Criminal Identification according to administrative rule, Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(9) (a) Misuse of access to criminal history record information is a class B misdemeanor.

(b) The commissioner shall be informed of the misuse.

Section 2. Coordinating Clause.

If this act and S.B. 19, 1993 General Session, both pass, the references in this act to the "Bureau of Criminal Identification" shall be deleted and "the division" shall be inserted.

CHAPTER 42
H. B. No. 179
Passed February 26, 1993
Approved March 10, 1993
Effective May 3, 1993

JUROR AMENDMENTS

By Steve Barth

AN ACT RELATING TO CRIMINAL CODE; AMENDING THE DEFINITION OF "PUBLIC SERVANT" TO EXCLUDE JURORS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-8-101, AS LAST AMENDED BY CHAPTER 229, LAWS OF UTAH 1988
76-8-103, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
76-8-301, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

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

Section 1. Section Amended.

Section 76-8-101, Utah Code Annotated 1953, as last amended by Chapter 229, Laws of Utah 1988, is amended to read:

76-8-101. Definitions.

For the purposes of this chapter:

(1) "Candidate for electoral office" means a person who has filed as a candidate for office under the laws of the state.

(2) "Party official" means any person holding any post in a political party whether by election, appointment, or otherwise.

(3) "Peace officer" means any employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(4) (a) "Pecuniary benefit" means any advantage in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain.

(b) "Pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

(5) (a) "Public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, [jurors,] and persons otherwise performing a governmental function.

(b) A person is considered a public servant upon his election, appointment, or other designation as such, although he may not yet officially occupy that position.

Section 2. Section Amended.

Section 76-8-103, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

76-8-103. Bribery to influence official or political actions.

(1) A person is guilty of a felony of the third degree if:

(a) he promises, offers, or gives any pecuniary benefit to another with the purpose of influencing the other's action, decision, opinion, recommendation, vote, nomination, or other exercise of discretion as a public servant, party official, or voter; or

(b) [being] as a public servant, [including a] juror, [or a] party official, candidate for electoral office, or voter, he solicits, accepts, or agrees to accept any pecuniary benefit from another, knowing the other's purpose to be as described in Subsection (1)(a).

(2) It is not a violation of this section to give a pecuniary benefit to a public servant if that benefit is reasonably related to an exchange of information on an issue within the responsibility of the public servant.

Section 3. Section Amended.

Section 76-8-301, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-8-301. Interference with public servant.

(1) A person is guilty of a class B misdemeanor if he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function.

(2) For purposes of this section, "public servant" does not include jurors.

CHAPTER 43
H. B. No. 212
Passed March 3, 1993
Approved March 10, 1993
Effective May 3, 1993

DUAL SENSORY IMPAIRMENT EDUCATION SPECIALIST

By Grant D. Protzman
Patricia B. Larson
David M. Jones
John B. Arrington
Kim R. Burningham
Beverly Ann Evans
Robert H.M. Killpack
Nora B. Stephens
Marda Dillree
Don E. Bush
James F. Yardley
Neal B. Hendrickson
Kelly C. Atkinson
Michael G. Waddoups
Shirley V. Jensen
John William Hickman
Gerry A. Adair
Karen B. Smith
Frank R. Pignanelli
Ronald J. Greensides
Pete Suazo

AN ACT RELATING TO PUBLIC EDUCATION; DESIGNATING A DUAL SENSORY IMPAIRMENT EDUCATION SPECIALIST WITHIN THE STATE OFFICE OF EDUCATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-25-305, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 53A-25-305, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-25-305. Cooperation between school trustees and advisory council — Dual sensory impairment disability education specialist.

(1) The board of trustees of the Schools for the Deaf and the Blind shall submit to the advisory council information and details regarding any of the activities of either institution, if requested by the council, and shall permit the council or any member to visit the schools at any convenient time.

(2) (a) The board of trustees shall adopt policies and programs for providing appropriate educational services to individuals who are both deaf and blind.

(b) Except as otherwise provided in Subsection (d), the board shall designate an individual within the State Office of Education, who holds a dual sensory impairment certificate, to:

(i) act as a resource coordinator for the board on public education programs designed for individuals who are both deaf and blind;

(ii) design and implement training programs to assist school districts and the Schools for the Deaf and the Blind in meeting the educational needs of those who are both deaf and blind; and

(iii) design and assist with the implementation of one-on-one intervention programs in school districts and at the Schools for the Deaf and the Blind for those who are both deaf and blind, serving as a resource for, or team member of, individual I.E.P. teams.

(c) If the board determines that current staff within the state office shall serve as the dual sensory impairment specialist and no one within the office holds the certificate referred to in Subsection (b), the board shall authorize and approve the costs associated with qualifying an individual within the office for certification.

(d) The board may contract with a third party for the services required under Subsection (b).

CHAPTER 44
H. B. No. 268
Passed March 3, 1993
Approved March 10, 1993
Effective July 1, 1993

RURAL MEDICAL FINANCIAL ASSISTANCE

By Christine R. Fox

AN ACT RELATING TO HEALTH; CREATING A GRANT AND SCHOLARSHIP PROGRAM FOR RURAL PHYSICIAN ASSISTANTS, AND CONSOLIDATING THE EXISTING RURAL PHYSICIAN GRANT AND SCHOLARSHIP PROGRAM WITH THE RURAL PHYSICIAN ASSISTANTS PROGRAM; PROVIDING PROCEDURES FOR QUALIFICATIONS, SERVICE, AND ENFORCEMENT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-1-7, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1992

ENACTS:
26-9-201, UTAH CODE ANNOTATED 1953
26-9-202, UTAH CODE ANNOTATED 1953
26-9-203, UTAH CODE ANNOTATED 1953
26-9-204, UTAH CODE ANNOTATED 1953
26-9-205, UTAH CODE ANNOTATED 1953
26-9-206, UTAH CODE ANNOTATED 1953
26-9-207, UTAH CODE ANNOTATED 1953
26-9-208, UTAH CODE ANNOTATED 1953
26-9-209, UTAH CODE ANNOTATED 1953
26-9-210, UTAH CODE ANNOTATED 1953
26-9-211, UTAH CODE ANNOTATED 1953
26-9-212, UTAH CODE ANNOTATED 1953
26-9-213, UTAH CODE ANNOTATED 1953

REPEALS:
26-9A-101, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-102, AS LAST AMENDED BY CHAPTER 55, LAWS OF UTAH 1992
26-9A-103, AS LAST AMENDED BY CHAPTER 55, LAWS OF UTAH 1992
26-9A-104, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-105, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-106, AS LAST AMENDED BY CHAPTER 55, LAWS OF UTAH 1992
26-9A-107, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-108, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-109, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-110, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-111, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-112, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-113, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-114, AS LAST AMENDED BY CHAPTER 55, LAWS OF UTAH 1992
26-9A-116, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9A-117, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1990
26-9B-101, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-102, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-103, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-104, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-105, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-106, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-107, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-108, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-109, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-110, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-111, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9B-113, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1990
26-9C-1, AS ENACTED BY CHAPTER 55, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 26-1-7, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1992, is amended to read:

26-1-7. Committees within department.

There are created within the department the following committees:

(1) Health Facility Committee;

(2) Medical Examiner Committee;

(3) State Emergency Medical Services Committee;

(4) Rural [~~Physician~~] Medical Financial Assistance Committee;

(5) Nurse Financial Assistance Committee; and

(6) Health Data Committee.

Section 2. Section Enacted.

Section 26-9-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Physicians and Physicians Assistants Grant Scholarship Program

26-9-201. Title.

This part is known as the "Physicians and Physicians Assistants Grant and Scholarship Program."

Section 3. Section Enacted.

Section 26-9-202, Utah Code Annotated 1953, is enacted to read:

26-9-202. Definitions.

As used in this part:

(1) "Applicant" means a person who meets the application requirements established by the committee for a grant or a scholarship under this part.

(2) "Committee" means the Rural Medical Financial Assistance Committee created by Section 26-1-7.

(3) "Educational expenses" are tuition, fees, books, supplies, educational equipment and material, and reasonable living expenses.

(4) "Medically underserved rural area" means a county, city, town, or other service area with a population of less than 99 people per square mile and designated by the committee as underserved by physicians or physician assistants.

(5) "Physician" means a person who has completed training at an educational institution that provides training leading to the award of a Medical Doctor or Doctor of Osteopathy degree and who has completed a post-graduate training program in medicine commenced within six months of graduation at an institution accredited by the Accreditation Committee on Graduate Medical Education, the American Osteopathic Association Bureau of Professional Education, or the Royal College of Physicians and Surgeons of Canada.

(6) "Physician assistant" means a person who is graduated from a physician assistant program approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and who is licensed to practice in the state under Title 58, Chapter 31, Physician Assistant Practice Act.

(7) "Recipient" means an applicant selected to receive a grant or a scholarship under this part.

Section 4. Section Enacted.

Section 26-9-203, Utah Code Annotated 1953, is enacted to read:

26-9-203. Committee created.

(1) The Rural Medical Financial Assistance Committee is comprised of ten members appointed by the governor with the advice and consent of the Senate. The committee members are:

(a) one faculty member of the school of medicine at the University of Utah nominated by the dean of the school of medicine;

(b) one employee of the department nominated by the director of the department;

(c) one rural hospital administrator nominated by the president of the Utah Hospital Association;

(d) one member of the Utah Medical Association nominated by the president of the association;

(e) one rural representative of the Association for Utah Community Health nominated by the board of the association;

(f) one rural representative nominated by Utah Small Cities, Inc.;

(g) one rural representative nominated by the Association of Counties;

(h) one rural representative nominated by the Utah Academy of Physician Assistants;

(i) one employee representing the Division of Business and Economic Development, nominated by the executive director of the Department of Community and Economic Development; and

(j) one member of the Legislature chosen by the president and speaker, who serves as an ex officio member with no voting privileges.

(2) (a) The names of all persons nominated to be members of the committee shall be submitted to the governor for confirmation or rejection.

(b) If a nominee is rejected by the governor, another nominee shall be selected in the same manner as the nominee the governor rejects.

(3) The term of office of each committee member is four years.

(4) A committee member may not serve more than two consecutive terms.

(5) The committee shall annually designate one of its members to serve as chairman for a one-year period.

(6) A vacancy on the committee shall be filled for the unexpired term in accordance with Subsection (2).

(7) A majority of the committee members constitutes a quorum for the transaction of business.

(8) Each committee member, except those employed by the state, shall receive a per diem allowance and expenses actually incurred in the discharge of his stated duties as approved by the Division of Finance.

Section 5. Section Enacted.

Section 26-9-204, Utah Code Annotated 1953, is enacted to read:

26-9-204. Committee duties and powers.

(1) The committee shall:

(a) establish application procedures for grants and scholarships;

(b) establish eligibility and selection criteria for grant and scholarship recipients;

(c) determine grant and scholarship awards and conditions for each recipient; and

(d) designate eligible medically underserved rural areas in which recipients may fulfill their service obligations.

(2) The committee may:

(a) approve the specific site at which a recipient may fulfill his service obligations under this part;

(b) set limitations on the amount an individual may receive and on the number of years for which an individual may receive funds under this part;

(c) cancel grants or scholarships for cause and, for compelling reasons, accept a lesser measure of damages for breach of a grant or scholarship contract or release a recipient from the service obligation without penalty for extreme hardship or other good cause;

(d) cancel a grant or scholarship for cause without penalty to the state;

(e) cancel a grant or a scholarship if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the grant or scholarship conditions; and

(f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this part.

Section 6. Section Enacted.

Section 26-9-205, Utah Code Annotated 1953, is enacted to read:

26-9-205. Department duties and powers.

(1) The department shall administer this part and provide staff to the committee.

(2) The department may accept gifts, grants, loans, and other aid or funds from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes set forth in this part.

Section 7. Section Enacted.

Section 26-9-206, Utah Code Annotated 1953, is enacted to read:

26-9-206. Physician loan repayment grants — Terms and amounts — Service.

(1) (a) To increase the number of physicians practicing in medically underserved rural areas of the state, the department may provide grants to physicians to repay loans taken by them for physician educational expenses in exchange for their agreement to practice for a specified period of time in medically underserved rural areas in the state.

(b) Grants may be given only to repay bona fide loans taken by a physician for physician educational expenses while pursuing an education at an institution that provides training leading to the award of a Medical Doctor or Doctor of Osteopathy degree.

(2) Grants to physicians under this section may not be used to satisfy other obligations owed by the physician under any similar program and may not be used to repay a loan that is in default at the time of application.

(3) The department may not disburse any grant funds under this part until the recipient has performed at least three months of full-time service at the designated medically underserved rural area.

Section 8. Section Enacted.

Section 26-9-207, Utah Code Annotated 1953, is enacted to read:

26-9-207. Physician scholarships — Terms and amounts — Service.

(1) To increase the number of physicians in medically underserved rural areas in the state, the department may provide scholarships to individuals seeking to become physicians in exchange for their agreement to practice for a specified period of time in medically underserved rural areas in the state.

(2) Scholarships may be given to pay educational expenses, while pursuing a four-year Medical Doctor or Doctor of Osteopathy degree at a school within the United States accredited by the Liaison Committee on Medical Education of the American Medical Association or by the American Osteopathic Association or at a school within Dominion of Canada accredited by the Royal College of Physicians and Surgeons of Canada.

(3) Scholarships given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship recipients shall seek a course of physician education following a schedule of minimum course hours per year and maximum years leading to receipt of a degree as set by rule by the committee.

Section 9. Section Enacted.

Section 26-9-208, Utah Code Annotated 1953, is enacted to read:

26-9-208. Physician assistant loan repayment grants — Terms and amounts — Service.

(1) (a) To increase the number of physician assistants practicing in medically underserved rural areas of the state, the department may provide grants to physician assistants to repay loans taken by them for physician assistant educational expenses in exchange for their agreement to practice for a specified period of time in medically underserved rural areas in the state.

(b) Grants may be given only to repay bona fide loans taken by a physician assistant for physician assistant educational expenses, including tuition, fees, books, supplies, educational equipment and material, and reasonable living expenses.

(2) Grants given to physician assistants under this section may not be used to satisfy other service obligations owed by the physician assistant under any similar program and may not be used to repay a loan that is in default at the time of application.

(3) The department may not disburse any grant funds under this part until the recipient has performed at least three months of full-time service at the approved site.

Section 10. Section Enacted.

Section 26-9-209, Utah Code Annotated 1953, is enacted to read:

26-9-209. Physician assistant scholarships — Terms and amounts — Service.

(1) To increase the number of physician assistants in medically underserved rural areas in the state,

the department may provide scholarships to individuals seeking physician assistant education in exchange for their agreement to practice for a specified period of time in medically underserved rural areas in the state.

(2) The scholarships may be given only to pay physician assistant educational expenses, while pursuing physician assistant education within the state or within the United States.

(3) Scholarships given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship recipients shall seek a course of physician assistant education following a schedule of minimum course hours per year and maximum years leading to receipt of a degree as set by rule by the committee.

Section 11. Section Enacted.

Section 26-9-210, Utah Code Annotated 1953, is enacted to read:

26-9-210. Service obligation — Repayment — Penalty.

(1) (a) Before receiving a grant or a scholarship under this part, each recipient shall enter into a contract with the state agreeing to the conditions upon which the grant or scholarship is to be made.

(b) The contract shall include necessary conditions to carry out the purposes of this part.

(2) (a) In exchange for financial assistance under this part, the recipient shall practice full-time for a minimum of 24 months in a medically underserved rural area at a site approved by the committee.

(b) The recipient's full-time practice in a medically underserved rural area at a site approved by the committee retires the amount owed for the grant or scholarship according to a schedule established by the committee.

(c) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under this part.

(3) A grant recipient under this part who fails to complete the obligated service shall:

(a) pay as a penalty, twice the total amount of the grant not yet paid to him, on a prorated basis according to a schedule established by the committee and 12% per annum interest on the unpaid penalty amount; and

(b) costs and expenses incurred in collection, including attorney fees.

(4) A scholarship recipient who fails to finish his medical or physician assistant schooling and become a physician or a physician assistant within the period of time agreed upon with the committee shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, repay:

(a) all scholarship money received;

(b) 12% per annum interest on the funds received under the scholarship, calculated from the date each installment is received under the scholarship until it is repaid; and

(c) costs and expenses incurred in collection, including attorney fees.

(5) A scholarship recipient who finishes his schooling and becomes a physician or physician assistant but who fails to fulfill his service obligation shall:

(a) repay twice the total scholarship amount paid to him that is not yet retired by his service, on a prorated basis according to a schedule established by the committee;

(b) 12% per annum interest on the unretired funds received under the scholarship calculated from the date he received each installment under the scholarship; and

(c) costs and expenses incurred in collection, including attorney fees.

(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of this part.

Section 12. Section Enacted.

Section 26-9-211, Utah Code Annotated 1953, is enacted to read:

26-9-211. Funding.

(1) Appropriations for programs under this part shall be a separate line item to the department in the annual appropriations act, and unless otherwise provided in an appropriations act, is nonlapsing.

(2) Federal funds, gifts, endowments, contributions for the programs, and damages collected from breach of program contracts may also be used for programs under this part and are nonlapsing.

(3) After a program contract has been signed by both parties, the department shall set aside the funds necessary to ensure sufficient funds will be available to make payments under the contract for the full term of obligated service.

(4) Funding under Subsections (1) and (2) shall be used to make payments under the program contracts.

(5) Committee and department staff support costs necessary to administer this part shall be appropriated by the Legislature.

Section 13. Section Enacted.

Section 26-9-212, Utah Code Annotated 1953, is enacted to read:

26-9-212. Reporting.

Annually on or before August 1, the committee shall submit a written report of its activities under this part to the executive director of the department and to the Health and Environment Interim Committee of the Legislature. The report shall include:

(1) the number and type of grant and scholarship recipients;

(2) the total amount of each grant and scholarship;

(3) the site at which each grant recipient is practicing;

(4) the site at which each scholarship recipient is practicing;

(5) the number of applications filed under this part within the preceding year; and

(6) the amount of administrative expenses incurred by the committee and by the department to provide staff support during the preceding year in carrying out the provisions of this part.

Section 14. Section Enacted.

Section 26-9-213, Utah Code Annotated 1953, is enacted to read:

26-9-213. Continuity with prior provisions.

(1) Persons who are applicants under Title 26, Chapter 9a or Title 26, Chapter 9b, prior to July 1, 1993, the effective date of this part, continue their application process under this part. The committee shall work with each applicant under this subsection to ensure continuity of the application process.

(2) Persons who are recipients under Title 26, Chapter 9a or Title 26, Chapter 9b, prior to July 1, 1993, the effective date of this part, shall continue their service under the terms of their contracts.

Section 15. Repealer.

Section 26-9a-101, Short title, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-102, Definitions, Utah Code Annotated 1953, as last amended by Chapter 55, Laws of Utah 1992;

Section 26-9a-103, Rural Physician Education Loan Repayment Program, Utah Code Annotated 1953, as last amended by Chapter 55, Laws of Utah 1992;

Section 26-9a-104, Committee — Creation — Appointment — Membership — Terms — Chairman — Vacancies — Quorum — Chairman — Per diem and expenses, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-105, Powers and duties of the committee, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-106, Physician selection criteria — Eligibility for loan repayment, Utah Code Annotated 1953, as last amended by Chapter 55, Laws of Utah 1992;

Section 26-9a-107, Approved sites, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-108, Eligible loans, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-109, Loan repayment program contract, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-110, Breach of loan repayment program contract, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-111, Release from service obligation, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-112, Minimum and maximum obligated service, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-113, Minimum and maximum loan repayment, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-114, Payment, Utah Code Annotated 1953, as last amended by Chapter 55, Laws of Utah 1992;

Section 26-9a-116, Approval required for participation, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9a-117, Reporting, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1990;

Section 26-9b-101, Short title, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-102, Definitions, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-103, Rural Physician Scholarship Program, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-104, Powers and duties of the committee, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-105, Eligible students, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-106, Scholarship contract — Contents, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-107, Duration of scholarship, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-108, Cancellation of scholarship, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-109, Repayment by recipient, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-110, Release from obligation, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-111, Maximum scholarship payments, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990;

Section 26-9b-113, Reporting, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1990; and

Section 26-9c-1, Funding, Utah Code Annotated 1953, as enacted by Chapter 55, Laws of Utah 1992, are repealed.

Section 16. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 45
H. B. No. 299
Passed March 3, 1993
Approved March 10, 1993
Effective May 3, 1993

EMT AMENDMENTS

By John L. Valentine

AN ACT RELATING TO HEALTH; PROVIDING THAT TERMINALLY ILL PERSONS MAY EXECUTE A DIRECTIVE THAT EMERGENCY MEDICAL SERVICES PROVIDERS NOT PROVIDE RESUSCITATION IF CALLED TO ATTEND TO THE PERSON.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
75-2-1105.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 75-2-1105.5, Utah Code Annotated 1953, is enacted to read:

75-2-1105.5. Emergency medical services — Directive to not resuscitate.

(1) (a) A person 18 years of age or older who is in a terminal condition may, by a directive made under this section, direct that emergency medical services providers licensed under Title 26, Chapter 8, who respond to a call to provide to that person emergency medical services as defined in Section 26-8-2, withhold all life sustaining procedures.

(b) The directive is binding upon emergency medical services providers only if the person issuing the directive is in compliance with the system developed under Subsection (2).

(2) (a) The Department of Health shall by rule establish a uniform system to allow emergency medical service providers to readily identify persons who have made a directive under this section.

(b) The system may provide for personal, tamper-proof identifying bracelets or other means necessary to assure identification of persons who have made a directive under this section.

(3) An emergency medical services provider is not bound to act in accordance with a directive issued under this section unless the person executing the directive complies with Department of Health rules made under this section, such as the wearing of an identifying bracelet, to clearly express to emergency medical service providers the continued intent to be readily identified as a person who has made a directive under this section.

(4) A directive made under this section shall be:

(a) in writing and on a form approved by the Department of Health;

(b) signed by the declarant or by another person in the declarant's presence and by the declarant's expressed direction, or if the declarant does not have the ability to give current directions concerning his care and treatment, by the following persons, as proxy, in the following order of priority if no person in a prior class is available, willing, and competent to act:

(i) an attorney-in-fact appointed as provided in Section 75-2-1106, but authorized to act under this section;

(ii) any previously appointed legal guardian of the declarant;

(iii) the person's spouse if not legally separated;

(iv) the parents or surviving parent;

(v) the person's child 18 years of age or older, or if the person has more than one child, by a majority of the children 18 years of age or older who are reasonably available for consultation upon good faith efforts to secure participation of all those children;

(vi) by the declarant's nearest reasonably available living relative 18 years of age or older if the declarant has no parent or child living; or

(vii) by a legal guardian appointed for the purposes of this section; and

(c) dated;

(d) signed, completed, and certified by the declarant's attending physician; and

(e) signed pursuant to Subsection (b) above in the presence of two or more witnesses who are 18 years of age or older.

(5) Neither of the witnesses may be:

(a) the person who signed the directive on behalf of the declarant;

(b) related to the declarant by blood or marriage;

(c) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;

(d) directly financially responsible for the declarant's medical care; or

(e) an agent of any health care facility in which the declarant is a patient or resident at the time of executing the directive.

(6) A directive made under this section takes precedence over a directive made pursuant to Section 75-2-1104.

CHAPTER 46
H. B. No. 416
Passed March 3, 1993
Approved March 10, 1993
Effective July 1, 1993

MANAGEMENT OF SCHOOL AND INSTITUTIONAL TRUST LANDS

By Melvin R. Brown

AN ACT RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS; ESTABLISHING AN ADVISORY BOARD FOR SCHOOL AND INSTITUTIONAL TRUST LANDS; PROVIDING FOR A SELECTION PROCESS TO THE BOARD; PROVIDING FOR BOARD POWERS TO INCLUDE RECOMMENDATIONS FOR LEGISLATION ON THE BEST STRUCTURE, MANAGEMENT SCHEME, AND OPERATIONAL POLICIES FOR MANAGEMENT OF SCHOOL TRUST LANDS; PROVIDING FOR A $200,000 APPROPRIATION FROM THE LAND GRANT MAINTENANCE ACCOUNT; PROVIDING A SUNSET DATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53C-1-101, UTAH CODE ANNOTATED 1953
53C-1-102, UTAH CODE ANNOTATED 1953
53C-1-103, UTAH CODE ANNOTATED 1953
53C-1-301, UTAH CODE ANNOTATED 1953
53C-1-302, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53C-1-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 1. ADMINISTRATION AND MANAGEMENT

Part 1. Title and Purpose

53C-1-101. Title.

This title is known as the "School and Institutional Trust Lands Act."

Section 2. Section Enacted.

Section 53C-1-102, Utah Code Annotated 1953, is enacted to read:

53C-1-102. Purpose.

The purpose of this title is to establish an organizational structure which will have sufficient authority, independence, and expertise to:

(1) meet the standard required of the state in its role as trustee of the school and institutional trust, which includes:

(a) all duties normally required of other trustees; and

(b) undivided loyalty to the beneficiaries, which precludes the state from acting in the interests of a third party at the expense of the beneficiaries; and

(2) best ensure that the state will faithfully fulfill its fiduciary responsibility to administer the trust lands for the support of the public schools and beneficiary institutions as required under Sections 6 through 13 of the Utah Enabling Act of July 16, 1894, and Articles X and XX of the Utah Constitution.

Section 3. Section Enacted.

Section 53C-1-103, Utah Code Annotated 1953, is enacted to read:

53C-1-103. Definitions.

As used in this title:

(1) "Board" means the Advisory Board for School and Institutional Trust Lands.

(2) "School and institutional trust lands" or "trust lands" means those properties granted by the United States in the Enabling Act to the State of Utah in trust, and other lands transferred to the trust, which must be managed for the benefit of:

(a) the state's public education system; or

(b) the institutions of the state which are designated by the Utah Enabling Act as beneficiaries of trust lands.

Section 4. Section Enacted.

Section 53C-1-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Advisory Board for School and Institutional Trust Lands

53C-1-301. Studies and public hearings related to management structure.

(1) The Advisory Board for School and Institutional Trust Lands consists of nine members, appointed by the governor with the advice and consent of the Senate.

(a) The governor shall select each appointee to the board from a nomination list of two candidates for each position.

(b) (i) Members shall be appointed for their expertise in one or more areas of trust responsibility.

(ii) At a minimum, the board members shall collectively exhibit expertise in the following areas:

(A) business;

(B) minerals;

(C) law;

(D) land management and development;

(E) trust management and related trust responsibilities;

(F) transactions which generate the principal income sources for the trust; and

(G) relationships with other affected public and private entities.

(c) The governor may request an additional list for any position if a list submitted by the nominating committee is unacceptable.

(d) If a vacancy occurs the governor shall appoint a replacement following the procedures set forth in this section.

(2) A nominating committee consisting of the following shall prepare the nomination lists required under this section:

(a) four individuals selected by the State Board of Education;

(b) one individual selected by the commissioner of higher education after consultation with institutional trust lands beneficiaries other than the public school trust lands beneficiaries;

(c) one individual selected by the agriculture industry;

(d) one individual selected by the Utah Petroleum Association;

(e) one individual selected by the Utah Mining Association; and

(f) one individual selected by the executive director of the Department of Natural Resources after consultation with statewide wildlife and conservation organizations.

Section 5. Section Enacted.

Section 53C-1-302, Utah Code Annotated 1953, is enacted to read:

53C-1-302. Board's duties and responsibilities — Proposed legislation.

(1)(a) The board shall initiate studies, hold public hearings, and return proposed legislation to the governor and to the Legislature's Education and Energy, Natural Resources, and Agriculture Interim Committees no later than November 30, 1993, concerning the best structure, management scheme, and operational policies for management of the trust lands.

(b) Action by a majority of the board constitutes official board action.

(c) The governor and committees shall consider this information and propose legislation to be submitted to the 1994 General Session of the Legislature in response to the information.

(2) The board's proposal shall:

(a) reflect full regard for the fiduciary duties of the state as trustee; and

(b) reflect undivided loyalty to the beneficiaries consistent with those fiduciary duties.

(3) The board may appoint and establish the compensation of an executive director to assist the board in its duties under this section.

(4) The State Board of Education and the Department of Natural Resources shall cooperate in providing facilities and staff support for the work of the board from appropriations made for the 1993-94 fiscal year.

(5) There is appropriated for fiscal year 1993-94 $200,000 from the Land Grant Maintenance Account to the Division of State Lands and Forestry to be used for compensation for the executive director and other costs associated with the advisory board's duties under this section.

Section 6. Sunset provision.

This title is repealed June 30, 1994, unless reauthorized.

Section 7. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 47
S. B. No. 18
Passed February 4, 1993
Approved March 10, 1993
Effective July 1, 1993

APPROPRIATION FOR BEAR RIVER PLANNING AND DEVELOPMENT

By John P. Holmgren

AN ACT RELATING TO DEVELOPMENT OF THE BEAR RIVER; APPROPRIATING FOR FISCAL YEAR 1993-94 $250,000 FROM THE BEAR RIVER DEVELOPMENT ACCOUNT TO THE DIVISION OF WATER RESOURCES FOR STUDIES AND PLANNING RELATING TO THE DEVELOPMENT OF THE BEAR RIVER WITH EMPHASIS ON THE ENLARGEMENT OF HYRUM DAM; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriation.

(1) There is appropriated for fscal year 1993-94 $250,000 from the Bear River Development Account to the Division of Water Resources for studies, planning, and administrative costs relating to the development of the Bear River with emphasis on the enlargement of Hyrum Dam.

(2) Of the amount appropriated under Subsection (1):

(a) up to $30,000 may be used to study probable maximum precipitation and inflow flood hydrology for Hyrum Dam;

(b) up to $75,000 may be used to develop a water quality management plan;

(c) up to $45,000 may be used for stream and sediment gages;

(d) up to $25,000 may be used for water quality analysis and sampling;

(e) up to $10,000 may be used for a cultural and historical investigation;

(f) up to $40,000 may be used for a geotechnical investigation of Hyrum Dam and Blacksmith Fork; and

(g) up to $25,000 may be used for the administrative costs of the Division of Water Resources.

(3) The money appropriated under Subsection (1) is nonlapsing.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 48
H. B. No. 47
Passed February 4, 1993
Approved February 24, 1993
Effective May 3, 1993

NONPROFIT CORPORATIONS AND CORPORATIONS SOLE AMENDMENTS

By Ray Short

AN ACT RELATING TO CORPORATIONS; PROVIDING FOR MERGER AND CONSOLIDATION RIGHTS FOR CORPORATIONS SOLE; PERMITTING CORPORATIONS SOLE TO RESTATE ARTICLES OF INCORPORATION; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
16-6-20, AS ENACTED BY CHAPTER 17, LAWS OF UTAH 1963
16-7-11, AS LAST AMENDED BY CHAPTER 178, LAWS OF UTAH 1985

ENACTS:
16-7-13, UTAH CODE ANNOTATED 1953
16-7-14, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 16-6-20, Utah Code Annotated 1953, as enacted by Chapter 17, Laws of Utah 1963, is amended to read:

16-6-20. Applicability.

(1) The provisions of this [~~act~~] chapter relating to domestic corporations [~~shall~~] apply to:

(a) all corporations organized [~~hereunder~~] under this chapter;

(b) all nonprofit corporations organized and existing under the laws of this state on [~~the effective date of this act~~] July 1, 1963, including all nonprofit corporations [~~not for pecuniary profit~~] organized under any [~~of the~~] former provisions of [~~chapter 6 of~~] Title 16, Chapter 6 [~~Utah Code Annotated 1953, which are repealed by this act~~]; [~~and~~]

(c) mutual irrigation, canal, ditch, reservoir, and water companies and water users' associations organized and existing under the laws of this state on [~~the effective date of this act.~~] July 1, 1963; and

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

(2) The provisions of this [~~act~~] chapter relating to foreign corporations [~~shall~~] apply to:

(a) all foreign nonprofit corporations transacting business in this state for [~~a purpose or~~] purposes for which a corporation might be organized under this [~~act~~] chapter; [~~and~~]

(b) all foreign nonprofit corporations which qualified to do business in this state prior to January 1, 1962, under the provisions of [~~chapter 8 of~~] Title 16, [~~Utah Code Annotated 1953, which provisions were repealed by chapter 28, Laws of Utah 1961.~~] Chapter 8; and

(c) all foreign corporations sole qualified to do business in this state with respect to mergers and consolidations.

(3) This [~~act shall~~] chapter does not apply to corporations sole, except with respect to mergers and consolidations, nor to domestic or foreign corporations governed by [~~the~~] Title 3, Chapter 1, Uniform Agricultural Cooperative Association Act.

Section 2. Section Amended.

Section 16-7-11, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1985, is amended to read:

16-7-11. Fees for filing documents and issuing certificates.

The [~~Division of Corporations and Commercial Code~~] division shall charge and collect a fee determined by it pursuant to Subsection 63-38-3 (2) for:

(1) filing articles of incorporation of a corporation sole and issuing a certificate of incorporation;

(2) filing articles of amendment and issuing a certificate of amendment;

(3) issuing each additional certificate of incorporation or amendment;

(4) filing a certificate of authorized agent and issuing [~~his~~] the agent's certificate [~~thereof~~];

(5) filing a revocation of authority; [~~and~~]

(6) furnishing a certified copy of any document, instrument, or paper relating to a corporation sole and affixing its seal; [~~and~~]

(7) issuing a certificate of dissolution[~~.~~]; and

(8) issuing a certificate of merger or consolidation.

Section 3. Section Enacted.

Section 16-7-13, Utah Code Annotated 1953, is enacted to read:

16-7-13. Merger and consolidation.

(1) As long as the surviving corporation qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3), any corporation organized under this chapter may merge with one or more domestic or foreign corporations organized or authorized to do business in this state under this title, or with one or more nonprofit domestic or foreign corporations organized or authorized to do business in this state under this title.

(2)(a) Articles of merger or consolidation shall be adopted by the appropriate incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and

procedures of the church, denomination, or religious society.

(b) The articles of merger or consolidation shall be adopted by any merging or consolidating corporation organized under Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, as provided in Section 16-6-56.

(3) The effect of a merger or consolidation under this section is the same as provided in Section 16-6-59.

Section 4. Section Enacted.

Section 16-7-14, Utah Code Annotated 1953, is enacted to read:

16-7-14. Restatement of articles of incorporation.

(1) A corporation sole organized under this chapter may restate its articles of incorporation in the same manner allowed nonprofit corporations under Section 16-6-53.5.

(2) The restated articles shall be adopted on behalf of the corporation by the appropriate incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and procedures of the church, denomination, or religious society.

CHAPTER 49
H. B. No. 251
Passed March 2, 1993
Approved March 11, 1993
Effective May 3, 1993

USE OF FORCE IN APPREHENDING INMATES

By Daniel H. Tuttle

AN ACT RELATING TO CORRECTIONS; ALLOWING THE USE OF DEADLY FORCE TO APPREHEND ESCAPEES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
64-13-32, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 64-13-32, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-32. Discipline of offenders — Use of force.

(1) If an offender offers violence to an officer or other employee of the Department of Corrections, or to another offender, or to any other person; attempts to damage or damages any corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable command; the officers and other employees of the department may use all reasonable means, including the use of weapons, to defend themselves and department property and to enforce the observance of discipline and prevent escapes.

(2) An inmate who is housed in [~~the act of escaping from~~] a secure correctional facility and is [~~presumptive evidence that he poses~~] in the act of escaping from that secure correctional facility or from the custody of a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to an officer or others if apprehension is delayed. Notwithstanding Section 76-2-404, a peace or correctional officer is justified in using deadly force if he reasonably believes deadly force is necessary to apprehend the inmate.

CHAPTER 50
H. B. No. 278
Passed March 2, 1993
Approved March 11, 1993
Effective March 11, 1993

REDEVELOPMENT AMENDMENTS

By Kevin S. Garn
Martin R. Stephens
John L. Valentine
Melvin R. Brown
Christine R. Fox
R. Lee Ellertson
James F. Yardley
Frank R. Pignanelli
Blake D. Chard
Douglas S. Peterson
Phil H. Uipi
Michael R. Styler
Clark L. Reber
Kim R. Burningham
Kelly C. Atkinson
Judy Ann Buffmire
Jeff Alexander
Shirley V. Jensen
Arlo D. James
Patricia B. Larson
Jordan Tanner
Brad Johnson
Beverly Ann Evans
Robert H.M. Killpack
Met Johnson
Stephen M. Bodily

AN ACT RELATING TO SPECIAL DISTRICTS; PROVIDING FOR STRICTER CONTROL OF THE USE OF TAX INCREMENT FINANCING AND EMINENT DOMAIN; PROVIDING FOR A PROPERTY OWNERS' "BILL OF RIGHTS"; STRENGTHENING THE PUBLIC HEARING PROCESS; CLARIFYING VARIOUS TAX PROVISIONS; CREATING A HOUSING FUND FOR LOW INCOME HOUSING; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

11-25-11, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
17A-2-1201, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1202, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1203, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1205, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1210, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1213, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1214, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1215, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1216, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1217, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1218, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1220, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1222, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1225, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1227, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1229, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1230, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1236, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1238, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1239, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1240, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1242, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1243, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1247, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1248, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1250, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1251, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1252, AS RENUMBERED AND

AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1253, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1254, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1256, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1258, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1259, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
17A-2-1260, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990

ENACTS:
17A-2-1210.5, UTAH CODE ANNOTATED 1953
17A-2-1247.5, UTAH CODE ANNOTATED 1953
17A-2-1261, UTAH CODE ANNOTATED 1953
17A-2-1262, UTAH CODE ANNOTATED 1953
17A-2-1263, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
17A-2-1204, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1206, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1207, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1208, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1209, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1211, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1212, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 11-25-11, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

11-25-11. Comprehensive financing program ordinance — Contents.

Prior to the issuance of any bonds or bond anticipation notes of the agency for residential rehabilitation, the agency shall by ordinance adopt a comprehensive residential rehabilitation financing program [~~which shall include, but is not limited to, the following items~~], including:

(1) Criteria for selection of residential rehabilitation areas by the agency [~~which shall include~~] including findings by the agency that:

(a) There are a substantial number of deteriorating structures in the area which do not conform to community standards for decent, safe, sanitary housing.

(b) Financial assistance from the agency for residential rehabilitation is necessary to arrest the deterioration of the area.

(c) Financing of residential rehabilitation in the area is economically feasible. These findings are not required, however, when the residential rehabilitation area is located within the boundaries of a project area covered by a project area redevelopment plan adopted in accordance with Section 17A-2-1226.

(2) Procedures for selection of residential rehabilitation areas by the agency [~~which shall include~~] including:

(a) Provisions for citizen participation in selection of residential rehabilitation areas.

(b) Provisions for a public hearing by the agency prior to selection of any particular residential rehabilitation area.

(3) A commitment that rehabilitation standards will be enforced on each residence for which financing is provided.

(4) Guidelines for financing residential rehabilitation which shall be subject to the following limitations:

(a) Outstanding loans on the property to be rehabilitated including the amount of the loans for rehabilitation, shall not exceed 80% of the anticipated after-rehabilitation value of the property to be rehabilitated, except that the agency may authorize loans of up to 95% of the anticipated after-rehabilitation value of the property if loans are made for the purpose of rehabilitating the property for residential purposes, there is demonstrated need for such higher limit, and there is a high probability that the value of the property will not be impaired during the term of the loan.

(b) The maximum repayment period for residential rehabilitation loans shall be 20 years or 3/4 of the economic life of the property, whichever is less.

(c) The maximum amount loan for rehabilitation for each dwelling unit and for each commercial unit which is, or is part of a "residence" [~~within the meaning of that term~~] as defined in this [part] chapter, shall be [~~$17,500~~] established by resolution of the agency.

[~~(5) A requirement that a plan for public improvements necessary to successful rehabilitation of the residential rehabilitation area be developed, with citizen participation, for each residential rehabilitation area and that the plan for public improvements be adopted by the agency prior to the financing of residential rehabilitation in any residential rehabilitation area, together with a commitment that, subject to budgetary and fiscal limitations, this plan will be carried out by the agency.~~]

Section 2. Section Amended.

Section 17A-2-1201, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1201.Short title.

This part shall be known [~~and may be~~ cited] as the "Utah Neighborhood Development Act."

Section 3. Section Amended.

Section 17A-2-1202, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1202. Definitions.

As used in this part:

[~~(2)~~] (1) "Agency" means the legislative body of a community when designated by the legislative body itself to act as a redevelopment agency.

(2) "Base tax amount" means that portion of taxes that would be produced by the rate upon which the tax is levied each year by or for all taxing agencies upon the total sum of the taxable value of the taxable property in a redevelopment project area as shown upon the assessment roll used in connection with the taxation of the property by the taxing agencies, last equalized before the effective date of the:

(a) ordinance approving the plan for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency; or

(b) the first approved project area budget for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221; and

(c) as adjusted by Sections 17A-2-1251, 17A-2-1252, and 17A-2-1253.

[~~(9)A "blighted~~] (3) "Blighted area" [is] or "blight" means:

(a) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, an area used or intended to be used for residential, commercial, industrial, or other purposes or any combination of such uses which is characterized by two or more of the following factors: [~~(a)~~]

(i) defective design and character of physical construction;

[~~(b)~~] (ii) faulty interior arrangement and exterior spacing;

[~~(c)~~] (iii) high density of population and overcrowding;

[~~(d)~~] (iv) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities;

[~~(e)~~] (v) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses;

[~~(f)~~] (vi) economic dislocation, deterioration, or disuse, resulting from faulty planning;

[~~(g)~~] (vii) subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;

[~~(h)~~] (viii) laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

[~~(i)~~] (ix) existence of inadequate streets, open spaces, and utilities; and

[~~(j)~~] (x) existence of lots or other areas which are subject to being submerged by water.

(b) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, when a finding of blight is required, an area with buildings or improvements, used or intended to be used for residential, commercial, industrial, or other urban purposes or any combination of these uses, which:

(i) contains buildings and improvements, not including out-buildings, on at least 50% of the number of parcels and the area of those parcels is at least 50% of the project area; and

(ii) is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors:

(A) defective character of physical construction;

(B) high density of population and overcrowding;

(C) inadequate provision for ventilation, light, sanitation, and open spaces;

(D) mixed character and shifting of uses which results in obsolescence, deterioration, or dilapidation;

(E) economic deterioration or continued disuse;

(F) lots of irregular form and shape and inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(G) existence of inadequate streets, open spaces, and utilities;

(H) existence of lots or other areas which are subject to being submerged by water; and

(I) existence of any hazardous or solid waste defined as any substance defined, regulated, or listed as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant," "contaminant," or "toxic substances," or identified as hazardous to human health or the environment under state or federal law or regulation.

(c) For purposes of Subsection (3)(b), if a developer involved in the project area redevelopment or eco-

nomic development causes any of the factors of blight listed in Subsection (b)(ii), the developer-caused blight may not be used as one of the three required elements of blight. Notwithstanding the provisions of this section, any blight caused by owners or tenants who may become developers under the provisions of Section 17A-2-1214 shall not be subject to this subsection.

[~~(13)~~] (4) "Bond" means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency.

[~~(1)~~] (5) "Community" means a city, county, town, or any combination of these.

(6) "Economic development" means the planning or replanning, design or redesign, development or redevelopment, construction or reconstruction, rehabilitation, business relocation or any combination of these, within all or part of a project area and the provision of office, industrial, manufacturing, warehousing, distribution, parking, public or other facilities, or improvements as may benefit the state or the community in order for a public or private employer to create additional jobs within the state.

[~~(4)~~] (7) "Federal government" means the United States or any of its agencies or instrumentalities.

[~~(5)~~] (8) "Legislative body" means the city council, city commission, county commission, or other legislative body of the community.

[~~(6)~~] (9) "Planning commission" means a city, town, or county planning commission established pursuant to law or charter.

(10) "Project area" or "redevelopment project area" means an area of a community [~~which is a blighted area~~] within a designated redevelopment survey area, the redevelopment of which is necessary to [~~effectuate the public purposes declared in this part,~~] eliminate blight or provide economic development and which is selected by the redevelopment agency pursuant to this part.

(11) "Project area budget" means, for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, a multiyear budget for the redevelopment plan prepared by the redevelopment agency showing:

(a) the base year taxable value of the project area;

(b) the projected tax increment of the project area, including the amount of any tax increment shared with other taxing districts which shall include:

(i) the tax increment expected to be used to implement the redevelopment plan including the estimated amount of tax increment to be used for land acquisition, public, and infrastructure improvements, and loans, grants, or tax incentives to private and public entities; and

(ii) the total principal amount of bonds expected to be issued by the redevelopment agency to finance the project;

(c) the tax increment expected to be used to cover the cost of administering the project area plan;

(d) a legal description for the portion of the project area from which tax increment will be collected pursuant to Section 17A-2-1247.5, if the area from which tax increment is to be collected is less than the entire project area; and

(e) for properties to be sold, the expected total cost of the property to the agency and the expected sales price to be paid by the purchaser.

[~~(3)~~] (12) "Public body" means the state, or any city, county, district, authority, or any other subdivision or public body of the state, their agencies, instrumentalities, or political subdivisions.

[~~(8)~~] (13) (a) "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provision of [such] residential, commercial, industrial, public, or other structures or spaces [as may be] that are appropriate or necessary to eliminate blight in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them.

(b) "Redevelopment" includes:

[~~(a)~~] (i) the alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area;

[~~(b)~~] (ii) provision for open space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds; and

[~~(c)~~] (iii) the replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist:

[~~(i)~~] (A) the areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes; or

[~~(ii)~~] (B) the areas require replanning and land assembly for reclamation or development in the interest of the general welfare. [~~Redevelopment shall include and encourage the continuance of existing buildings or uses whose demolition and rebuilding or change of use are not deemed essential to the development, redevelopment or rehabilitation of the area.~~]

[~~(12)~~] (14) "Redevelopment plan" means a plan developed by the agency and adopted by ordinance of the governing body of a community to guide and control redevelopment and economic development undertakings in a specific [redevelopment] project area.

[~~(7) "Redevelopment project" means any undertaking of an agency pursuant to this part.~~]

[~~(11)~~] (15) "Redevelopment survey area" or "survey area" means an area of a community designated by resolution of the legislative body or the governing body of the agency for study by the agency to determine if blight exists if redevelopment is planned, and if a redevelopment or economic development project or projects within the area are feasible.

(16) "Taxes" include all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible.

(17) "Taxing agencies" mean the public entities, including the state, any city, county, city and county, any school district, special district, or other public corporation, which levy property taxes within the project area.

(18) "Tax increment" means that portion of the levied taxes each year in excess of the base tax amount which excess amount is to be paid into a special fund of an agency.

Section 4. Section Amended.

Section 17A-2-1203, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1203. Creation of redevelopment agencies — Governing body — Powers — Contiguous communities.

[~~Each~~] (1) Any community may, by ordinance, create a redevelopment agency and shall designate the legislative body of the community as the governing body of the [~~redevelopment~~] agency. [~~The~~]

(2) Any agency [~~is authorized to~~] may:

(a) enter into contracts generally [~~and may~~];

(b) provide for redevelopment and economic development as provided in this part;

(c) transact [the] other business and exercise all [~~the~~] other powers provided for in this part[~~. The agency may~~];

(d) accept financial or other assistance from any public or private source for the agency's activities, powers, and duties, and expend any funds so received for any of the purposes of this part[~~. The agency may~~]; and

(e) borrow money or accept financial or other assistance from the state or the federal government for any [~~redevelopment project within its area of operation~~] of the purposes of this part and comply with any conditions of such loan or grant.

(3) (a) By ordinance the legislative body of a community may authorize redevelopment or economic development activities in a project area within its territorial limits by another community if the project area is contiguous to the other community.

(b) The ordinance shall designate which community shall undertake the redevelopment or economic development.

(c) The community authorized to undertake the redevelopment or economic development may act in all respects as if the project area were within its territorial limits and its legislative body, agency, and planning commission shall have all the rights, powers, privileges, and tax increment with respect to the project area as if it were within the territorial limits of the community so authorized.

(d) Any redevelopment plan for the project area shall be approved by ordinance enacted by the legislative body of the authorizing community.

Section 5. Section Repealed and Reenacted.

Section 17A-2-1204, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1204. Redevelopment survey areas.

(1) Redevelopment survey areas shall be designated by resolution of the governing body of the agency.

(2) Any person, a group, association, or corporation may in writing request the legislative body or the agency to designate a redevelopment survey area or areas for project study purposes and may submit with their request plans showing the proposed redevelopment or economic development of the areas or any part or parts thereof.

(3) The resolution designating a redevelopment survey area or areas shall contain the following:

(a) a finding that the area requires study to determine if a project or projects within the area are feasible; and

(b) a description or a map of the boundaries of the area designated.

Section 6. Section Amended.

Section 17A-2-1205, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1205. Preconditions for designating a project area.

Before any area is designated for redevelopment or economic development, the community authorized to undertake the development shall:

(1) have a planning commission; and

(2) have a [~~master or~~] general [~~community~~] plan as required by law.

Section 7. Section Repealed and Reenacted.

Section 17A-2-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1206. Selection of project areas — Blight hearing.

(1) On the agency's own motion, at the direction of the legislative body, or upon the written petition of a majority of the owners in fee of any proposed redevelopment survey area, excluding publicly owned areas or areas dedicated to a public use, the agency may select one or more project areas comprising all or part of the proposed survey area and formulate a preliminary plan for the redevelopment or economic

development of each project area in cooperation with the planning commission of the community.

(2)(a) For redevelopment plans required to find blight under Subsection 17A-2-1202(3)(b), the agency shall conduct a public hearing for the purpose of making a finding of blight.

(b) The property owner shall be given a reasonable opportunity to prepare for the blight hearing.

(c) For purposes of this section "reasonable opportunity to prepare" shall include the opportunity to review the agency's evidence of blight, including any expert reports or expected expert testimony. Property owners shall be given at least 30 days to prepare for the hearing.

(3) During the blight hearing required by this section, the agency shall:

(a) present evidence of the elements of blight listed in Section 17A-2-1202;

(b) permit examination and cross-examination by the property owner or the property owner's representative of the agency's evidence or experts; and

(c) hear and consider evidence and expert testimony concerning the elements of blight presented by the property owners or their representative.

(4) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the agency shall hold at least one public hearing within 45 days after designation of a project area to inform the public about the proposed project area and to allow public input into the agency deliberations on designating a project area.

(5) The hearings required in Subsections (2) and (4) may be combined. If they are not combined, and if a blight study is required under this part, the agency shall give the property owners notice of the blight study and the possibility that the area will be declared blighted in accordance with Subsection 17A-2-1222(2)(e).

Section 8. Section Repealed and Reenacted.

Section 17A-2-1207, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1207. Contents of preliminary plan.

Each preliminary plan shall:

(1) describe the boundaries of the project area;

(2) contain a general statement of the land uses, layout of principal streets, population densities, and building intensities and standards proposed as the basis for the redevelopment or economic development of the project area;

(3) show how the purposes of this part would be attained by the redevelopment or economic development;

(4) show that the proposed redevelopment or economic development conforms to the master or general community plan;

(5) for redevelopment projects that conduct a blight study and are subject to the definition of blight under Subsection 17A-2-1202(3)(b), contain a description of the way in which the redevelopment will reduce or eliminate any finding of blight in the project area;

(6) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, contain a description of the specific project or projects that are the object of the proposed redevelopment or economic development, if any; and

(7) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, identify the way in which private developers, if any, will be selected to undertake the redevelopment or economic development and identify any developers who are currently involved in the proposed redevelopment or economic development.

Section 9. Section Repealed and Reenacted.

Section 17A-2-1208, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1208. Blight study — Findings of blight.

(1) If the redevelopment plan will authorize the use of eminent domain, the redevelopment project area described in the redevelopment plan must be a blighted area and a finding that the area is a blighted area must be made by the agency at the time a preliminary plan is prepared, and must be made by the legislative body prior to adopting the plan under Section 17A-2-1225.

(2) If required, the blight study shall be initiated by resolution of the agency. The resolution shall contain:

(a) a statement that the area requires study to determine whether blight exists as defined in Section 17A-2-1202;

(b) a description of the boundaries of the area to be studied; and

(c) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, a time limit not to exceed one year within which the study must be completed.

(3)(a) The agency always maintains the burden of proof regarding a finding of blight, whether that

finding is to be determined by the agency under Section 17A-2-1206, or by a governing body under Section 17A-2-1225.

(b) Within 30 days after a finding of blight under Section 17A-2-1206 or 17A-2-1225, an owner may appeal a finding of blight by an agency or governing body to a court of competent jurisdiction. The court shall review that finding of blight de novo, and the agency shall maintain the burden of proof regarding blight.

Section 10. Section Repealed and Reenacted.

Section 17A-2-1209, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1209. Use of eminent domain.

(1) Except when acquiring property from an officer or member pursuant to Section 17A-2-1239, eminent domain may not be used by an agency in a project area where one of the purposes of the plan is economic development and the project area has not been found to be blighted as defined in Sections 17A-2-1202 and 17A-2-1208.

(2) Before any agency may exercise the power of eminent domain, the agency shall:

(a) negotiate with the affected property owner in good faith and provide evidence of those negotiations;

(b) explain to the affected property owner and occupant in writing the eminent domain power and the procedures and reasons for exercising it;

(c) explain to the affected property owner and occupant his right to just compensation and how he may obtain it; and

(d) explain to the affected property owner and occupant his right to receive aid to relocate as provided in Title 57, Chapter 12.

Section 11. Section Amended.

Section 17A-2-1210, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1210. Limits on value and size of project areas using tax increment financing without consent of local taxing agencies — Time limits.

(1) [No] (a) A redevelopment plan adopted after April 1, 1983, and projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, may not incorporate the provisions of tax increment financing under Section 17A-2-1247 if the taxable value of the project area described in the redevelopment plan, when added to the total taxable value as shown on the last equalized assessment roll certified by the county assessor for other redevelopment project areas of the community for which an allocation of ad valorem taxes is provided, exceeds a figure at the time of the adoption of the redevelopment plan after April 1, 1983, equal to 15% of the taxable value of the locally assessed property of the community, unless the governing body of each local taxing agency which levies taxes upon the property within the proposed redevelopment project area consents to the redevelopment project area plan in writing.

(b) An agency may not obtain approval of a project area budget pursuant to Section 17A-2-1247.5 if the allocated incremental value of all existing project areas exceeds 10% of the total taxable value of the community, or if the projected allocated incremental value of the project area as described in the proposed project area budget, when added to the allocated incremental value of all existing project areas, exceeds 12% of the total taxable value of the community unless the agency obtains the majority consent of the taxing agency committee. The taxable value of the community shall be the total taxable value for the community as shown on the last equalized assessment roles as certified by the county assessor. The allocated incremental value value shall be calculated as follows:

(i) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, the allocated incremental value shall be the taxable value in excess of the adjusted base-year taxable value in the tax increment collection area, multiplied by the applicable percentage of tax increment to be paid to the agency pursuant to Subsection 17A-2-1247(2)(f); and

(ii) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the allocated incremental value shall be the taxable value in excess of the adjusted base value in the tax increment collection area, multiplied by the applicable percentage of tax increment to be paid to the agency in accordance with the approved and proposed project area budgets pursuant to Subsections 17A-2-1247.5(3), (4), and (5).

(c) "Tax increment collection area" means that area of a project area from which an agency may receive an allocation of tax increment pursuant to a plan incorporating provisions of Section 17A-2-1247 or an approved or a proposed project area budget incorporating the provisions of Section 17A-2-1247.5.

(d) The consent of the taxing entities required by this section may be obtained by majority consent of the taxing agency committee in accordance with Section 17A-2-1247.5.

(2) If the county assessor fails to report the value of the locally assessed property within the proposed redevelopment project area within 90 days after notice as provided in Section 17A-2-1222, the 15% limitation does not apply. [No]

(3) A redevelopment plan adopted before April 1, 1983, incorporating the provisions of tax increment financing under Section 17A-2-1247 may not be amended after April 1, 1983, to add area containing additional taxable value unless the governing body of each local taxing agency [which] that levies taxes upon the property within the area proposed to be added consents in writing to a higher percentage of taxable value if the additional taxable value, when added to the taxable value in the project area as the taxable value existed immediately before the adoption of the amendment, would exceed the limits established in this subsection for a redevelopment plan adopted after April 1, 1983.

[~~(2)~~] (4) (a) [No] A project area with a redevelopment plan adopted after April 1, 1983, incorporating the provisions of [~~Section~~] tax increment financing under Sections 17A-2-1247[,] and 17A-2-1247.5 may not exceed 100 acres of privately owned property unless the governing body of each local taxing agency [which] that levies taxes upon property within the proposed redevelopment project area consents in writing to exceeding the limit of 100-acre of privately owned property in the redevelopment [~~project area~~] plan. [~~No~~]

(b) A redevelopment plan adopted before April 1, 1983, may not be amended after April 1, 1983, to add any additional area if [~~(a)~~] the project area exceeds 100 acres of privately owned property, or [~~(b)~~] the project area is less than 100 acres of privately owned property[,] but would exceed 100 acres of privately owned property with the additional area, unless the governing body of each local taxing agency [~~which~~] that levies taxes upon property within the area proposed to be added consents in writing to the adding of the additional area to the project area.

[~~(3)~~] (5) (a) For purposes of computing under Section 17A-2-1247 the amount to be allocated to and when collected to be paid into a special fund of a redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, from a project area with a redevelopment plan adopted before April 1, 1983, incorporating the provisions of Section 17A-2-1247 and containing more than 100 acres of privately owned property, the redevelopment agency may be paid only that portion of that amount levied each year from 100 acres selected by the redevelopment agency from the entire project area. The amount allocated to and when collected to be paid into a special fund of a redevelopment agency under Subsections 17A-2-1247 [~~(1)~~](2)(c) and [~~(1)~~](2)(e) from the 100 acres of privately owned property shall be that portion of the levied taxes each year in excess of the amount from the 100 acres allocated to and when collected paid to the taxing agencies under Subsection 17A-2-1247 [~~(1)~~](2)(a). The 100 acres of privately owned property shall be contiguous.

(b) The 100-acre limit of privately owned property established in this subsection does not apply to loans, moneys advanced to, or indebtedness [~~(~~], whether funded, refunded, assumed, or otherwise[~~)~~], incurred by redevelopment agencies before April 1, 1983, in projects with redevelopment plans adopted before April 1, 1983. The 100-acre limit of privately owned property does not apply if the governing body of each local taxing agency which levies taxes upon the property within the project area consents in writing to exceeding the 100-acre limit of privately owned property.

(c) Each [redevelopment] agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 100 acres of privately owned property to be used for the purposes of computing the amount [~~to be allocated to and when collected~~] of tax increment to be paid [~~into a special fund of~~] to the [redevelopment] agency. The resolution shall also contain a legal description of the areas included in the 100 acres. A copy of the resolution shall be filed with the county auditor and the State Tax Commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the establishment of the 100 acres or of the resolution for any cause [~~whatsoever~~].

[~~(4) Every~~] (6) Each project area with a redevelopment plan adopted before April 1, 1983, [~~which~~] that exceeds 590 acres of privately owned property shall be reduced to 590 acres of privately owned property unless the governing body of each local taxing agency [~~which~~] that levies taxes upon property within the [~~redevelopment~~] project area consents in writing to the project area not being reduced. Each [~~redevelopment~~] agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 590 acres of privately owned property to be used for the purposes of reducing to the 590 acre limit of privately owned property. The resolution shall also contain a legal description of the areas included in the 590 acres of privately owned property. A copy of the resolution shall be filed with the county auditor and the State Tax Commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the reduction to the 590 acre limit of privately owned property or of the resolution for any cause.

[~~(5)~~] (7) A redevelopment plan adopted after April 1, 1983, and redevelopment projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, shall contain:

(a) a time limit not to exceed [7] seven years from the date of the approval of the plan after which the agency may not commence acquisition of property through eminent domain;

(b) a time limit not to exceed 15 years from the date of the approval of the plan after which no bonds may be issued for redevelopment projects; and

(c) a time limit not to exceed 32 years from the date of the approval of the plan after which no tax incre-

ment from the project area may be allocated to or used by the agency.

[(6)] (8) The time limits established in Subsections (5)(a), (b), and (c) shall apply to redevelopment plans adopted before April 1, 1983, but shall be measured from April 1, 1983.

(9) Notwithstanding the provisions of Subsections (7) and (8) or of any corresponding provisions of a redevelopment plan, an agency may issue bonds for the purpose of refunding bonds previously issued for redevelopment projects (or to refund bonds issued for redevelopment projects) without regard to the 15-year limit provided therein.

Section 12. Section Enacted.

Section 17A-2-1210.5, Utah Code Annotated 1953, is enacted to read:

17A-2-1210.5. Limits on length of time for project areas adopted after July 1, 1993.

For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, a redevelopment plan shall contain:

(1) a time limit not to exceed three years after the date of plan adoption during which the agency must commence implementation of the plan unless the plan is readopted as if it were a modified plan in accordance with Section 17A-2-1229;

(2) a time limit not to exceed five years from the date of the plan adoption after which the agency may not commence acquisition of property through eminent domain;

(3) a time limit not to exceed 25 years from the date of plan adoption after which no tax increment from the project area may be allocated to or paid to the agency without the agency obtaining the majority consent of the taxing agency committee in accordance with Section 17A-2-1247.5 for a longer time period for the collection of tax increment.

Section 13. Section Repealed and Reenacted.

Section 17A-2-1211, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1211. Property owner's rights.

This section applies to projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221.

(1) An agency shall hold the following public hearings at least 30 days apart:

(a) at least one public hearing shall be held to inform the public about the proposed project area and to allow public input into agency deliberations on the plan pursuant to Section 17A-2-1206; and

(b) at least one public hearing shall be held to allow public comment on agency deliberations on approving the redevelopment plan pursuant to Section 17A-2-1221.

(2) The agency shall prepare a written statement regarding the rights of property owners within the project area. The following information shall be included within the written statement:

(a) the right of each owner to object to the inclusion of his property within the project area, and the process for the property owner to file an objection to the inclusion of his property in the project area;

(b) the right of each property owner to object to any required proceeding of the agency in the creation of the project area and the process for the property owner to file an objection with the agency;

(c) the procedure to be followed to propose amendments or modifications to the proposed redevelopment plan;

(d) the right of each property owner to obtain any document from the agency including the following:

(i) the blight study, if applicable;

(ii) the benefit analysis;

(iii) the preliminary plan;

(iv) the report to the redevelopment plan;

(v) the planning commission report to the plan;

(vi) the owner participation guidelines developed in accordance with Section 17A-2-1214;

(vii) the relocation guidelines developed by the agency; and

(viii) other documents used by the agency when preparing the redevelopment plan including the report that accompanies the plan;

(e) the agency shall provide at no charge one copy of the documents available to property owners under this section if the property owner requests the documents;

(f) for plans which authorize the power of eminent domain, and prior to the agency exercising the power of eminent domain, the agency shall provide a written statement to any affected property owner with the following information:

(i) an explanation of the eminent domain process including:

(A) the need for the agency to obtain an independent appraisal that indicates the fair market value of the property, and how the price was determined;

(B) a statement explaining agency compliance with the owner participation requirements;

(C) a statement that the agency may adopt a resolution authorizing the agency to make an offer to the owner to purchase the property for the amount of just compensation as determined by the appraiser, and if the offer is rejected, the agency has the right to acquire the property through condemnation proceedings; and

(D) if an offer is made, a statement that the agency shall prepare an offer and summary of the just compensation, which offer will include the price to be offered, the legal description of the property, conditions of the offer, the time at which the offer will expire, and how the agency determined the amount being offered;

(ii) an explanation of the property owner's relocation rights and how to receive relocation assistance and compensation; and

(g) a statement of the times during which the agency will be available to meet with property owners to discuss the redevelopment process and the preliminary plan.

(3) The agency shall provide notice pursuant to Section 17A-2-1222 to each property owner within a project area.

(4) A person may bring a civil suit against an agency for violation of any of the provisions of this section resulting in damage to that person.

Section 14. Section Repealed and Reenacted.

Section 17A-2-1212, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is repealed and reenacted to read:

17A-2-1212. Project area and redevelopment restrictions.

(1) Redevelopment shall include and encourage the continuance of existing buildings or uses. For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, if any of the existing buildings or uses are included in or eligible for inclusion in the National Register of Historic Places, or the State Register, the redevelopment plan must be in accordance with Subsection 9-8-404(1).

(2) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, when the development of retail sales is an objective of the project, tax increment financing provisions of Section 17A-2-1247 or 17A-2-1247.5 may not be used unless blight is also found. Incidental or subordinate development of retail sales shall not disqualify an economic development project from receiving tax increment financing under Section 17A-2-1247 or 17A-2-1247.5.

Section 15. Section Amended.

Section 17A-2-1213, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1213. Plan preparation — Hearing — Notice — Consultation with community planning commission.

(1)(a) [The] Upon the designation of each project area, the agency shall prepare or cause to be prepared a redevelopment plan for [each] the project area [and for that purpose]. For projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, the agency shall hold at least one public hearing [and] pursuant to Section 17A-2-1221. For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the agency shall hold at least two public hearings in accordance with Sections 17A-2-1206 and 17A-2-1221 to allow public comment on the plan preparation process and whether the plan should be adopted, rejected, or amended.

(b) The agency shall notify each owner of property in the project area of each public hearing, pursuant to Section 17A-2-1222.

(2) The agency shall conduct examinations, investigations, and other negotiations regarding the plan.

(3) The plan shall be consistent with the community's general plan, master plan, and other plans of the community involved in development or capital improvement programs affecting the project area.

(4) The agency shall consult with the planning commission of the community in preparing a project area redevelopment plan.

Section 16. Section Amended.

Section 17A-2-1214, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1214. Opportunities to participate in project required — Preferences — Rules.

(1) [Every] Each redevelopment plan shall provide for reasonable opportunities to participate in the redevelopment of property in the project area by the owners of property in the project area if the owners enter into a participation agreement with the agency.

(2) [The] Each agency [may] shall permit owners and tenants within the project area reasonable opportunities to participate in the redevelopment of the project area by:

(a) owners retaining, maintaining, and if necessary rehabilitating, all or portions of their properties;

(b) owners acquiring adjacent or other properties in the project area;

(c) owners selling all or portions of their improvements to the agency, retaining the land, and developing their properties;

(d) owners selling all or portions of their properties to the agency and purchasing other properties in the project area;

(e) owners selling all or portions of their properties to the agency and obtaining preferences to reenter the project area;

(f) tenants having opportunities to become owners of property in the project area, subject to the opportunities of owners of property in the project area; [and] or

(g) other methods approved by the agency.

(3) Every redevelopment agency may extend reasonable preferential opportunities to owners and tenants in the project area ahead of persons and entities from outside the project area, to be owners and tenants in the project area during and after the completion of redevelopment.

(4) The agency shall prepare and submit rules governing the opportunities to the legislative body of the community at the time the agency submits the redevelopment plan to the legislative body of the community.

(5) The legislative body of the community may not adopt the redevelopment plan until the rules have been adopted by the agency and approved by the legislative body of the community.

(6) This section does not apply to redevelopment plans adopted before April 1, 1983.

Section 17. Section Amended.

Section 17A-2-1215, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1215. Approval and adoption of plan — Funding — Reuse of property.

[~~Upon the approval of~~] (1) Once the hearing requirements described in Section 17A-2-1213 are met, the agency may by resolution, approve a redevelopment plan [~~by resolution of the agency, it shall~~]. The plan shall then be submitted to the legislative body for adoption.

(2) Upon adoption by the legislative body the agency shall carry out the redevelopment project set forth in the plan.

(3) Funding shall be provided for in the annual budget of the agency.

(4) No redevelopment project activities may be undertaken unless a reuse of the property has been arranged, planned, or provided.

(5) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the agency shall publish, in a newspaper of general circulation within its community, the ordinance adopting the plan or a summary of the ordinance adopting the plan and shall include within the notice a statement that the plan is available for general public inspection and the hours for inspection. For an agency where the community has no newspaper of general circulation, the agency shall post the ordinance in three public places. The redevelopment plan shall become effective on the date of publication or posting of the notice.

(6) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the agency shall make the adopted plan available to the general public at its offices during normal business hours.

Section 18. Section Amended.

Section 17A-2-1216, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1216. Agency budget — Hearing — Public inspection — Agency budget forms — Copies of adopted budget filed — Expenditures limited by budget.

(1) Each agency shall prepare and adopt an annual budget for each fiscal year prior to June 22, or for county redevelopment agencies prior to December 15. The fiscal year shall be the same as the fiscal year of the community. The agency shall hold a public hearing on the budget before adopting the budget. Notice of the public hearing shall be published in a newspaper of general circulation within the community at least once, two weeks in advance of the public hearing. The prepared budget shall be made available for public inspection at least three days before the day of commencement of the public hearing. The state auditor shall prescribe the budget forms and the categories to be contained in each agency budget, including, but not limited to, the following:

(a) revenues and expenditures for the budget year;

(b) all legal fees; and

(c) all administrative costs, including, but not limited to, salaries of redevelopment personnel, rent, supplies, and other material.

(2) Within 30 days after adoption of the budget, the agency shall file a copy of the budget with the county auditor, the State Tax Commission, the state auditor, and each property taxing entity affected by the distribution of property taxes pursuant to [Section] Sections 17A-2-1247 and 17A-2-1247.5. The budget may be amended during the year by the governing body of the agency, but any amendment which would increase the total expenditures shall be made only after public hearing by notice published as required for initial adoption of each budget. The agency may not make expenditures in excess of the total expenditures established in the budget as it is adopted or amended. This section applies to fiscal years beginning on or after July 1, 1983.

Section 19. Section Amended.

Section 17A-2-1217, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1217. Annual reports by agency.

(1) On or before November 1 of each year, each agency shall prepare and file a report with the county auditor, the State Tax Commission, the State Board of Education, and each property taxing entity affected by the distribution of property taxes pursuant to [Section] Sections 17A-2-1247 and 17A-2-1247.5. The reports shall contain:

[(1)] (a) estimates of the portion of property taxes to be paid to the agency pursuant to [Section] Sections 17A-2-1247 and 17A-2-1247.5 for the calendar year ending December 31; and

[(2)] (b) an estimate of the portion of property taxes to be paid to the agency, pursuant to [Section] Sections 17A-2-1247[,] and 17A-1247.5 for the calendar year beginning the next January 1. [This section]

(2) Subsection (1) applies to fiscal years beginning on or after July 1, 1983.

(3) For fiscal years beginning on or after July 1, 1993, if an agency is required to be audited in accordance with Section 17A-2-1219, the agency shall file with each taxing agency a copy of the audit report within 120 days after the end of the fiscal year. The audit report shall include:

(a) the tax increment collected by the agency for each project area;

(b) the amount of tax increment paid to any taxing agency pursuant to Section 17A-2-1258;

(c) the outstanding principal amount of bonds issued or other loans incurred to finance the costs associated with the project areas;

(d) the actual amount expended for:

(i) acquisition of property;

(ii) site improvements or preparation costs;

(iii) installation of public utilities or other public improvements; and

(iv) administrative costs of the agency.

Section 20. Section Amended.

Section 17A-2-1218, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1218. Annual reports by county auditor.

(1) On or before March 31 of each year, the county auditor shall report the following data on each project area to the redevelopment agency, the State Tax Commission, the State Board of Education, and each property taxing agency affected by the distribution of property taxes pursuant to [Section] Sections 17A-2-1247 and 17A-2-1247.5:

[(1)] (a) the total assessed property value for the previous tax year;

[(2)] (b) the base year total assessed property values for the previous tax year;

[(3)] (c) the tax increment available to be paid for the previous tax year;

[(4)] (d) the tax increment requested by the agency for the previous tax year; and

[(5)] (e) the tax increment paid to the agency for the previous tax year.

(2) Within 30 days of a request by a redevelopment agency, the State Tax Commission, the State Board of Education, or any taxing agency affected by the distribution of property taxes pursuant to Sections 17A-2-1247 and 17A-2-1247.5, the county auditor or the county assessor shall provide access to:

(a) the county auditor's method and calculations used to adjust the base tax amount pursuant to Sections 17A-2-1247, 17A-2-1247.5, 17A-2-1251, 17A-2-1252, and 17A-2-1253;

(b) the unequalized assessed valuation of an existing or proposed project area, or any parcel or parcels within an existing or proposed project area if the equalized assessed valuation has not yet been determined for that year; and

(c) the most recent equalized assessed valuation of an existing or proposed project area or any parcel or parcels within an existing or proposed project area; and

(d) the tax rates of each taxing agency adopted as of November 1 for the previous tax year.

(3) This section applies to fiscal years beginning on or after July 1, 1983.

Section 21. Section Amended.

Section 17A-2-1220, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1220. Report to accompany plan.

(1) [Every] Each project area redevelopment plan shall be accompanied by a report containing:

[(1)] (a) the reasons for the selection of the project area;

[(2)] (b) a description of the physical, social, and economic conditions existing in the area;

[(3)] (c) a financial analysis of the proposed redevelopment describing the proposed method of financing the redevelopment of the project area in sufficient detail so that the legislative body may determine the economic feasibility of the plan. The report shall contain to the extent known, the items specified for a "project area budget" in Section 17A-2-1202 and a description of any tax incentives offered private entities for facilities located in the project area;

[(4)] (d) a method or plan for the relocation of families and persons to be temporarily or permanently displaced from housing facilities, if any, in the project area;

[(5)] (e) an analysis of the preliminary plan; [and]

(f) whenever a finding of blight is required under this part for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and

the good faith commencement of the hearing by the agency under Section 17A-2-1221, an analysis in accordance with Subsection (2) showing that the adoption of the plan is necessary and appropriate to reduce or eliminate the blight, or if blight is not found, is beneficial under a benefit analysis to provide economic development; and

[(6)] (g) the report and recommendations of the planning commission.

(2) The analysis of necessary and appropriate in the case of blight, or the benefit analysis in the event of economic development shall consider the following factors:

(a) a description of the benefit of financial assistance or other public subsidy, if any, proposed to be provided by the agency including:

(i) an evaluation of the reasonableness of economic development or redevelopment costs;

(ii) efforts to maximize private investment;

(iii) rationale for use of tax increment financing including an analysis of whether the proposed development might reasonably be expected to occur in the forseeable future solely through private investment; and

(iv) an estimate of the total amount and length of time that tax increment financing will be expended in undertaking economic development or redevelopment;

(b) a description of the anticipated public benefit to be derived from the economic development or redevelopment project including:

(i) the number of jobs or employment anticipated as a result of the economic development or redevelopment project;

(ii) associated business and economic activity likely to be stimulated by the economic development or redevelopment project; and

(iii) the beneficial influences upon the tax base of the community as a result of the economic development or redevelopment project; and

(c) other factors approved by the agency.

(3) The agency shall make the report available to the general public at its offices during normal business hours and shall publish a notice pursuant to Section 17A-2-1222 in a newspaper of general circulation in the county that the report is available for inspection at its offices.

Section 22. Section Amended.

Section 17A-2-1222, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1222. Notices of hearing required.

(1) (a) Notice of the public hearing on a project area redevelopment plan shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the county in which the land lies.

(b) The published notice shall:

[(a)] (i) describe specifically the boundaries of the proposed redevelopment or economic development project area; and

[(b)] (ii) state the day, hour, and place in which persons objecting to the proposed project area redevelopment plan [or], denying the findings or existence of blight in the proposed project area, or denying the regularity of any of the proceedings, may appear before the legislative body and show cause why the proposed plan should not be adopted.

(2) The agency shall notify the last-known assessee of each parcel of land in the project area of any public hearing required by this part at least 30 days before the date of the public hearing to the last-known address of the property owner as shown on the last equalized assessment roll. The notice to the property owner shall:

(a) be mailed by certified mail for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221;

(b) include the summary of property owners rights in accordance with Section 17A-2-1211, for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221;

(c) describe specifically the boundaries of the proposed project area;

(d) state the day, hour, and place in which persons objecting to the proposed project area or redevelopment plan, denying the existence of blight in the proposed redevelopment project area, if applicable, or denying the regularity of any of the proceedings, may appear before the legislative body and show cause why the proposed project area should not be designated as a project area or why the proposed plan should not be adopted; and

(e) for plans required to make a finding of blight under Subsection 17A-2-1202(3)(b), and requiring the use of eminent domain, for the public hearings required by Section 17A-2-1206, the agency shall include in the notice to property owners a statement that:

(i) the area is being proposed for possible redevelopment;

(ii) if a blight study has been conducted, the property may be declared blighted; and

(iii) the property owner will be notified of each additional public hearing held by the agency on the project area prior to the adoption of the plan.

(3) (a) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and

the good faith commencement of the hearing by the agency under Section 17A-2-1221, the agency shall notify the last known assessee of each parcel of land contiguous to the project area of each public hearing at least 30 days before the date of the public hearing to the last-known address of the property owner as shown on the last equalized assessment roll by certified mail.

(b) For purposes of this part, "contiguous property" means property with a boundary that touches the boundaries of the project area, or with a boundary within 300 feet of the project area's boundaries.

[~~(2)~~] (4) Not less than 30 days prior to the date set for [~~the~~] each hearing required by this part, the agency shall give notice by mail to the State Tax Commission, county assessor, county auditor, any taxing agency committee required under Section 17A-2-1247.5, and the governing body of each of the taxing entities of which taxable property is included in the project area if a taxing agency committee is not yet formed under Section 17A-2-1247.5. The notice shall include [~~the requirements set forth in Subsection (1) and an invitation to each taxing district to submit comments to the agency concerning the subject matter of the hearing prior to the date of the hearing.~~]

[~~(3) Not less than 30 days prior to the date set for the hearing, the agency shall give notice by mail as provided in Subsection (2) to the last-known assessee of each parcel of land in the project area at the last-known address shown on the last equalized assessment roll of the county.~~]:

(a) a description of the boundaries of the proposed project area;

(b) a map showing the boundaries of the proposed project area;

(c) a statement that a plan for the redevelopment or economic development of the proposed project area is being prepared; and

(d) a statement that if the redevelopment plan is adopted and, for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, if the agency obtains the majority consent of the taxing agency committee to the project area budget, and if the plan provides for a division of tax revenues, then property taxes resulting from increases in valuation above the taxable value as shown on the last equalized assessment roll could be allocated to the agency for redevelopment or economic development purposes, rather than being paid into the treasury of the taxing agency;

(e) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, state the day, hour, and place for the public hearing at which the approval of the designation of a project area or the redevelopment plan will be considered; and

(f) invite each taxing agency to submit comments to the redevelopment agency concerning the subject matter of the hearing prior to the date of the hearing.

Section 23. Section Amended.

Section 17A-2-1225, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1225. Adoption, rejection, or modification of plan — Plan submitted to voters — When rejection required — Petition for alternative plan.

(1) Once the [~~hearing has~~] hearings have been held, the legislative body may proceed to adopt, reject, or modify the project area redevelopment plan. The project area redevelopment plan may not be modified so as to add any real property to the project area without the legislative body holding a new hearing to consider the matter, notice of which shall be given in the same manner as provided in Section 17A-2-1222. [~~In the event~~]

(2) (a) If the owners of 40% of the area of the property included within the project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing prior to or at the hearing and [~~such~~] the objections are not withdrawn at or prior to [~~such~~] the hearing, the plan [~~shall~~] may not be adopted until the proposition to so adopt the plan [~~shall have~~] has been approved by a majority of the registered voters of the community voting thereon at an election called for [~~such~~] this purpose[~~, which~~].

(b) This election may be held on the same day and with the same election officials as any primary or general election held in the community and shall be held as nearly as practicable in conformity with the general election laws of the state.

(c) Upon the approval by the voters as set forth [~~above~~] in Subsection (a), the project area redevelopment plan shall be deemed adopted and the legislative body shall confirm [~~such~~] the adoption by ordinance.

[~~In the event~~] (3) If the owners of two-thirds of the area of the property included within any project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing at or prior to [~~such~~] the hearing, the legislative body [~~shall~~] may not adopt the project, and the proposed project [~~shall~~] may not be reconsidered by the legislative body for a period of three years[~~; but a~~].

(4) (a) Projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, must adopt a plan within one year after a project area is designated under Section 17A-2-1204 for a redevelopment plan where the purpose is the elimination of blight, and

within one year after a preliminary plan is prepared for a redevelopment plan where the purpose is economic development.

(b) If the plan will be submitted to an election for approval by the registered voters of a community, the time limit for the plan adoption shall be increased by the time between the close of the public hearing held pursuant to Section 17A-2-1221 and the date of the next general election within the community.

(5) A majority of the owners of the area of the property included within the project area, excluding property owned by public agencies or dedicated to public use, may file a written petition requesting an alternative preliminary plan be formulated pursuant to Section 17A-2-1211 [~~of this part~~].

Section 24. Section Amended.

Section 17A-2-1227, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1227. Adoption by ordinance.

The ordinance shall contain:

(1) a legal description of the boundaries of the project area covered by the redevelopment plan;

(2) the purposes and intent of the legislative body with respect to the project area;

(3) the plan incorporated by reference;

(4) a designation of the approved plan as the official redevelopment plan of the project area;

(5) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, the findings and determinations of the legislative body based upon fact that:

(a) the project area is a blighted area, the redevelopment of which is necessary to effectuate [the] a public [~~purposes declared in this part~~] purpose;

(b) the redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare;

(c) the adoption and carrying out of the redevelopment plan is economically sound and feasible;

(d) the redevelopment plan conforms to the master or general plan of the community;

(e) the carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part;

(f) the condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law;

(g) the agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area; and

(h) there are or are being provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment; and

(6) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the findings and determinations of the legislative body based upon fact that:

(a) there is a finding of blight, if applicable;

(b) there is a need to effectuate a public purpose;

(c) there is a benefit under the analysis described in Section 17A-2-1220;

(d) the redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare;

(e) the adoption and carrying out of the redevelopment plan is economically sound and feasible;

(f) the redevelopment plan conforms to the master or general plan of the community;

(g) the carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community;

(h) the condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law;

(i) the agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants in the project area; and

(j) there are or are being provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number and available to such displaced families and persons and reasonably accessible to their places of employment; and

[(6)] (7) a statement that the legislative body is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that

pending the development of [such] these housing facilities there will be available to [such] the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

Section 25. Section Amended.

Section 17A-2-1229, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1229. Amendment or modification of plan.

If at any time after adoption of a redevelopment plan for a project area by the legislative body it becomes necessary or desirable to amend or modify [such] the plan, [such] the amendment or modification may be made in the same manner as if the amendment or modification constituted a redevelopment plan being originally proposed in accordance with this part, except that minor adjustments in the legal description of a project area boundary requested by a county assessor or county auditor to avoid inconsistent property boundary lines and the removal of one or more parcels of real property from a redevelopment project area as described in a plan that the agency believes is no longer blighted or its inclusion is no longer necessary or desirable to the project area, if consented to in writing by the parcel owner or owners, may be made without the public hearing required by Sections 17A-2-1206 and 17A-2-1221, or the plan requirements of Subsections 17A-2-1207(5) and (7) upon the adoption of an amended ordinance by the legislative body pursuant to Section 17A-2-1227, the transmittal of the amended legal description and other documents pursuant to Section 17A-2-1256, and the recording of the amended legal description with the county recorder pursuant to Section 17A-2-1257.

Section 26. Section Amended.

Section 17A-2-1230, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1230. Powers of public body aiding and cooperating in redevelopment projects — Notice requirement.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of redevelopment and economic development projects located within the area in which it is authorized to act, any public body, after 15 days' public notice, may:

(1) dedicate, sell, convey, grant, or otherwise dispose or lease any of its property to a redevelopment agency;

(2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with redevelopment or economic development projects;

(3) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) plan or replan, zone or rezone any part of the area and make any legal exceptions from building regulations and ordinances;

(5) enter into agreements with the federal government, the state, an agency, or any other public body respecting action to be taken pursuant to any of the powers granted by this part or any other law, which agreements may extend over any period, notwithstanding any law to the contrary;

(6) purchase or legally invest in any of the bonds of an agency and exercise all of the rights of any holder of such bonds;

(7) lend, grant, or contribute funds to [a redevelopment] an agency for a redevelopment or economic development project;

(8) purchase [and], buy, sell, lease, or otherwise acquire or dispose of land in a project area from an agency for redevelopment or economic development in accordance with the plan, and in connection with it, to become obligated to the extent that it is authorized and funds have been made available to make the redevelopment improvements or structures required; and

(9) do any and all things necessary to aid or cooperate in the planning or carrying out of a redevelopment or economic development project.

Section 27. Section Amended.

Section 17A-2-1236, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1236. Actions on validity or enforceability of bonds — Time for bringing action.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part or the security for [same] them, any such bond reciting in substance that it has been issued by the agency in connection with an area redevelopment or economic development project[;] shall be conclusively deemed to have been issued for [such] that purpose[;] and [such] the project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part.

(2) For a period of 30 days after the publication of the resolution authorizing the bonds, or a notice of bonds to be issued by the agency containing those items described in Subsection 11-14-21(3) in a newspaper having general circulation in the area of operation, any person [shall have the right to] may contest the legality of the resolution authorizing any bonds or any provisions made for the security and payment of the bonds[; and after such time]. After the 30-day period no one [shall have] has any cause of action to contest the regularity, formality, or legality of the bonds for any cause whatsoever.

Section 28. Section Amended.

Section 17A-2-1238, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1238. Agency disposition of property within project area — Eminent domain — Just compensation, costs, damages.

(1) Within [the] a project area an agency may:

[(1)] (a) purchase, sell, lease, obtain option upon, acquire, or dispose by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it; or

[(2)] (b) acquire real property by eminent domain[; but when] except as prohibited by Section 17A-2-1209.

(2) (a) When the power of eminent domain is exercised under the provisions of this part and the party whose property is affected contests the matter in the district court, the court may, in cases where the amount of the award exceeds the amount offered, award in addition to his just compensation, costs, including a reasonable attorney's fee as determined by the court.

(b) The court, or jury in cases tried before a jury, may also award a reasonable sum as compensation for the costs and expenses, if any, of relocating the owner whose property is acquired [or], a party conducting a business on such acquired property, or a person displaced from the property, as permitted by Title 57, Chapter 7, Utah Relocation Assistance Act.

(c) An award may also be made for damages to any fixtures or personal property owned by the owner of such acquired property or owned by the person conducting a business on such acquired property, if such fixtures or personal property are damaged as a result of such acquisition or relocation.

Section 29. Section Amended.

Section 17A-2-1239, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1239. Acquisition of property from members or officers prohibited.

An agency shall not acquire from any of its members or officers any property or interest in property except through eminent domain proceedings. Any member of the planning commission, the agency, the city council, county commission, or the legislative body who may personally benefit financially, or who is a member of an organization that may benefit financially, or whose immediate family members may benefit financially from the designation of an area as a project area or from a proposed preliminary or redevelopment plan shall follow the disclosure requirement of Title 10, Chapter 3, Municipal Government. However, no disclosure is required if the effect on the individual is indirect, remote, and insubstantial.

Section 30. Section Amended.

Section 17A-2-1240, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1240. Acquisition of real property without owner's consent prohibited — Exception.

Without the consent of an owner, an agency [shall] may not acquire any real property on which an existing building is to be continued on its present site and in its present form and use unless [such]:

(1) the building requires structural alteration, improvement, modernization, or rehabilitation[, or];

(2) the site or lot on which the building is situated requires modification in size, shape, or use; or

(3) it is necessary to impose upon [such] the property any of the standards, restrictions, and controls of the plan and the owner fails or refuses to agree to participate in the [redevelopment] plan.

Section 31. Section Amended.

Section 17A-2-1242, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1242. Rights and duties not affected.

It is the intent of the Legislature that the rights, duties, responsibilities, and authority granted under the Utah Community Redevelopment Law shall in no way be diminished, restricted, abolished, or in any way impaired by this part[; neither shall] nor that the rights, duties, responsibilities, and authority of any governmental unit be diminished, restricted, or impaired in utilizing the benefits of this part.

Section 32. Section Amended.

Section 17A-2-1243, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1243. Bond issues — Agency members and persons executing bonds not personally liable — Bonds and obligations not general obligation or debt — Negotiability.

(1) From time to time an agency may issue bonds for any of its corporate purposes. An agency may also issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.

(2) An agency may issue such types of bonds as it may determine including bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the [redevelopment] projects financed with the proceeds of the bonds, or with such proceeds together with financial assistance from the state or federal government in aid of the projects;

(b) exclusively from the income and revenues of certain designated [redevelopment] projects whether or not they were financed in whole or in part with the proceeds of the bonds;

(c) in whole or in part from taxes allocated to, and paid into a special fund of, the agency under [Section] Sections 17A-2-1247 and 17A-2-1247.5;

(d) from its revenues generally;

(e) from any contributions or other financial assistance from the state or federal government; or

(f) by any combination of these methods.

(3) Any of such bonds may be additionally secured by a pledge of any revenues or by an encumbrance by mortgage, deed of trust, or otherwise of any redevelopment project or other property of the agency or by a pledge of the taxes referred to in Subsection (2), or by any combination thereof.

(4) Neither the members of an agency nor any persons executing the bonds are liable personally on the bonds by reason of their issuance.

(5) The bonds and other obligations of any agency are not a general obligation or debt of the community, the state, or any of its political subdivisions, and neither the community, the state, nor any of its political subdivisions are liable on them, nor in any event shall the bonds or obligations give rise to a general obligation or liability of the community, the state, or any of its political subdivisions, or a charge against their general credit or taxing powers, or be payable out of any funds or properties other than those of the agency; and these bonds and other obligations shall so state on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(6) Bonds issued pursuant to this part are fully negotiable.

Section 33. Section Amended.

Section 17A-2-1247, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1247. Tax increment financing authorized — Division of tax revenues — Greater allocation allowed if authorized by taxing agency.

(1) This section applies to projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency.

[~~(1)~~] (2) Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the state, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the taxable value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of the property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which the territory has been annexed or otherwise included after the effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the taxable value of the taxable property in the project on the effective date).

(b) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency before April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection [~~(1)~~](2)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) Notwithstanding the provisions of Subsections [~~(1)(b)~~] (2)(a) and (e), Subsection 17A-2-1210 [~~(3)~~] (5), or any other provision of this part, any loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) issued prior to April 1, 1983, may be refinanced and repaid from 100% of that portion of the levied taxes paid into the special fund of the redevelopment agency each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a) if the principal amount of loans, moneys advanced to, or indebtedness is not increased in the refinancing.

(d) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits established in Subsection [~~(1)~~](2)(f) to pay the principal of and in-

terest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection [~~(1)~~](2)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(e) In a redevelopment project with a redevelopment plan adopted after April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits established in Subsection [~~(1)~~](2)(f) to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection [~~(1)~~](2)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(f) For purposes of Subsections [~~(1)~~](2)(d) and (e), the maximum amounts which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency may not exceed the following percentages:

(i) for a period of the first five tax years commencing from the first tax year a redevelopment agency accepts an amount allocated to and when collected paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) which loans, advances, or indebtedness are incurred by the redevelopment agency after April 1, 1983, 100% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a);

(ii) for a period of the next five tax years 80% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a);

(iii) for a period of the next five tax years 75% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a);

(iv) for a period of the next five tax years 70% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a); and

(v) for a period of the next five tax years 60% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection [~~(1)~~](2)(a).

(g) (i) In addition to the maximum amounts which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency as described in Subsection [~~(1)~~](2)(f), a redevelopment agency established by the governing body of a first class city may receive the following additional percentages (which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency) which are greater than those described in Subsection [~~(1)~~](2)(f) if the amount of the tax increment funding received from the greater percentage is used solely to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement of a publicly or privately-owned convention center or sports complex, including parking and infrastructure improvements related to such convention center or sports complex: for a period of the first 32 years commencing from the first tax year a redevelopment agency accepts an amount allocated to and when collected paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) which loans, advances, or indebtedness are incurred by the redevelopment agency after April 1, 1983, 100% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (a).

(ii) This Subsection (g) applies only to a redevelopment agency in whose project area construction has begun on a building, facility, structure, or other improvement of a publicly or privately-owned convention center or sports complex, including parking and infrastructure improvements related to such con-

vention center or sports complex, on or before June 30, 1995.

(iii) If any additional amount described in Subsection (i) is not pledged to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement described in Subsection (i) on or before June 30, 1995, such additional amount may no longer be allocated to or used by the redevelopment agency, notwithstanding any other law to the contrary.

[~~(2)~~] (3) Nothing contained in Subsections [~~(1)~~](2)(d), (e), (f), and (g) prevents an agency from receiving a greater percentage than those established in Subsections [~~(1)~~](2)(f) and (g) of the levied taxes of any local taxing agency each year in excess of the amount allocated to and when collected paid into the funds of the respective local taxing agency if the governing body of the local taxing agency consents in writing.

Section 34. Section Enacted.

Section 17A-2-1247.5, Utah Code Annotated 1953, is enacted to read:

17A-2-1247.5. Tax increment financing — Project area budget approval.

(1) This section applies to projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221.

(2)(a) A taxing agency committee shall be created for each redevelopment or economic development project. The committee membership shall be selected as follows:

(i) two representatives appointed by the school district in the project area;

(ii) two representatives appointed by resolution of the county commission or county council for the county in which the project area is located;

(iii) two representatives appointed by resolution of the city or town's legislative body in which the project area is located if the project is located within a city or town;

(iv) a representative approved by the State School Board; and

(v) one representative who shall represent all of the remaining governing bodies of the other local taxing agencies that levy taxes upon the property within the proposed project area to serve as a nonvoting, ex-officio member of the committee. The representative shall be selected by resolution of each of the governing bodies of those taxing agencies.

(b) A taxing agency committee formed in accordance with this section has the authority to:

(i) represent all taxing entities in a project area and cast votes that will be binding on the governing boards of all taxing entities in a project area;

(ii) negotiate with the agency concerning the redevelopment plan;

(iii) approve or disapprove project area budgets; and

(iv) approve an exception to the limits on the value and size of project areas imposed by Section 17A-2-1210, or the time and amount of tax increment financing under this section.

(3)(a) An agency must obtain the majority consent of the taxing agency committee for the project area budget before an agency may collect any tax increment for a project area.

(b) The project area budget may be amended from time to time by obtaining the majority consent of the taxing agency committee. If an amendment is proposed and the taxing agency committee does not consent to the amendment, the agency will continue to operate under the previously approved, unamended project area budget.

(4)(a) An agency may collect tax increment from all or a part of a project area. The tax increment shall be paid to the agency in the same manner and at the same time as payments of taxes to other taxing agencies to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, to finance or refinance, in whole or in part, the redevelopment or economic development project according to the limits established by majority consent of the taxing agency committee.

(b) The agency may elect one of the following alternatives for tax increment collection:

(i) 100% of annual tax increment to be paid to the agency for a period of twelve years commencing from the first tax year an agency accepts tax increment from a project area; or

(ii) 75% of annual tax increment to be paid to the agency for a period of twenty years commencing from the first tax year an agency accepts tax increment from a project area.

(c) An agency may receive a greater percentage of tax increment or receive tax increment for a longer period of time than that specified in this subsection if the agency obtains the majority consent of the taxing agency committee.

(5)(a) The redevelopment plan shall contain a provision that provides that the portion of the taxes, if any, due to an increase in the tax rate by a taxing agency after the date the project area budget is approved by the taxing agency committee may not be allocated to and when collected paid into a special fund of the redevelopment agency according to the provisions of Subsection (4) unless the taxing agency committee approves the inclusion of the increase in the tax rate at the time the project area budget is approved. If approval of the inclusion of the increase in the tax rate is not obtained, the portion of the taxes attributable to the increase in the rate shall be distributed by the county to the taxing agency imposing the tax rate increase in the same manner as other property taxes.

(b) In each year in which there are increases or decreases in the tax rate of a taxing agency as de-

scribed in Subsection (a) as a result of (i) statutes enacted by the Legislature, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate pursuant to Subsection 59-2-704(2), (ii) changes in exemptions provided in Article XIII, Sec. 2, Utah Constitution, or Section 59-2-103, and (iii) any increase or decrease in the percentage of fair market value, as defined under Section 59-2-102, the amount of the tax rate to be used in determining tax increment shall be increased or decreased by the amount of the increases or decreases as a result of the applicable action described in (i), (ii), or (iii).

(c) Notwithstanding the increase or decrease resulting from Subsection (b), the amount of money allocated to, and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no increase or decrease under Subsection (b).

Section 35. Section Amended.

Section 17A-2-1248, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1248. Time for payment of taxes to agency.

The [~~portion of taxes~~] tax increment to be paid to an agency as provided in [~~Subsection~~] Sections 17A-2-1247[~~(1)(b)~~] and 17A-2-1247.5 is not allocable or payable for the first time until January 1 of the year following the adoption of the redevelopment plan. This section does not apply to redevelopment plans adopted before April 1, 1983.

Section 36. Section Amended.

Section 17A-2-1250, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1250. Distribution of property taxes.

Any property taxes not distributed under Section 17A-2-1247 or 17A-2-1247.5 to an agency shall be distributed by the county in the same manner as other property taxes. Each county shall pay and distribute to each agency, in the manner provided for in Section 59-2-1365, the property taxes allocated under Section 17A-2-1247 or 17A-2-1247.5.

Section 37. Section Amended.

Section 17A-2-1251, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1251. Adjustment of base year taxable value of area required for county rate adjustment.

(1) In each year in which there are increases or decreases in the taxable value of a project area as a result of statutes enacted by the Legislature, or the people through initiative petition, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate pursuant to Subsection 59-2-704 (2), the amount of taxable value for the base year established pursuant to Subsection 17A-2-1247 [~~(1)~~] (2)(a) or 17A-2-1202(2) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, shall be increased or decreased by the amount of the increases or decreases as a result of a statute, initiative petition, judicial decision, or the order to adjust or factor its assessment rate pursuant to Subsection 59-2-704 (2).

(2) Notwithstanding the increase or decrease resulting from a statute, judicial decision, or the order to adjust or factor the assessment rate, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no statute, judicial decision, or order to adjust or factor.

Section 38. Section Amended.

Section 17A-2-1252, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1252. Adjustment of base year taxable value of area required for changes in exemptions — Minimum payment to agency.

In each year in which there are increases or decreases in the taxable value of the project area as a result of changes in exemptions provided in Article XIII, Sec. 2, Utah Constitution, or Section 59-2-103, the amount of taxable value of the base year established pursuant to [~~Subsection~~] Section 17A-2-1247 [~~(1)(a)~~], or Subsection 17A-2-1202(2) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, shall be increased or decreased as a result of the changes in the exemptions. Notwithstanding the increase or decrease resulting from the changes in exemptions, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no changes in the exemptions.

Section 39. Section Amended.

Section 17A-2-1253, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1253. Adjustment of base year taxable value of area required for changes in percentage of value assessed — Minimum payment to agency.

In each year in which there are increases or decreases in the taxable value of the project area as a result of any increase or decrease in the percentage

of fair market value, as defined under Section 59-2-102, to be assessed as provided under that section, the amount of taxable value for the base year established under [Subsection] Section 17A-2-1247[(1)(a)], and Subsection 17A-2-1202(2) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, shall be increased or decreased by the amount of the increases or decreases as a result of any change in the percentage of fair market value, as defined under Section 59-2-102, assessed as provided under that section. Notwithstanding the increase or decrease resulting from changes in the percentage, the amount of money allocated to and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated and when collected paid to the agency each year if there had been no changes in the percentage.

Section 40. Section Amended.

Section 17A-2-1254, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1254. Pledge of increment for payment of loans, advances or indebtedness.

[(1)] In any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness, [(]whether funded, refunded, assumed, or otherwise[)] by the [redevelopment] agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in [Subsection] Sections 17A-2-1247 [(1)(b)] and 17A-2-1247.5 may be irrevocably pledged for the payment of the principal of and interest on [such] the loans, advances, or indebtedness.

[(2) As used in this part, "taxes" include, but without limitation, all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible.]

Section 41. Section Amended.

Section 17A-2-1256, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1256. Transmittal of description of land within project area and other documents to taxing agencies.

(1) After the adoption by the legislative body of a redevelopment plan which contains the provision permitted by Section 17A-2-1247 or 17A-2-1247.5, the agency or the clerk of the community shall transmit a copy of the description of the land within the project area, a copy of the ordinance adopting the plan, and a map or plat indicating the boundaries of the project area to: [(1)]

(a) the auditor and tax assessor of the county in which the project is located; [(2)]

(b) the officer or officers performing the functions of auditor or assessor for any taxing agencies which, in levying or collecting its taxes, do not use the county assessment roll or do not collect its taxes through the county; [(3)]

(c) the governing body of each of the taxing agencies which levies taxes upon any property in the project area; and [(4)]

(d) the State Tax Commission.

(2) The copies of the description, ordinance, and map or plat shall be transmitted as promptly as practicable within 30 days, following the adoption of the redevelopment plan, but in any event, on or before the January 1 next following the adoption of the plan.

Section 42. Section Amended.

Section 17A-2-1258, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1258. Payments by agency in lieu of taxes.

The agency may pay to any or all taxing agencies an amount of money in lieu of taxes which have been allocated to the agency under Section 17A-2-1247 or 17A-2-1247.5. The agency may pay to any school district with territory located within the project area any amount of money which in the agency's determination is appropriate to alleviate any financial burden or detriment caused to the school district by a redevelopment project.

Section 43. Section Amended.

Section 17A-2-1259, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

17A-2-1259. Transmittal of preliminary plan — Consultation with taxing agencies.

[(1) Within five days of creation of a preliminary plan, the agency shall transmit to the State Tax Commission, State Board of Education, the auditor, assessor, treasurer, and legislative body of the county in which the proposed project area is located, and the governing body of each taxing agency which levies taxes upon any property in the proposed project area, and which would be affected by a division of tax revenues pursuant to Section 17A-2-1247 permissible under the redevelopment plan:]

[(a) a description of the boundaries of the proposed project area;]

[(b) a map showing the boundaries of the proposed project area;]

[(c) a statement that a plan for the redevelopment of the proposed project area is being prepared; and]

[(d) a statement that, if the redevelopment plan is adopted and permits such a division of tax revenues, property taxes resulting from increases in valuation above the taxable value as shown on the last equalized assessment roll could be allocated to the agency for redevelopment purposes, rather than being paid into the treasury of the taxing agency.]

[~~(2)~~] Prior to the public hearing [as] provided for in Section [~~17A-2-1221~~] 17A-2-1213, the agency shall consult with each taxing agency which levies taxes on property in the proposed project area regarding the preliminary plan.

Section 44. Section Amended.

Section 17A-2-1260, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1260. Payment authorized for land or cost of buildings, facilities, structures, or other improvements located within or without project area if of benefit to project area — Reimbursement of costs — Limitation on use of tax increment.

(1)(a) An agency may, with the consent of the legislative body:

(i) subject to Subsection (5), pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned within the project area, upon a determination by resolution of the agency and local legislative body that such buildings, facilities, structures, or other improvements are of benefit to the project area regardless of whether such improvement is within another project area, or in the case of a project area in which substantially all of the land is publicly owned that such improvement is of benefit to an adjacent project area of the agency; [~~and~~]

(ii) in first-class cities, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to [~~such~~] the convention center or sports complex, either within or without the project area, upon a determination by resolution of the agency and local legislative body that [~~such~~] these buildings, facilities, structures, or other improvements are of benefit to the project area regardless of whether [~~such~~] the improvement is within another project area, or in the case of a project area in which substantially all of the land is publicly owned that [~~such~~] the improvement is of benefit to [~~an~~] the adjacent [~~project~~] area of the [~~agency.~~] community; and

(iii) subject to Subsection (5) and approval by the taxing agency committee in accordance with Section 17A-2-1247.5, pay all or part of the cost of the installation of utilities and access which are publicly owned within or without the project area, upon a determination by resolution of the agency and local legislative body that the utilities and access are of benefit to the project area.

(b) [~~Such~~] This determination by the agency and the local legislative body shall be final and conclusive as to the issue of benefit to the project area.

(2) When the value of such land or the cost of the installation and construction of such building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of such land or all or part of the cost of such building, facility, structure, or other improvement, or both, by periodic payments over a period of years.

(3) The obligation of the agency under such contract shall constitute an indebtedness of the agency for the purpose of carrying out the redevelopment project for such project area, which indebtedness may be made payable out of [~~taxes levied in such project area and allocated to the agency~~] tax increment under Subsection 17A-2-1247 [~~(1)~~] (2)(b) or out of any other available funds.

(4) In a case where such land has been or will be acquired by, or the cost of the installation and construction of such building, facility, structure or other improvement has been paid by, a parking authority, joint powers entity, or other public corporation to provide a building, facility, structure, or other improvement which has been or will be leased to the community, such contract may be made with, and such reimbursement may be made payable to the community.

(5) [~~Taxes allocated and paid to an agency~~] Tax increment financing under [~~Section~~] Sections 17A-2-1247 and 17A-2-1247.5 may not be used to construct municipal buildings, courts or other judicial buildings, and fire stations.

(6) This section does not apply to any land, building, facility, structure, or other improvement for which:

(a) bonds or other indebtedness have been issued or contracted;

(b) the purchase has been accomplished; or

(c) construction has commenced before April 1, 1983.

(7)(a) [~~Taxes allocated and paid to an agency~~] Tax increment under [~~Section~~] Sections 17A-2-1247 and 17A-2-1247.5 from one project area may, in first-class cities, be used in another project area to pay all or part of the value of the land for and the cost of installation and construction of any building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to such convention center or sports complex.

(b) This Subsection (7) applies only to a redevelopment agency in whose project area construction has begun on a building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to such convention center or sports complex, on or before June 30, 1995.

(c) If [~~any taxes~~] tax increment allocated [~~and paid to an agency~~] for use in another project area as described in Subsection (a) are not pledged to pay all or part of the value of the land for and the cost of the

installation and construction of any building, facility, structure, or other improvement described in Subsection (a) on or before June 30, 1995, [such taxes] the tax increment may no longer be allocated to or used by the redevelopment agency for use in another project area, notwithstanding any other law to the contrary.

Section 45. Section Enacted.

Section 17A-2-1261, Utah Code Annotated 1953, is enacted to read:

17A-2-1261. Deactivation and dissolution of an agency — Order of legislative body on own motion or agency recommendation — Payment of obligations.

Upon the motion of the legislative body or upon recommendation of the agency, the legislative body of the community may, by ordinance, order the deactivation and dissolution of an agency if the agency has no outstanding bonded indebtedness, other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the community.

Section 46. Section Enacted.

Section 17A-2-1262, Utah Code Annotated 1953, is enacted to read:

17A-2-1262. Notice of dissolution — Publication — Disposition of records.

(1) The legislative body of the community shall file a certified copy of the ordinance dissolving an agency with the State Tax Commission, county assessor, county auditor, and the governing body of each taxing entity having taxable property included in any project area adopted by the agency.

(2) When a agency has been dissolved, the legislative body shall also cause a notice of dissolution to be published in a newspaper having a general circulation in the county in which the agency is located.

(3) The books, documents, records, papers, and seal of any dissolved agency shall be deposited with the recorder of the community of the agency for safekeeping and reference. The expenses of the deactivation and dissolution of the agency shall be the obligation of the agency and shall be paid by it.

Section 47. Section Enacted.

Section 17A-2-1263, Utah Code Annotated 1953, is enacted to read:

17A-2-1263. Housing funds.

(1) Tax increment paid to an agency under Section 17A-2-1247 or 17A-2-1247.5 from one project area may be used to pay all or part of the value of the land for and the cost of installation, construction, and rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements related to housing located in one or more project areas.

(2) Notwithstanding any provisions of this part, a maximum of 20% of tax increment under Sections 17A-2-1247 and 17A-2-1247.5 may be used by an agency outside of project areas for the purpose of replacing housing units lost by redevelopment and economic development, or increasing, improving, and preserving the community's supply of affordable housing generally.

(3) The funds allocated under this section shall be held by the agency in a separate account of the special fund of the redevelopment agency designated as the housing fund until used. The housing fund, together with any interest earned by the fund, and any payments or repayments made to the agency for loans, advances, or grants of any kind from the fund shall accrue to and be deposited in the housing fund to be used to increase, improve, and preserve the supply of housing within project areas and affordable housing within the boundaries of the community or used to effectuate any purposes of redevelopment or economic development in the project area from which the funds originated.

(4) Expenditures or obligations incurred by the agency under this section shall constitute an indebtedness incurred by an agency.

(5) An agency may lend, grant, or contribute funds from the housing fund to a person, public body, housing authority, private entity or business, or nonprofit corporation for housing purposes as defined in this section.

(6) For purposes of this section, "affordable housing" means housing to be owned or occupied by persons and families of low or moderate income as determined by resolution of the agency.

Section 48. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 51
H. B. No. 27
Passed February 24, 1993
Approved March 12, 1993
Effective July 1, 1993

GOLF FEES

By Kelly C. Atkinson

AN ACT RELATING TO PARKS AND RECREATION; CREATING A NONLAPSING DEDICATED CREDIT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-11-19.5, AS ENACTED BY CHAPTER 220, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-11-19.5, Utah Code Annotated 1953, as enacted by Chapter 220, Laws of Utah 1992, is amended to read:

63-11-19.5. User fees for golf.

(1) The following user fees are assessed in the following parks for playing nine holes of golf:

(a) 50 cents at Wasatch Mountain State Park;

(b) 50 cents at Palisades State Park; and

(c) 25 cents at Jordan River State Park.

(2) The fee in Subsection (1) is:

(a) in addition to the fee set by the Board of Parks and Recreation; and

(b) to be used for the upgrade of facilities at the park where the money is collected.

(3) The revenue from the fees established in Subsection (1) shall be nonlapsing.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 52
H. B. No. 75
Passed February 15, 1993
Approved March 12, 1993
Effective May 3, 1993

SALES AND USE TAX - CHARITABLE EXEMPTION

By Martin R. Stephens

AN ACT RELATING TO SALES AND USE TAX ACT; AMENDING ADMINISTRATIVE PROCEDURES FOR SALES TAX EXEMPTION FOR RELIGIOUS OR CHARITABLE INSTITUTIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-12-104.1, AS ENACTED BY CHAPTER 298, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-12-104.1, Utah Code Annotated 1953, as enacted by Chapter 298, Laws of Utah 1992, is amended to read:

59-12-104.1 (Effective 07/01/93). Exemptions for religious or charitable institutions.

(1) Sales made by religious or charitable institutions or organizations are exempt from the sales and use tax imposed by this chapter if the sale is made in the conduct of the institution's or organization's regular religious or charitable functions or activities.

(2)(a) Sales made to a religious or charitable institution or organization are exempt from the sales and use tax imposed by this chapter if the sale is made in the conduct of the institution's or organization's regular religious or charitable functions and activities.

(b) In order to facilitate the efficient administration of the exemption granted by this section, the exemption shall be administered as follows:

(i) The exemption shall be at point of sale if the sale is in the amount of at least $1,000.

(ii) If the sale is less than $1,000, the exemption shall be in the form of a refund of sales or use taxes paid at the point of sale.

(iii) Notwithstanding Subsection (2)(b)(ii), the exemption under this subsection shall be at point of sale if the sale is:

(A) made pursuant to a contract between the vendor and the charitable or religious institution or organization; or

(B) made by a public utility, as defined in Section 54-2-1, to a religious or charitable institution or organization.

(3)(a) Religious or charitable institutions or organizations entitled to a refund under Subsection (2)(b)(ii) may apply to the commission for the refund of sales or use taxes paid.

(b) The commission shall designate the following by commission rule adopted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(i) procedures for applying for a sales and use tax refund;

(ii) standards for determining and verifying the amount of purchase at the point of sale;

(iii) procedures for submitting a request for refund on a monthly basis anytime the taxpayer has accumulated $100 or more in sales tax payments; and

(iv) procedures for submitting a request for refund on a quarterly basis for any cummulative amount of sales tax payments.

CHAPTER 53
H. B. No. 77
Passed February 15, 1993
Approved March 12, 1993
Effective May 3, 1993

SALES AND USE TAX AMENDMENT

By Martin R. Stephens

AN ACT RELATING TO SALES AND USE TAX; DISALLOWING GOVERNMENT ENTITIES FROM RETAINING A PORTION OF SALES TAXES THEY COLLECT TO COVER ADMINISTRATIVE EXPENSES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-12-108, AS LAST AMENDED BY CHAPTER 298, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-12-108, Utah Code Annotated 1953, as last amended by Chapter 298, Laws of Utah 1992, is amended to read:

59-12-108. Monthly payment — Penalty.

(1) Any person whose tax liability under this part and Part 2, was $50,000 or more for the previous year, shall on or before the last day of the month next succeeding each calendar month, file with the commission a return for the preceding monthly period. The vendor shall remit with the return the amount of the state and local tax required under Parts 1, 2, and 5 of this chapter to be collected or paid for the period covered by the return. The commission shall establish by rule the procedures and guidelines in determining the tax liability under this section.

(2) Any person whose tax liability under this part, Part 2, and Part 5 was $96,000 or more for the previous year, shall [~~transmit~~] remit the monthly amount of state and local tax payment due under this section to the tax commission by electronic funds transfer.

(3) (a) [A] Except as provided in Subsection (b), a vendor who is required to remit taxes monthly under this section may retain an amount not to exceed 1.5% of the total monthly sales tax collected under Part 1 of this chapter, and 1% of the total monthly sales tax collected under Parts 2 and 5 of this chapter for the cost to it of collecting and remitting sales and use taxes to the commission on a monthly basis.

(b) A state government entity that is required to remit taxes monthly under this chapter may not retain any portion of the taxes it collects to cover the costs of collecting and remitting sales and use taxes to the commission.

[~~(b) The commission shall, on a one-time basis, retain the first $125,000 in local sales tax proceeds collected under Parts 1, 2, and 5 of this chapter to pay the costs incurred by the commission in implementing the reimbursement rates under this subsection.~~]

(4) Penalties for late payment shall be as provided in Section 59-1-401.

CHAPTER 54
H. B. No. 90
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

NOTARY AND NOTARIZATION AMENDMENTS

By Melvin R. Brown

AN ACT RELATING TO NOTARIES PUBLIC; IDENTIFYING IMPROPER NOTARIZATIONS; ALLOWING ALTERNATE NOTARIAL PROCEDURES FOR PLAT MAPS; PROHIBITING EMPLOYERS FROM REQUIRING EMPLOYEE NOTARIES TO VIOLATE LAW; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
46-1-8, AS LAST AMENDED BY CHAPTER 106, LAWS OF UTAH 1990
46-1-10, AS REPEALED AND REENACTED BY CHAPTER 222, LAWS OF UTAH 1988
46-1-13, AS LAST AMENDED BY CHAPTER 106, LAWS OF UTAH 1990

ENACTS:
46-1-19, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 46-1-8, Utah Code Annotated 1953, as last amended by Chapter 106, Laws of Utah 1990, is amended to read:

46-1-8. Improper notarizations.

(1) A notary public may not perform a notarial act if the notary is a signer of or named in the document that is to be notarized.

(2) A notary public may not perform any notarial act in connection with:

(a) a financial transaction in which he is named individually as a principal; or

(b) a real property transaction in which he is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee.

Section 2. Section Amended.

Section 46-1-10, Utah Code Annotated 1953, as repealed and reenacted by Chapter 222, Laws of Utah 1988, is amended to read:

46-1-10. False or incomplete certificate.

A notary public may not:

(1) execute a certificate containing a statement known by the notary to be false or materially incomplete; or

(2) perform any official action with intent to deceive or defraud.

Section 3. Section Amended.

Section 46-1-13, Utah Code Annotated 1953, as last amended by Chapter 106, Laws of Utah 1990, is amended to read:

46-1-13. Official signature — Official seal — Seal impression.

(1) In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name indicated on the notary's commission.

(2) A notary public shall keep an official notarial seal that is the exclusive property of the notary public and that may not be used by any other person. Upon the resignation, revocation, or expiration of a notarial commission or upon death of a notary public, the seal shall be destroyed.

(3) A new seal shall be obtained for any new commission or recommission after July 1, 1990. The seal impression shall [~~consist of the following: Near~~] be affixed near the notary's official signature on a notarial certificate[~~, the notary shall affix in ink~~] and shall include a sharp, legible, and photographically reproducible ink impression of the notarial seal that [includes] consists of:

(a) the notary public's name exactly as indicated on the commission;

(b) the words "notary public," "state of Utah," and "my commission expires (commission expiration date)";

(c) the address of the notary's business or residence;

(d) a facsimile of the great seal of the state of Utah; and

(e) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and seal.

(4) Notwithstanding Subsection (3), a seal obtained for any existing notarial commission which complied with the statutory requirements for seals in effect at the time the commission was issued may continue to be used until the expiration of the original commission.

(5) An embossed seal impression that is not photographically reproducible may be used in addition to, but not in [lieu] place of, the photographically reproducible seal required in this section.

(6) The notarial seal shall be affixed in a manner that does not obscure or render illegible any information or signatures contained in the document or in the notarial certificate.

(7) A notary acknowledgement on an annexation, subdivision, or other transparent map or plat is considered complete without the imprint of the notary's official seal if:

(a) the notary signs the acknowledgement in permanent ink; and

(b) the following appear below or immediately adjacent to the notary's signature:

(i) the notary's full name;

(ii) the words "A notary public commissioned in Utah"; and

(iii) the expiration date of the notary's commission.

Section 4. Section Enacted.

Section 46-1-19, Utah Code Annotated 1953, is enacted to read:

46-1-19. Employer violations.

It is a class B misdemeanor for the employer of a notary to require the notary to perform a notarial act in violation of this chapter.

CHAPTER 55
H. B. No. 108
Passed March 3, 1993
Approved March 12, 1993
Effective March 12, 1993

AUTHORIZATION FOR LEGISLATIVE TECHNICAL CORRECTIONS

By Judy Ann Buffmire

AN ACT RELATING TO THE LEGISLATURE; CLARIFYING THE POWER FOR TECHNICAL CORRECTIONS IN THE OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
36-12-12, AS LAST AMENDED BY CHAPTER 85, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 36-12-12, Utah Code Annotated 1953, as last amended by Chapter 85, Laws of Utah 1992, is amended to read:

36-12-12. Legislative research and general counsel — Office established — Powers, functions, and duties — Organization of office — Selection of director and general counsel.

(1) There is established an Office of Legislative Research and General Counsel as a permanent staff office for the Legislature.

(2) The powers, functions, and duties of the Office of Legislative Research and General Counsel under the supervision of the director shall be:

(a) to provide research and legal staff assistance to all standing, special, and interim committees as follows:

(i) to assist each committee chairman in planning the work of the committee;

(ii) to prepare and present research and legal information in accordance with committee instructions or instructions of the committee chairman;

(iii) to prepare progress reports of committee work when requested; and

(iv) to prepare a final committee report in accordance with committee instructions, which shall include relevant research information, committee policy recommendations, and recommended legislation;

(b) to collect and examine the acts and official reports of any state and report their contents to any committee or member of the Legislature;

(c) to provide research and legal analysis services to any interim committee, legislative standing committee, or individual legislator on actual or proposed legislation or subjects of general legislative concern;

(d) to maintain a legislative research library which provides analytical, statistical, legal, and descriptive data relative to current and potential governmental and legislative subjects;

(e) to exercise under the direction of the general counsel the constitutional authority provided in Article VI, Sec. 32, Utah Constitution, in serving as legal counsel to the Legislature, majority and minority leadership of the House or Senate, any of the Legislature's committees or subcommittees, or the professional legislative staff and to represent the Legislature, majority and minority leadership of the House or Senate, any of the Legislature's committees or subcommittees, or the professional legislative staff in cases and controversies before courts and administrative agencies and tribunals;

(f) to prepare and assist in the preparation of legislative bills, resolutions, memorials, amendments, and other documents or instruments required in the legislative process and, under the direction of the general counsel, give advice and counsel regarding them to the Legislature, majority and minority leadership of the House or Senate, any of its members or members-elect, any of its committees or subcommittees, or the professional legislative staff;

(g) under the direction of the general counsel to review, examine, and correct any technical errors and approve legislation that has passed both houses in order to enroll the legislation and prepare the laws for publication;

(h) to keep on file records concerning all legislation and proceedings of the Legislature with respect to this legislation;

(i) to formulate recommendations for the revision, clarification, classification, arrangement, codification, annotation, and indexing of Utah statutes, and to develop proposed legislation to effectuate the recommendations;

(j) to appoint and develop a professional staff within budget limitations; and

(k) to prepare and submit the annual budget request for such office.

(3) The statutory authorization of the Office of Legislative Research and General Counsel to correct technical errors provided in Subsection (2) (g) includes:

(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

(b) eliminating duplication and the repeal of laws directly or by implication, including renumbering when necessary;

(c) correcting defective or inconsistent section and paragraph structure in the arrangement of the subject matter of existing statutes;

(d) eliminating all obsolete and redundant words;

(e) correcting obvious errors and inconsistencies [in] including those involving punctuation, capitalization, cross references, numbering, and wording;

(f) changing the boldface to more accurately reflect the substance of each section, part, chapter, or title; and

(g) merging or determining priority of any amendments, enactments, or repealers to the same code provisions that are passed by the Legislature.

(4) In carrying out the duties provided for in this section, the director of the Office of Legislative Research and General Counsel may obtain access to all records, documents, and reports necessary to the scope of his duties according to the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers.

(5) In organizing the management of the Office of Legislative Research and General Counsel, the Legislative Management Committee may either:

(a) select a person to serve as both the director of the office and as general counsel. In such case, the director of the office shall be a lawyer admitted to practice in Utah and shall have practical management experience or equivalent academic training; or

(b) select a person to serve as director of the office who would have general supervisory authority and select another person to serve as the legislative general counsel within the office. In such case, the director of the office shall have a master's degree in public or business administration, economics, or the equivalent in academic or practical experience and the legislative general counsel shall be a lawyer admitted to practice in Utah.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 56
H. B. No. 122
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

HOUSING TRUST FUND AMENDMENTS

By Kim R. Burningham

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; AMENDING THE HOUSING TRUST FUND ALLOWING THE FUND TO PAY CERTAIN LOAN PROCESSING FEES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-4-704, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-4-704, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-704. Distribution of fund moneys.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as recommended by the board;

(b) establish the criteria by which loans and grants will be made; and

(c) determine the order in which projects will be funded.

(2) The executive director shall distribute any federal moneys contained in the fund according to the procedures, conditions, and restrictions placed upon the use of those moneys by the federal government.

(3) The executive director shall distribute all other moneys from the fund according to the following requirements:

(a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

(b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan moneys shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) (A) The executive director or his designee shall lend moneys to benefit persons whose annual income is at or below 50% of the median family income for the state at a rate based upon the borrower's ability to pay.

(B) The executive director shall lend moneys to benefit persons whose annual income is between 50% and 80% of the median family income for the state at a rate that generates an average annual return to the [account] fund of at least 2% and not more than one-half of the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold.

(c) Any fund moneys not distributed as loans shall be distributed as grants.

(i) Ninety-five percent of the fund moneys distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining 5% of the fund moneys may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this chapter, including the payment of reasonable loan processing fees, but may not be used to offset department or board administrative expenses.

(4) The executive director may enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

CHAPTER 57
H. B. No. 126
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

MEDICAID CAPITATION

By Christine R. Fox

AN ACT RELATING TO MEDICAL ASSISTANCE; DIRECTING THE DEPARTMENT OF HEALTH TO PROMOTE ENROLLMENT OF MEDICAID RECIPIENTS INTO PREPAID HEALTH CARE DELIVERY SYSTEMS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
26-18-3.7, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 26-18-3.7, Utah Code Annotated 1953, is enacted to read:

26-18-3.7. Prepaid health care delivery systems.

(1) (a) Except as provided in Subsection (b) or (c), before July 1, 1996, the division shall submit to the Health Care Financing Administration within the United States Department of Health and Human Services, an amendment to the state's freedom of choice waiver. That amendment shall provide that by July 1, 1996, all persons, except those described in Subsection (b), who are eligible for services under the state plan for medical assistance, who reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a prepaid, capitated, health care delivery system.

(b) The division may not enter into any agreements with mental health providers that establish a prepaid capitated delivery system for mental health services that were not in existence prior to July 1, 1993, until the Utah Medicaid Hospital Provider Temporary Assessment Act is repealed.

(c) The following are exempt from the requirements of Subsection (a):

(i) persons who:

(A) receive medical assistance for the first time after July 1, 1996;

(B) have a mental illness, as that term is defined in Section 62A-12-202; and

(C) are receiving treatment for that mental illness. The division, when appropriate, shall enroll these persons in a health care delivery system that meets the requirements of this section;

(ii) persons who are institutionalized in a facility designated by the division as a nursing facility or an intermediate care facility for the mentally retarded; or

(iii) persons with a health condition that requires specialized medical treatment that is not available from a health care delivery system that meets the requirements of this section.

(2) In submitting the amendment to the state's freedom of choice waiver under Subsection (1), the division shall ensure that the proposed health care delivery systems have at least the following characteristics, so that the provider:

(a) is financially at risk, for a specified continuum of health care services, for a defined population, and has incentives to balance the patients need for care against the need for cost control;

(b) follows utilization and quality controls developed by the department;

(c) is encouraged to promote the health of patients through primary and preventive care;

(d) coordinates care to avoid unnecessary duplication and services; and

(e) conserves health care resources.

(3) Health care delivery systems that meet the requirements of this section may provide all services otherwise available under the state plan for medical assistance, except prescribed drugs.

(4) The division shall periodically report to the Legislative Health and Environment and Human Services Interim Committees regarding the development and implementation of the amendment to the state's freedom of choice waiver required under this section.

CHAPTER 58
H. B. No. 176
Passed March 2, 1993
Approved March 12, 1993
Effective May 3, 1993

SALE OF FOREIGN MOTOR VEHICLE - TECHNICAL AMENDMENTS

By Paul Shepherd

AN ACT RELATING TO MOTOR VEHICLES; MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-711, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

REPEALS:
41-1A-1312, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-1a-711, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-711. Compliance of foreign motor vehicle required prior to sale — Penalty.

(1) A person may not knowingly sell or offer for sale in this state any vehicle referred to in Section 41-1a-225 without providing to the purchaser at the time of purchase evidence of:

[~~(1)~~] (a) legal entry of the vehicle into the United States from the United States Customs Service; and

[~~(2)~~] (b) compliance with the United States Environmental Protection Agency and the United States Department of Transportation requirements applicable to the vehicle.

(2) It is a class A misdemeanor to violate this section.

Section 2. Repealer.

Section 41-1a-1312, Class A misdemeanor — Unlawful transfer, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is repealed.

CHAPTER 59
H. B. No. 188
Passed March 3, 1993
Approved March 12, 1993
Effective March 12, 1993

REVISIONS FOR COURT CONSOLIDATION

By John L. Valentine

AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR IMPLEMENTATION OF THE CONSOLIDATION OF THE CIRCUIT COURT INTO THE DISTRICT COURT; PROVIDING FOR THE REALLOCATION OF CIRCUIT COURT VACANCIES INTO THE DISTRICT COURT OR JUVENILE COURT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20-1-7.6, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1991, SECOND SPECIAL SESSION
78-1-2, AS REPEALED AND REENACTED BY CHAPTER 268, LAWS OF UTAH 1991
78-1-2.2, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-1-2.3, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1990
78-1-2.4, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1991, SECOND SPECIAL SESSION
78-3-4, AS LAST AMENDED BY CHAPTER 290, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 20-1-7.6, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1991, Second Special Session, is amended to read:

20-1-7.6. Convening of judicial nominating commissions — Quorum — Certification to governor of nominees — Meetings to investigate prospective candidates.

(1) If a vacancy occurs or is about to occur in the office of a justice or judge of any court of record other than the circuit court, the chairperson of the judicial nominating commission for the office to be filled shall convene the commission as soon as practicable [after the deadline for action established in Subsection (2) if applicable].

(2) (a) If a vacancy occurs due to death, retirement, resignation, or removal from office or is about to occur in the office of a judge of any [trial] circuit court [of record], the Judicial Council shall assess the need for the position and shall, within 45 days of the vacancy or the determination that a vacancy will occur, recommend to the governor, the president of the Senate, and the speaker of the House of Representatives whether the vacancy should be [filled,] reallocated to another trial court in the same or another geographic division[, reallocated to another geographic division of the same court, replaced with a court commissioner,] or eliminated.

(b) Unless the Legislature is in session, the governor may within 60 days of receipt of the council's recommendation convene the Legislature in special session and may provide a recommendation to the Legislature. [The Legislature shall consider legislation regarding the allocation of the vacancy or the vacancy shall be filled.]

[(3)(a) The first priority of the Judicial Council in evaluating circuit court vacancies shall be providing necessary court commissioners in the first, second, third, and fourth judicial districts.]

[(b) If a vacancy occurs due to death, retirement, resignation, or removal from office or is about to occur in the office of a judge of the circuit court, in addition to the authority provided in Subsection (2), the Judicial Council may replace the vacant judicial position with a court commissioner position or eliminate the position. The council may not reduce the number of circuit court judgeships below the limits established by law.]

[(c) The power authorized to the Judicial Council in Subsection (3)(b) expires January 1, 1996.]

(c) If the Judicial Council or the governor fail to act as provided in this section or if the Legislature fails to enact a law requiring a different result, the position shall be reallocated to the district court of the district in which the vacancy exists.

(d) The chair of the judicial nominating commission responsible for the position after it has been reallocated shall convene the nominating commission and proceed in accordance with this section. If the position is eliminated, the Judicial Council may use funds associated with the position to appoint necessary nonjudicial personnel, including a court commissioner.

[(4)] (3) (a) A majority of acting commissioners is required to form a quorum of the commission.

(b) (i) Not later than 45 days after convening, the commission shall certify to the governor a list of nominees having the qualifications required by law to fill the office, who are willing to serve, and who possess the ability, temperament, training, and experience which fits them for the office as determined by a majority of the members of the commission.

(ii) The commission shall certify a list of three nominees to the governor, except in the case of a tie vote both nominees may be certified, but in any event not more than five nominees may be certified to the governor.

[(5)] (4) Any nominating commission may meet from time to time and make or cause to be made an investigation of prospective candidates as the commission considers advisable.

[(6)] (5) A commissioner or alternate commissioner who has served in place of any member may not be named on a list certified by the commission during the commissioner's term of office and within six months of the date that the commission was last convened.

Section 2. Section Amended.

Section 78-1-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 268, Laws of Utah 1991, is amended to read:

78-1-2. Circuit court jurisdiction amended — Effective date.

(1) Not prior to January 1, 1996, and not later than July 1, 1998, the district court and circuit [courts] court shall be [established as district courts] merged into one court. Judges of the successor court shall be district court judges.

(2) If, due to the reallocation of circuit court positions under Section 20-1-7.6, there are no circuit court judges within a judicial district, the district court and the circuit court of that district shall be merged into one court. The successor court shall be the district court.

Section 3. Section Amended.

Section 78-1-2.2, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-1-2.2. Number of district judges.

[The] (1) Subject to changes due to the reallocation of circuit court positions under Section 20-1-7.6, the number of district court judges shall be not more than:

[~~(1) two~~] (a) four district judges in the First District;

[~~(2) five~~] (b) 12 district judges in the Second District[~~, but no more than three may reside in any one county~~];

[~~(3) fourteen~~] (c) 25 district judges in the Third District;

[~~(4) four~~] (d) 9 district judges in the Fourth District;

[~~(5)~~] (e) three district judges in the Fifth District;

[~~(6)~~] (f) two district judges in the Sixth District;

[~~(7)~~] (g) three district judges in the Seventh District; and

[~~(8)~~] (h) two district judges in the Eighth District.

[~~(9) The Fifth, Sixth, Seventh, and Eighth Districts shall be exempt from the provisions of Subsection 20-1-7.6(2). If a vacancy occurs or is about to occur in these districts, the provisions of Subsection 20-1-7.6(1) shall apply.~~]

(2) The difference in the number of district court judges caused by the amendment of this section will be funded by the reallocation of vacant circuit court positions pursuant to Section 20-1-7.6.

Section 4. Section Amended.

Section 78-1-2.3, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1990, is amended to read:

78-1-2.3. Number of juvenile judges and jurisdictions.

(1) [The] Subject to changes due to the reallocation of circuit court positions under Section 20-1-7.6, the number of juvenile court judges shall be:

(a) one juvenile judge in the First Juvenile District;

(b) three juvenile judges in the Second Juvenile District;

(c) [four] five juvenile judges in the Third Juvenile District;

(d) two juvenile judges in the Fourth Juvenile District, but these judges shall also serve as judges of the Eighth Juvenile District;

(e) one juvenile judge in the Fifth Juvenile District;

(f) one juvenile judge in the Sixth Juvenile District; and

(g) one juvenile judge in the Seventh Juvenile District.

(2) Judges under Subsection (1)(d) shall stand for retention election in every county in both districts under Section 20-1-7.7.

Section 5. Section Amended.

Section 78-1-2.4, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1991, Second Special Session, is amended to read:

78-1-2.4. Number of circuit judges — Replacement authority.

(1) [The] Subject to changes due to the reallocation or elimination of circuit court positions under Section 20-1-7.6, the number of circuit court judges shall be:

(a) [~~not less than one nor more than three~~] two circuit judges in the First District;

(b) [~~not less than three nor more than eight~~] seven circuit judges in the Second District;

(c) [~~not less than seven nor more than fifteen~~] ten circuit judges in the Third District; and

(d) [~~not less than two nor more than five~~] three circuit judges in the Fourth District.

(2) On January 1, 1992, the district court and circuit [~~courts~~] court in the Fifth, Sixth, Seventh, and Eighth Districts are [~~established as~~] merged into one court. The successor court shall be the district [~~courts~~] court and shall be located in those municipalities where the [~~circuit courts~~] district courts currently are located. [~~Circuit court judges~~] Judges of the successor court in these judicial districts shall be district court judges as of that date. Judges of these districts shall stand for unopposed retention election as required by law.

[~~(3) The authority of the Judicial Council to replace a vacant circuit court judicial position with a court commissioner position within the limits established under Subsection (1) shall expire January 1, 1996.~~]

Section 6. Section Amended.

Section 78-3-4, Utah Code Annotated 1953, as last amended by Chapter 290, Laws of Utah 1992, is amended to read:

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when court does not exist.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council and subject to policies established by the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court shall transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court has the same jurisdiction as if the case had been originally commenced in the circuit court and any appeals from final judgments shall be to the Court of Appeals.

(4) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(5) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

(6) When a circuit court is given original or appellate jurisdiction of a matter and [~~no such court exists in~~] the circuit and district court of the county of proper venue have been merged into one court under Section 78-1-2 or 78-1-2.4, the district court shall have jurisdiction. Notwithstanding Section 78-3-14.5, criminal fines and forfeitures collected in such cases shall be distributed as if filed in the circuit court.

Section 7. Effective Date.

As provided in the Utah Constitution Article VI, Section 25, these amendments shall be effective upon signature by the governor after approval by a vote of two-thirds of all members elected to each house.

CHAPTER 60
H. B. No. 197
Passed February 23, 1993
Approved March 12, 1993
Effective May 3, 1993

TRANSPORTATION TECHNICAL AMENDMENT

By Orville D. Carnahan

AN ACT RELATING TO MOTOR VEHICLES; CLARIFYING THE PENALTY FOR FAILURE TO COMPLY WITH MOTOR VEHICLE EQUIPMENT REQUIREMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-12, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 41-6-12, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

41-6-12. Violations of chapter — Penalties.

(1) A violation of any provision of this chapter is a class C misdemeanor, unless otherwise provided.

(2) A violation of any provision of Articles 2, 11, 15, [~~16~~] and 17 of this chapter is an infraction, unless otherwise provided.

CHAPTER 61
H. B. No. 231
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

EMERGENCY RELEASE DUE TO PRISON OVERCROWDING

By R. Lee Ellertson

AN ACT RELATING TO THE DEPARTMENT OF CORRECTIONS, STATE PRISON; PROVIDING FOR EMERGENCY RELEASE OF INMATES DUE TO OVERCROWDING; PROVIDING FOR NOTIFICATION OF THE RELEASE; AND STATING LEGISLATIVE INTENT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
64-13-37, UTAH CODE ANNOTATED 1953 (CODIFIED AS 64-13-38)

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

Section 1. Section Enacted.

Section 64-13-37, Utah Code Annotated 1953, is enacted to read:

64-13-37. Emergency release due to overcrowding.

(1) When the executive director of the department finds that the inmate population of the Utah State Prison has exceeded operational capacity for at least 45 calendar days, he may:

(a) notify the governor that an overcrowding emergency exists and provide him with information relevant to that determination; and

(b) notify the Board of Pardons and Parole of the existence of the overcrowding emergency so that the board may commence emergency releases pursuant to Subsection (2).

(2) Upon the governor's receipt of notification of the existence of an emergency release, the department shall:

(a) notify the board of the number of inmates who need to be released in order to eliminate the overcrowding emergency;

(b) in cooperation and consultation with the board, compile a list of inmates by chronological order according to their existing parole release dates, sufficient to eliminate the overcrowding emergency; and

(c) for each inmate listed in accordance with Subsection (2)(b), notify the board if the department has any reason to believe that the inmate has violated a disciplinary rule or for some other reason recommends that the inmate's existing parole date be rescinded.

(3) Unless the board has identified a reason to believe that the inmate's existing parole date should be rescinded, the parole release date of each inmate identified in Subsection (2)(b) may be advanced a sufficient number of days to allow for release.

(4) When the process described in Subsections (2) and (3) has been completed, the board may order the release of the eligible inmates.

(5) The department shall:

(a) send to the Commission on Criminal and Juvenile Justice a list of names of the inmates released under this section; and

(b) provide the name and address of each inmate to the local law enforcement agency for the political subdivision in which the inmate intends to reside.

(6) The department shall inform the governor when the emergency release has been completed.

(7) The board shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to carry out the provision of this section.

CHAPTER 62
H. B. No. 256
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

ITEMS PROHIBITED IN CORRECTIONAL FACILITIES

By Daniel H. Tuttle

AN ACT RELATING TO THE CRIMINAL CODE; ADDING CONTROLLED SUBSTANCES TO THE LIST OF ITEMS PROHIBITED IN CORRECTIONAL FACILITIES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-8-311.3, AS ENACTED BY CHAPTER 238, LAWS OF UTAH 1990
76-10-503, AS LAST AMENDED BY CHAPTERS 17 AND 87, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 76-8-311.3, Utah Code Annotated 1953, as enacted by Chapter 238, Laws of Utah 1990, is amended to read:

76-8-311.3. Items prohibited in correctional facilities — Penalties.

(1) [~~Except as provided by municipal or county policy, it~~] As used in this section:

(a) "Correctional facility" means:

(i) any facility operated by the Department of Corrections to house offenders either in a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(b) "Offender" means a person who is in official custody.

(c) "Medicine" means any prescription drug as defined in Section 58-17-2 but does not include any controlled substances listed in Section 58-37-4.

(d) "Official custody" means arrest, custody in a penal institution, jail, an institution for confinement of juvenile offenders, half-way house, community corrections center, nonsecure correctional facility, or other confinement in accordance with the order of a court. A person is in the official custody of the Department of Corrections if he has been sentenced and is committed to the department.

(2) It is a criminal offense under this section if any firearm, dangerous weapon, implement of escape, explosive, spirituous or fermented liquor, medicine, or poison in any quantity is:

(a) transported to or upon a correctional facility [~~or its appurtenant grounds~~];

(b) sold or given away at any correctional facility [~~or in any building appurtenant to a secure correctional facility, or on land granted to the municipality or county for use as a correctional facility~~]; or

(c) given to or used by[~~;~~] any offender at a correctional facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal hereby:

(a) with respect to a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) with respect to a correctional facility operated by a municipality, acted in conformity with the policy of the municipality; or

(c) with respect to a correctional facility operated by a county, acted in conformity with the policy of the county.

[~~(2)~~] (4) (a) Any person who transports to or upon a correctional facility [~~or its appurtenant grounds~~] any firearm, dangerous weapon, explosive, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) Any person who provides or sells to any offender at a correctional facility any firearm, dangerous weapon, explosive, or implement of escape is guilty of a second degree felony.

(c) Any offender who possesses at a correctional facility any firearm, dangerous weapon, explosive, or implement of escape is guilty of a second degree felony.

[~~(3) Except as provided by municipal or county policy:~~]

(5) (a) Any person who [~~transports~~] knowingly violates departmental policy or rule by transporting to or upon a correctional facility [~~or its appurtenant grounds~~] any spirituous or fermented liquor, medicine, whether or not lawfully prescribed for the offender, or poison in any quantity is guilty of a third degree felony.

(b) Any person who [~~provides or sells to~~] knowingly violates departmental policy or rule by providing or selling any offender at a correctional facility any spirituous or fermented liquor, medicine, or poison in any quantity is guilty of a third degree felony.

(c) Any offender who possesses at a correctional facility any spirituous or fermented liquor, medicine, or poison in any quantity is guilty of a third degree felony.

[~~(4) As used in this section "correctional facility" means any facility operated by a municipality or county to house or detain criminal offenders.~~]

(6) The possession, distribution, or use of a controlled substance at a correctional facility shall be prosecuted in accordance with Chapter 37, Title 58, Utah Controlled Substances Act.

Section 2. Section Amended.

Section 76-10-503, Utah Code Annotated 1953, as last amended by Chapters 17 and 87, Laws of Utah 1991, is amended to read:

76-10-503. Possession of dangerous weapon — Persons not permitted to have — Penalties.

(1) (a) Any person who has been convicted of any crime of violence under the laws of the United States, the state, or any other state, government, or country, or who is addicted to the use of any narcotic drug, or who has been declared mentally incompetent may not own or have in his possession or under his custody or control any dangerous weapon as defined in this part.

(b) Any person who violates this section is guilty of a class A misdemeanor, and if the dangerous weapon is a firearm or sawed-off shotgun, he is guilty of a third degree felony.

(2) (a) Any person who is on parole or probation for a felony [~~or is incarcerated in a correctional facility~~] may not have in his possession or under his custody or control any dangerous weapon as defined in this part.

(b) Any person who violates this section is guilty of a third degree felony, but if the dangerous weapon is a firearm, explosive, or infernal machine he is guilty of a second degree felony.

CHAPTER 63
H. B. No. 276
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

HEARING OFFICER IN PERSONNEL MANAGEMENT

By Grant D. Protzman

AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES; ALLOWING FOR THE HIRING OF AN IMPARTIAL HEARING OFFICER FOR HEARING OF CLASSIFICATION GRIEVANCES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
67-19-31, AS LAST AMENDED BY CHAPTER 193, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 67-19-31, Utah Code Annotated 1953, as last amended by Chapter 193, Laws of Utah 1992, is amended to read:

67-19-31. Classification or position schedule assignment grievances — Procedure.

(1) Upon receipt of a classification or position schedule assignment grievance, the administrator of the Career Service Review Board shall refer the grievance to the director.

(2) (a) The director shall assign the grievance to a classification panel of three or more impartial persons trained in state classification procedures.

(b) The classification panel shall determine whether or not the classification assignment was appropriate by applying the statutes, rules, and procedures adopted by the department that were in effect at the time of the classification or schedule change.

(c) The classification panel may:

(i) obtain access to previous audits, classification decisions, and reports;

(ii) request new or additional audits by department or agency personnel analysts; and

(iii) consider new or additional information.

(d) The classification panel may sustain or modify the original decision or make a new decision.

(e) The classification panel shall report its decision and findings to the director, who shall notify the grievant.

(3) (a) Either party may appeal the panel's decision to [a ~~classification committee appointed by the~~ director] an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:

(i) the executive director of the Department of Human Resource Management;

(ii) two department executive directors;

(iii) the chairman of the Human Resources Advisory Committee; and

(iv) a representative of the Utah Public Employees Association.

[~~(b) The director shall appoint a classification committee composed of three or more department directors representing both large and small agencies to hear the appeal~~].

(b) The successful bid shall serve under contract for no more than three years. At the end of that time the Department of Human Resource Management shall reissue the bid.

(c) The [~~classification committee~~] hearing officer shall review the classification and make the final [agency] decision. The final [agency] decision is subject to judicial review pursuant to the provisions of Section 63-46b-15.

CHAPTER 64
H. B. No. 354
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

HORSE RACING COMMISSION AMENDMENTS

By Bill Wright

AN ACT RELATING TO THE UTAH HORSE REGULATION ACT; MODIFYING PROCEDURES FOR THE SELECTION OF MEMBERS ON THE UTAH HORSE RACING COMMISSION; AMENDING THE COMMISSION'S POWERS AND DUTIES; RAISING PENALTIES FOR VIOLATIONS OF COMMISSION RULES; CREATING THE HORSE RACING ACCOUNT; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
4-38-2, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-3, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-4, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-7, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-8, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-9, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992
4-38-10, AS ENACTED BY CHAPTER 296, LAWS OF UTAH 1992

ENACTS:
4-38-16, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 4-38-2, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-2. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Horse Racing Commission created by this chapter.

(2) "Executive director" means the executive director of the commission.

(3) "Mixed meet" means a race meet that includes races by more than one breed of horse.

(4) "Race meet" means the entire period of time for which a licensee has been approved by the commission to hold horse races.

(5) "Racetrack facility" means a racetrack within Utah approved by the commission for the racing of horses, including the track surface, grandstands, clubhouse, all animal housing and handling areas, and other areas in which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials.

(6) "Recognized race meet" means a race meet recognized by a national horse breed association.

(7) "Utah bred horse" means a horse that is sired by [~~an accredited Utah~~] a stallion standing in Utah at the time the dam was bred.

Section 2. Section Amended.

Section 4-38-3, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-3. Utah Horse Racing Commission.

(1)(a) There is created within the Department the Utah Horse Racing Commission.

(b) (i) The commission shall consist of five members who shall be U.S. citizens, Utah residents, and qualified voters of Utah.

(ii) Each member shall have an interest in horse racing.

(c) (i) The members of the commission shall be appointed by the governor with the consent of the Senate.

(ii) The governor shall appoint commission members from a list of nominees submitted by the Commissioner of Agriculture.

(d) (i) The members of the commission shall be appointed to [~~six-year~~] four-year terms, except that the original members shall be appointed within 30 days after the effective date of this chapter, two of whom shall be appointed for terms expiring December 31, 1992, two for terms expiring December 31, 1994, and one for a term expiring December 31, 1996.

(ii) A commission member may not serve more than two consecutive terms.

(e) The governor shall make the appointments so that a resident of each of Utah's three congressional districts is a member of the commission at all times.

(f) Each member shall hold office until his or her successor is appointed and qualified.

(g) Vacancies on the commission shall be filled by appointment by the governor with the consent of the Senate for the unexpired term.

(h) Any member may be removed from office by the governor for cause after a public hearing. Notice of the hearing shall fix the time and place of the hearing and shall specify the charges. Copies of the notice of the hearing shall be served on the member by mailing it to the member at his last known address at least ten days before the date fixed for the hearing. The governor may designate a hearing officer to preside over the hearing and report his findings to the governor.

(2)(a) The members of the commission shall annually elect a chairperson.

(b) Three members of the commission shall constitute a quorum for the transaction of any business of the commission.

(c) Members of the commission shall receive per diem and expenses as established by the Division of Finance.

(3) All claims and expenditures made under this chapter shall be first audited and passed upon by the commission and when approved shall be paid in the manner provided by law for payment of claims against the state of Utah.

(4) Any member of the commission who has a personal or private interest in any matter proposed or pending before the commission shall publicly disclose this fact to the commission and may not vote on the matter.

(5) Any member of the commission who owns or who has any interest or whose spouse or member of his immediate family has any interest in a horse participating in a race shall disclose that interest and may not participate in any commission decision involving that race.

Section 3. Section Amended.

Section 4-38-4, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-4. Powers and duties of commission.

(1) The commission shall:

(a) license, regulate, and supervise all persons involved in the racing of horses as provided in this chapter;

(b) license, regulate, and supervise all recognized race meets held in this state under the terms of this chapter;

(c) cause the various places where recognized race meets are held to be visited and inspected at least once a year;

(d) assist in procuring public liability insurance coverage from a private insurance company for those licensees unable to otherwise obtain the insurance required under this chapter;

(e) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to govern race meets, including rules:

(i) to resolve scheduling conflicts and settle disputes among licensees;

(ii) to supervise, discipline, suspend, fine, and bar from events all persons required to be licensed by this chapter; and

(iii) to hold, conduct, and operate all recognized race meets conducted pursuant to this chapter;

(f) determine which persons participating, directly or indirectly, in recognized race meets require licenses;

(g) announce the time, place, and duration of recognized race meets for which licenses shall be required;

(h) establish reasonable fees for all licenses provided for under this chapter; and

(i) prepare and submit a report to the governor and the Legislature on or before December 31 each year containing detailed records of all meetings and of the business transacted in them and all licenses applied for and issued.

(2) The commission may:

(a) grant, suspend, or revoke licenses issued under this chapter;

[~~(b) provide incentives for the development of the horse industry in Utah;~~]

[~~(c) license and charge registration fees for horses;~~]

[~~(d)~~] (b) impose fines as provided in this chapter;

[~~(e) require that license applicants be fingerprinted for identification purposes as a condition of licensing;~~]

[~~(f)~~] (c) access criminal history record information for all licensees and commission employees; and

[~~(g)~~] (d) exclude from any racetrack facility in this state any person who the commission considers detrimental to the best interests of racing or any person who violates any provisions of this chapter or any rule or order of the commission.

Section 4. Section Amended.

Section 4-38-7, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-7. Licenses — Fees — Duties of licensees.

(1) The commission may grant licenses for [~~owners, trainers, assistant trainers, owner/trainers, jockeys, apprentice jockeys, veterinarians, blacksmiths, vendors, racing officials, jockey agents, bloodstock agents, track management personnel, groom/hot walkers, pony riders, exercise riders, vendor employees, licensee clerks, recognized race meets, civic or fair meet employees, and multiple owners~~] participation in racing and other activities associated with racetracks.

(2) The commission shall establish a schedule of fees for the application for and renewal and reinstatement of all licenses issued under this chapter. [~~All such fees may be used in any incentive plan to develop the horse industry in Utah.~~]

(3) Each person holding a license under this chapter shall comply with this chapter and with all rules promulgated and all orders issued by the commission under this chapter.

(4) Any person who holds a recognized race meet or who participates directly or indirectly in a recognized race meet without being first licensed by the commission as required under this chapter or by the rules of the commission and any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.

Section 5. Section Amended.

Section 4-38-8, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-8. Stewards.

(1)(a) The commission may delegate authority to enforce its rules and this chapter to three stewards employed by the commission at each recognized race meet. At least one of them shall be [~~an employee of and~~] selected by the commission.

(b) Stewards shall exercise reasonable and necessary authority as designated by rules of the commission including the following:

(i) enforce rules of the commission;

(ii) rule on the outcome of events;

(iii) evict from an event any person who has been convicted of bookmaking, bribery, or attempts to alter the outcome of any race through tampering with any animal that is not in accordance with this chapter or the rules of the commission;

(iv) levy fines not to exceed [~~$200~~] $2,500 for violations of rules of the commission, which fines shall be reported daily and [fines] paid to the commission within 48 hours of imposition and notice;

(v) suspend licenses not to exceed [~~ten days~~] one year for violations of rules of the commission, which suspension shall be reported to the commission daily; and

(vi) recommend that the commission impose fines or suspensions greater than permitted by Subsections (iv) and (v).

(2) [~~Only a licensed steward~~] If a majority of the stewards agree, they may impose fines or [~~license suspensions except that a starter may impose fines when horses arrive at the gate until off time in an amount not exceeding $200~~] suspend licenses.

(3)(a) Any fine or license suspension imposed by a steward [~~or fine imposed by a starter~~] may be appealed in writing to the commission within five days after its imposition. The commission may affirm or reverse the decision of a steward [~~or starter~~] or may increase or decrease any fine or suspension.

(b) A fine imposed by the commission under this section or Section [~~4-38-8~~] 4-38-9 may not exceed $10,000 [~~and may be used in any incentive plan to develop the horse industry in Utah~~].

(c) Suspensions of a license may be for any period of time but shall be commensurate with the seriousness of the offense.

Section 6. Section Amended.

Section 4-38-9, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-9. Investigation — License denial and suspension — Grounds for revocation — Fines.

(1) The commission or its boards of stewards of a recognized race meet, upon their own motion may, and upon verified complaint in writing of any person shall, investigate the activities of any licensee within the state or any licensed person upon the premises of a racetrack facility.

(2) The commission or board of stewards [or judges] may fine, suspend a license, or deny an application for a license.

(3) The commission may revoke a license, if the licensee has committed any of the following violations:

(a) substantial or willful misrepresentation;

(b) disregard for or violation of any provisions of this chapter or of any rule promulgated by the commission;

(c) conviction of a felony under the laws of this or any other state or of the United States, a certified copy of the judgment of the court of conviction of which shall be presumptive evidence of the conviction in any hearing held under this section;

(d) fraud, willful misrepresentation, or deceit in racing;

(e) falsification, misrepresentation, or omission of required information in a license application to the commission;

(f) failure to disclose to the commission a complete ownership or beneficial interest in a horse entered to be raced;

(g) misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of racing animals;

(h) failure to comply with any order or rulings of the commission, the stewards, or a racing official pertaining to a racing matter;

(i) ownership of any interest in or participation by any manner in any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise;

(j) being unqualified by experience or competence to perform the activity permitted by the license possessed or being applied for;

(k) employment or harboring of any unlicensed person on the premises of a racetrack facility;

(l) discontinuance of or ineligibility for the activity for which the license was issued;

(m) being currently under suspension or revocation of a racing license in another racing jurisdiction;

(n) possession on the premises of a racetrack facility of:

(i) firearms; or

(ii) a battery, buzzer, electrical device, or other appliance other than a whip which could be used to alter the speed of a horse in a race or while working out or schooling;

(o) possession, on the premises of a racetrack facility, by a person other than a licensed veterinarian of[~~:(i)~~] a hypodermic needle, hypodermic syringe, or other similar device[~~;(ii)~~] that may be used in administering medicine internally in a horse, or any substance, compound items, or combination of any medicine, narcotic, stimulant, depressant, or anes-

thetic which could alter the normal performance of a horse unless specifically authorized by a commission-approved veterinarian;

(p) cruelty to or neglect of a horse;

(q) offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of such act immediately to the stewards, the patrol judges, or the commission;

(r) causing, attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of such act immediately to the stewards, the patrol judges, or the commission;

(s) entering, or aiding and abetting the entry of, a horse ineligible or unqualified for the race entered;

(t) willfully or unjustifiably entering or racing any horse in any race under any name or designation other than the name or designation assigned to the animal by and registered with the official recognized registry for that breed of animal, or willfully setting on foot, instigating, engaging in, or in any way furthering any act by which any horse is entered or raced in any race under any name or designation other than the name or designation duly assigned by and registered with the official recognized registry for the breed of animal; or

(u) racing at a racetrack facility without having that horse registered to race at that racetrack facility[~~; or~~].

[~~(v) being on the premises of a racetrack facility for which the applicant or licensee is required to be licensed without being able to show proof of gainful employment at that racetrack facility.~~]

(4)(a) Any person who fails to pay in a timely manner any fine imposed pursuant to this chapter shall pay, in addition to the fine due, a penalty amount equal to the fine.

(b) Any person who submits to the commission a check in payment of a fine or license fee requirement imposed pursuant to this chapter, which is not honored by the financial institution upon which it is drawn, shall pay, in addition to the fine or fee due, a penalty amount equal to the fine.

Section 7. Section Amended.

Section 4-38-10, Utah Code Annotated 1953, as enacted by Chapter 296, Laws of Utah 1992, is amended to read:

4-38-10. Race meets — Licenses — Fairs.

(1) Each person making application for a license to hold a race meet under this chapter shall file an application with the commission which shall set forth the time, place, and number of days the race meet will continue, and other information the commission may require.

(2) A person who has been convicted of a crime involving moral turpitude may not be issued a license to hold a race meet.

(3)(a) The license issued shall specify the kind and character of the race meet to be held, the number of days the race meet shall continue, and the number of races per day.

(b) The licensee shall pay in advance of the scheduled race meet to the commission a fee of not less than $25 [~~for each day of racing~~]. If unforeseen obstacles arise which prevent the holding or completion of any race meet, the license fee held may be refunded to the licensee if the commission considers the reason for failure to hold or complete the race meet sufficient. [~~All license fees may be used in any incentive plan to develop the horse industry in Utah.~~]

(4)(a) Any unexpired license held by any person who violates any of the provisions of this chapter, or who fails to pay to the commission any fees required under this chapter, shall be subject to cancellation and revocation by the commission.

(b) This cancellation shall be made only after a summary hearing before the commission, of which seven days notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation. At the hearing, the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

(5) (a) Fair boards or fair districts that conduct race meets in connection with regularly scheduled annual fairs shall be exempt from payment of the fees provided in this section, unless they sponsor a race in which the speed indexes are officially recognized under breed requirements.

(b) All fair boards and fair meets shall be limited to 14 race days, unless otherwise permitted by a unanimous vote of the commission.

[~~(6) Each person licensed to conduct a race meet under this chapter shall carry public liability insurance in an amount and form of contract, and with a company, to be approved by the commission.~~]

(6) The exemption from the payment of fees under Subsection (5)(a) does not apply to those qualifying for official speed index races.

Section 8. Section Enacted.

Section 4-38-16, Utah Code Annotated 1953, is enacted to read:

4-38-16. Horse Racing Account created — Contents — Use of account monies.

(1) There is created within the General Fund a restricted account known as the Horse Racing Account.

(2) The Horse Racing Account consists of:

(a) license fees collected under this chapter;

(b) revenue from fines imposed under this chapter; and

(c) interest on account monies.

(3) Upon appropriation by the Legislature, monies from the account shall be used for the administration of this chapter, including paying the costs of:

(a) public liability insurance;

(b) stewards;

(c) veterinarians; and

(d) drug testing.

CHAPTER 65
H. B. No. 430
Passed February 26, 1993
Approved March 12, 1993
Effective July 1, 1993

PERSONNEL AMENDMENTS - STATE OFFICERS

By Martin R. Stephens

AN ACT RELATING TO COMPENSATION FOR STATE OFFICERS; DELETING CERTAIN OUTDATED PROVISIONS; PROVIDING A SALARY INCREASE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
67-22-1, AS LAST AMENDED BY CHAPTERS 41 AND 206, LAWS OF UTAH 1992
67-22-2, AS LAST AMENDED BY CHAPTER 206, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 67-22-1, Utah Code Annotated 1953, as last amended by Chapters 41 and 206, Laws of Utah 1992, is amended to read:

67-22-1. Compensation — Constitutional offices.

(1) The Legislature fixes salaries for the constitutional offices as follows:

(a) Governor	[~~$75,000~~] $77,250
(b) Lieutenant Governor	[~~$56,200~~] $60,000
(c) Attorney General	[~~$60,000~~] $65,000
(d) State Auditor	[~~$56,900~~] $62,000
(e) State Treasurer	[~~$56,900~~] $60,000

(2) The Legislature fixes benefits for the constitutional offices as follows:

(a) Governor:

(i) a vehicle for official and personal use;

(ii) housing;

(iii) household and security staff;

(iv) household expenses;

(v) retirement benefits as provided in Title 49;

(vi) health insurance;

(vii) dental insurance;

(viii) basic life insurance;

[~~(ix) unemployment compensation;~~]

[~~(x)~~] (ix) workers' compensation;

[~~(xi)~~] (x) required employer contribution to social security; and

[~~(xii)~~] (xi) long-term disability insurance.

(b) Lieutenant governor, attorney general, state auditor, and state treasurer:

(i) a vehicle for official and personal use;

(ii) the option of participating in a state retirement system established by Title 49, Chapter 2 or Chapter 3, or in a deferred compensation plan administered by the State Retirement Office, in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(iii) health insurance;

(iv) dental insurance;

(v) basic life insurance;

[~~(vi) unemployment compensation;~~]

[~~(vii)~~] (vi) workers' compensation;

[~~(viii)~~] (vii) required [employee] employer contribution to social security; and

[~~(ix)~~] (viii) long-term disability insurance.

Section 2. Section Amended.

Section 67-22-2, Utah Code Annotated 1953, as last amended by Chapter 206, Laws of Utah 1992, is amended to read:

67-22-2. Compensation — Other state officers.

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
Commissioner of Agriculture	[~~$45,100-$61,000~~] $49,650 - $67,150
Commissioner of Insurance	[~~$45,100-$61,000~~] $49,650 - $67,150
Director, Alcoholic Beverage Control Commission	[~~$45,100-$61,000~~] $49,650 - $67,150
Chairman, Industrial Commission	[~~$48,200-$65,200~~] $49,650 - $67,150
Commissioners, Industrial Commission	[~~$48,200-$65,200~~] $49,650 - $67,150
Members, Board of Pardons	[~~$48,200-$65,200~~] $49,650 - $67 150
Executive Director, Department of Commerce	[~~$48,200-$65,200~~] $49,650 - $67,150
Executive Director, Commission on Criminal and Juvenile Justice	[~~$48,200-$65,200~~] $49,650 - $67,150
Adjutant General	[~~$48,200-$65,200~~] $49,650 - $67,150
Chairman, Tax Commission	[~~$52,100-$70,500~~] $53,663 - $72,615
Commissioners, Tax Commission	[~~$52,100-$70,500~~] $53,663 - $72,615
Executive Director, Department of Community and Economic Development	[~~$52,100-$70,500~~] $53,663 - $72,615
[~~Executive Director, Department of Corrections~~	~~$52,100—$70,500~~]
Director, Office of Planning and Budget	[~~$52,100-$70,500~~] $53,663 - $72,615
Commissioner, Department of Public Safety	[~~$52,100-$70,500~~] $53,663 - $72,615
Chairman, Public Service Commission	[~~$52,100-$70,500~~] $53,663 - $72,615

Commissioner, Public Service Commission [~~$52,100-$70,500~~] $53,663 - $72,615
Commissioner, Department of Financial Institutions [~~$52,100-$70,500~~] $53,663 - $72,615
Executive Director, Department of Corrections $58,504 - $79,000
Executive Director, Tax Commission [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Natural Resources [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Human Services [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Transportation [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Administrative Services [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Human Resource Management [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Environmental Quality [~~$56,800-$76,700~~] $58,504 - $79,000
Executive Director, Department of Health [~~$61,700-$83,400~~] $63,551 - $85,902

(2) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(a) the option of participating in a state retirement system established by Title 49 or in a deferred compensation plan administered by the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(b) health insurance;

(c) dental insurance;

(d) basic life insurance;

(e) unemployment compensation;

(f) workers' compensation;

(g) required employer contribution to Social Security;

(h) long-term disability insurance;

(i) the same [~~annual leave,~~] sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees, and the same annual leave granted to Schedule B state employees with more than ten years of state service;

(j) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;

(k) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and

(l) professional memberships if being a member of the professional organization is a requirement of the position.

(3) The Legislature fixes the following additional benefits:

(a) for the executive director of the State Tax Commission a vehicle for official and personal use;

(b) for the executive director of the Department of Transportation a vehicle for commute and official use;

(c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;

(d) for the Commissioner of Public Safety:

(i) an accidental death insurance policy if [~~post~~] POST certified; and

(ii) a public safety vehicle for official and personal use;

(e) for the executive director of the Department of Corrections:

(i) an accidental death insurance policy if [~~post~~] POST certified; and

(ii) a public safety vehicle for official and personal use;

(f) for the Adjutant General a vehicle for official and personal use; and

(g) for each member of the Board of Pardons a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 66
H. B. No. 464
Passed March 3, 1993
Approved March 12, 1993
Effective July 1, 1993

DIVISION OF ENERGY REORGANIZATION

By Christine R. Fox

AN ACT RELATING TO NATURAL RESOURCES; REPEALING THE CREATION OF THE DIVISION OF ENERGY AND THE UTAH ENERGY ADVISORY COUNCIL; REALLOCATING THE DUTIES OF THE DIVISION OF ENERGY TO THE DEPARTMENT OF NATURAL RESOURCES AND THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AMENDING THE SUNSET ACT; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-1-201, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
63-34-3, AS LAST AMENDED BY CHAPTERS 28 AND 176, LAWS OF UTAH 1991
63-34-5, AS LAST AMENDED BY CHAPTER 114, LAWS OF UTAH 1991
63-55-263, AS LAST AMENDED BY CHAPTERS 7 AND 241, LAWS OF UTAH 1992

ENACTS:
9-1-701, UTAH CODE ANNOTATED 1953

RENUMBERS AND AMENDS:
9-1-702,(RENUMBERED FROM 63-53-9, AS LAST AMENDED BY CHAPTERS 68 AND 151, LAWS OF UTAH 1992)
9-1-703,(RENUMBERED FROM 63-53-9.5, AS ENACTED BY CHAPTER 68, LAWS OF UTAH 1992)
9-1-704,(RENUMBERED FROM 63-53-10, AS LAST AMENDED BY CHAPTER 151, LAWS OF UTAH 1992)
9-1-705,(RENUMBERED FROM 63-53-11, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1991)
9-1-706,(RENUMBERED FROM 63-53-12, AS LAST AMENDED BY CHAPTERS 68 AND 151, LAWS OF UTAH 1992)

REPEALS:
63-53-1, AS REPEALED AND REENACTED BY CHAPTER 176, LAWS OF UTAH 1991
63-53-2, AS REPEALED AND REENACTED BY CHAPTER 176, LAWS OF UTAH 1991
63-53-3, AS REPEALED AND REENACTED BY CHAPTER 176, LAWS OF UTAH 1991
63-53-4, AS REPEALED AND REENACTED BY CHAPTER 176, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 9-1-201, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-1-201. Department of Community and Economic Development — Creation — Powers and duties.

(1) There is created the Department of Community and Economic Development.

(2) The department shall:

(a) be responsible for community and economic development within the state;

(b) perform economic development planning for the state;

(c) coordinate the program plans of the various divisions within the department;

(d) administer and coordinate all state or federal grant programs which are, or become, available for community and economic development;

(e) (i) coordinate state governmental functions regarding energy conservation and program management;

(ii) facilitate the development and implementation of programs relating to energy conservation;

(iii) administer federal funds in accordance with applicable federal program guidelines; and

(iv) prepare a state energy emergency plan in accordance with Title 63, Chapter 53a, Energy Emergency Powers of Governor;

[~~(e)~~] (f) administer any other programs over which the department is given administrative supervision by the governor;

[~~(f)~~] (g) annually submit a report to the governor and the Legislature; and

[~~(g)~~] (h) perform any other duties as provided by the Legislature.

(3) The department may solicit and accept contributions of moneys, services, and facilities from any other sources, public or private, but may not use these funds for publicizing the exclusive interest of the donor.

(4) Moneys received pursuant to Subsection (3) shall be deposited in the General Fund as restricted revenues of the department.

Section 2. Section Enacted.

Section 9-1-701, Utah Code Annotated 1953, is enacted to read:

9-1-701. Short title.

This part is known as the "Clean Fuels Conversion Program Act."

Section 3. Section Renumbered and Amended.

Section 9-1-702, Utah Code Annotated 1953, which is renumbered from Section 63-53-9, Utah Code Annotated 1953, as last amended by Chapters 68 and 151, Laws of Utah 1992, is amended to read:

[~~63-53-9~~] 9-1-702. **Definitions.**

As used in this [~~chapter~~] part:

(1) "Clean fuel" means:

(a) propane, compressed natural gas, or electricity;

(b) other fuel the Air Quality Board determines to be at least as effective as fuels under Subsection (a) in reducing air pollution; or

(c) other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(2) "Clean-fuel vehicle" means a vehicle that uses a clean fuel and that meets clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(3) "Government vehicle" means a motor vehicle owned and operated by the state, a public trust authority, a county, a municipality, a town, or a city, including metropolitan rapid transit motor vehicles, buses, trucks, law enforcement vehicles, and emergency vehicles.

(4) "Private Sector Fund" means the Clean Fuels Private Sector Vehicle Conversion Fund created in Section [~~63-53-9.5~~] 9-1-703.

(5) "Private Sector Program" means the Clean Fuels Private Sector Vehicle Incentive Program created in Section [~~63-53-12~~] 9-1-706.

(6) "Private sector vehicle fleet" means at least ten motor vehicles that are not government vehicles and that are owned or operated by one person.

(7) "Public Sector Fund" means the Clean Fuels Public Sector Vehicle Conversion Fund created in Section [~~63-53-10~~] 9-1-704.

(8) "Public Sector Program" means the Clean Fuels Public Sector Incentive Program created in Section [~~63-53-12~~] 9-1-706.

Section 4. Section Renumbered and Amended.

Section 9-1-703, Utah Code Annotated 1953, which is renumbered from Section 63-53-9.5, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1992, is amended to read:

[~~63-53-9.5~~] 9-1-703. Clean Fuel Private Sector Vehicle Conversion Fund — Creation — Funding.

(1)(a) There is created [~~in the division~~] a revolving fund known as the Clean Fuels Private Sector Vehicle Conversion Fund.

(b) The private sector fund consists of:

(i) appropriations to the private sector fund;

(ii) other public and private contributions made under Subsection (d);

(iii) interest earnings on cash balances; and

(iv) all monies collected for loan repayments and interest on loans.

(c) All money appropriated to the private sector fund is nonlapsing.

(d) The [~~Division of Energy~~] department may accept contributions from other public and private sources for deposit into the private sector fund.

(2)(a) Monies available in the private sector fund may be loaned by the [~~division~~] department for expenses for the conversion of private sector fleet vehicles to use a clean fuel.

(b) The maximum amount loaned per vehicle may not exceed the actual cost of vehicle conversion or $3,000, whichever is less.

(3) Administrative costs of the private sector fund shall be paid by the [~~division~~] department until interest revenues in the private sector fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the private sector fund.

(4)(a) The private sector fund balance may not exceed $5,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the private sector fund balance at $5,000,000 shall be deposited in the General Fund.

(5)(a) Expenditures from the private sector fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy with the [~~division~~] department.

Section 5. Section Renumbered and Amended.

Section 9-1-704, Utah Code Annotated 1953, which is renumbered from Section 63-53-10, Utah Code Annotated 1953, as last amended by Chapter 151, Laws of Utah 1992, is amended to read:

[~~63-53-10~~] 9-1-704. Clean Fuels Public Sector Vehicle Conversion Fund — Creation — Funding.

(1)(a) There is created [~~in the division~~] a revolving fund known as the Clean Fuels Public Sector Vehicle Conversion Fund.

(b) The public sector fund consists of:

(i) appropriations to the public sector fund;

(ii) other public and private contributions made under Subsection (d);

(iii) interest earnings on cash balances; and

(iv) all monies collected for loan repayments and interest on loans.

(c) All money appropriated to the public sector fund is nonlapsing.

(d) The [~~Division of Energy~~] department may accept contributions from other public and private sources for deposit into the public sector fund.

(2)(a) Monies available in the public sector fund may be loaned by the [~~division~~] department for ex-

penses for the conversion of government fleet vehicles to use a clean fuel.

(b) The maximum amount loaned per vehicle may not exceed the actual cost of vehicle conversion or $3,000, whichever is less.

(3) Administrative costs of the public sector fund shall be paid by the [division] department until interest revenues in the public sector fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the public sector fund.

(4) (a) The public sector fund balance may not exceed $5,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the public sector fund balance at $5,000,000 shall be deposited in the General Fund.

(5) (a) Expenditures from the public sector fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy with the [division] department.

Section 6. Section Renumbered and Amended.

Section 9-1-705, Utah Code Annotated 1953, which is renumbered from Section 63-53-11, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1991, is amended to read:

[~~63-53-11~~] 9-1-705. Clean Fuel Conversion Program.

(1) The state, a county or municipal government, and a school district within the state may apply to the [division] department in the manner provided in Section [~~63-53-10~~] 9-1-704 for a loan for the reasonable expenses of the conversion of its vehicles to use clean fuel.

(2) The state, county, municipality, or school district must demonstrate the ability to pay back the conversion costs within seven years of the date of conversion.

Section 7. Section Renumbered and Amended.

Section 9-1-706, Utah Code Annotated 1953, which is renumbered from Section 63-53-12, Utah Code Annotated 1953, as last amended by Chapters 68 and 151, Laws of Utah 1992, is amended to read:

[~~63-53-12~~] 9-1-706. Rulemaking — Division duties — Loan repayment.

(1) The [division] department shall:

(a) (i) establish and administer the Public Sector Program to encourage government officials to convert their fleets to use a clean fuel; and

(ii) establish and administer the Private Sector Program to encourage private sector vehicle fleet operators to convert their fleets to use a clean fuel; and

(b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish criteria and conditions for:

(i) awarding loans, including establishing a minimum loan amount;

(ii) repayment by the loan recipient;

(iii) collection of the loans authorized by this section;

(iv) awarding program monies to loan recipients who meet the criteria and conditions under Subsection (a); and

(v) requiring all loan applicants who wish to receive funds for conversion of a vehicle to use a clean fuel to:

(A) apply on forms provided by the [division] department;

(B) agree in writing to use the clean fuel for which each vehicle is converted using loan proceeds for a minimum of 50% of the vehicle miles traveled beginning from the time of conversion of the vehicle;

(C) agree in writing to notify the division if a vehicle converted using loan proceeds becomes inoperable through mechanical failure or accident and to pursue a remedy outlined in [division] department rules;

(D) provide reasonable data to the [division] department on vehicles converted with loan proceeds; and

(E) submit vehicles converted with loan proceeds to inspections by the [division] department as required in [division] department rules.

(2) (a) When developing repayment schedules for the loans, the [division] department shall consider the projected savings from conversion to a clean fuel.

(b) A repayment schedule may not exceed seven years.

(c) The loan repayment amount shall include interest at a rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

(3) The Division of Finance is responsible for collection of and accounting for the loans and has custody of all loan documents, including all notes and contracts, evidencing the indebtedness of the Public and Private Sector Fund.

Section 8. Section Amended.

Section 63-34-3, Utah Code Annotated 1953, as last amended by Chapters 28 and 176, Laws of Utah 1991, is amended to read:

63-34-3. Department of Natural Resources created — Boards, councils, and divisions within department.

There is created within [the] state government [of the ~~state of Utah~~ a] the Department of Natural Resources. There is created within the Department of Natural Resources the following boards, councils, and divisions:

(1) Board of Water Resources;

(2) Board of State Lands and Forestry;

(3) Board of Oil, Gas and Mining;

(4) Board of Parks and Recreation;

(5) Wildlife Board;

(6) Board of Big Game Control;

(7) Riverway Enhancement Advisory Council;

(8) Great Salt Lake Advisory Council;

(9) Board of Geological Survey;

(10) Water Development Coordinating Council;

[~~(11) Energy Advisory Council;~~]

[~~(12)~~] (11) Division of Water Rights;

[~~(13)~~] (12) Division of Water Resources;

[~~(14)~~] (13) Division of State Lands and Forestry;

[~~(15)~~] (14) Division of Oil, Gas and Mining;

[~~(16)~~] (15) Division of Parks and Recreation;

[~~(17)~~] (16) Division of Wildlife Resources; and

[~~(18)~~] (17) Division of Geological Survey[~~; and~~].

[~~(19) Division of Energy.~~]

Section 9. Section Amended.

Section 63-34-5, Utah Code Annotated 1953, as last amended by Chapter 114, Laws of Utah 1991, is amended to read:

63-34-5. Executive director of natural resources — Appointment — Removal — Compensation — Responsibilities — Department fee schedule.

(1) (a) The chief administrative officer of the Department of Natural Resources shall be [~~the~~] an executive director [~~of natural resources who shall be~~] appointed by the governor with the advice and consent of the Senate.

(b) The executive director may be removed at the will of the governor.

(c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) The executive director shall [~~be responsible for~~]:

(a) [~~the administration and supervision of~~] administer and supervise the Department of Natural Resources and [~~for effecting~~] provide for coordination and cooperation among the boards and divisions of the department;

(b) [~~approving~~] approve the budget of each board and division;

(c) (i) coordinate state governmental functions regarding energy development;

(ii) facilitate the development and implementation of policies and programs relating to energy production, processing, utilization, and technology in the state;

(iii) coordinate and consolidate energy resource data collection throughout state government;

(iv) perform forecasts of state-level energy production, consumption, and prices;

(v) monitor federal laws and regulations relating to energy development, processing, or use, and recommend policy positions for the state;

(vi) participate in regulatory proceedings as appropriate to the functions and duties of the department;

(vii) represent the state on regional and national energy matters on his own initiative or as requested by the governor; and

(viii) provide the Legislature and the governor with:

(A) a biennial report addressing the current status of energy markets in the state; and

(B) an independent assessment of energy issues.

[~~(c)~~] (d) [~~making a full annual~~] report at the end of each fiscal year to the governor [~~reviewing~~] on department activities, and activities of the boards and divisions[~~, at the end of each fiscal year~~]; and

[~~(d) such~~] (e) perform other duties as provided by the Legislature [~~shall assign to him~~] by statute.

(3) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department. The fee shall be reasonable and fair and shall reflect the cost of services provided. Each fee established in this manner shall be submitted to and approved by the Legislature as part of the department's annual appropriations request. The department may not charge or collect any fee proposed in this manner without approval of the Legislature.

Section 10. Section Amended.

Section 63-55-263, Utah Code Annotated 1953, as last amended by Chapters 7 and 241, Laws of Utah 1992, is amended to read:

63-55-263. Repeal dates, Title 63.

(1) Sections 63-1-50 and 63-1-50.1, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 1996.

(2) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(3) Title 63, Chapter 25, State Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(4) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 1994.

(5) The Utah Fire Prevention Board, created in Section 63-27-104, is repealed July 1, 1993.

(6) The Liquefied Petroleum Gas Board, created in Section 63-29a-103, is repealed July 1, 1997.

(7) (a) The Department of Natural Resources, created in Section 63-34-3, is repealed July 1, 1999.

(b) The Board of Water Resources, created in Sections 63-34-3 and 73-10-1.5, is repealed July 1, 2001.

(c) The Board of State Lands and Forestry, created in Sections 63-34-3 and 65A-1-2, is repealed July 1, 1999.

(d) The Board of Oil, Gas and Mining, created in Sections 40-6-4 and 63-34-3, is repealed July 1, 1993.

(e) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(f) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(g) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

(h) The Riverway Enhancement Advisory Council, created in Section 63-34-3, is repealed July 1, 1999.

(i) The Great Salt Lake Advisory Council, created in Sections 63-34-3 and 65A-10-5, is repealed July 1, 1999.

(j) The Board of the Utah Geological Survey, created in Sections 63-34-3 and 63-73-2, is repealed July 1, 1999.

(k) The Water Development Coordinating Council, created in Sections 63-34-3 and 73-10c-3, is repealed July 1, 2001.

(l) The Division of Water Rights, created in Sections 63-34-3 and 73-2-1.1, is repealed July 1, 2001.

(m) The Division of Water Resources, created in Sections 63-34-3 and 73-10-18, is repealed July 1, 2001.

(n) The Division of Parks and Recreation, created in Section 63-34-3, is repealed July 1, 1997.

(o) The Division of Oil, Gas and Mining, created in Sections 63-34-3 and 40-6-15, is repealed July 1, 1993.

(p) The Division of Geological Survey, created in Section 63-34-3 and Title 63, Chapter 73, is repealed July 1, 1999.

[~~(q) The Division of Energy, created in Sections 63-34-3 and 63-53-2, is repealed July 1, 2001.~~]

[~~(r) The Energy Advisory Council, created in Sections 63-34-3 and 63-53-4, is repealed July 1, 2001.~~]

(8) (a) The Office of Internal Audit, created in Section 63-49-7, is repealed July 1, 2001.

(b) The Office of Comptroller, created in Section 63-49-7, is repealed July 1, 2001.

(c) The Office of Planning and Programming, created in Section 63-49-7, is repealed July 1, 2001.

(d) The Office of Community Relations, created in Section 63-49-7, is repealed July 1, 2001.

(e) The Maintenance Division, created in Section 63-49-8, is repealed July 1, 1995.

(f) The Construction Division, created in Section 63-49-8, is repealed July 1, 1997.

(g) The Preconstruction Division, created in Section 63-49-8, is repealed July 1, 1997.

(h) The Safety Division, created in Section 63-49-8, is repealed July 1, 1999.

(i) The Right-of-way Division, created in Section 63-49-8, is repealed July 1, 1995.

(j) The Aeronautical Operations Division and Utah Aeronautical Committee, created in Sections 2-1-12 and 63-49-8, are repealed July 1, 1995.

(k) District management offices, created in Section 63-49-9, are repealed July 1, 2001.

(l) The Utah Transportation Commission, created in Section 63-49-10, is repealed July 1, 1995.

(9) The Utah Constitutional Revision Study Commission, created in Section 63-54-1, is repealed July 1, 1993.

(10) The Crime Victims' Reparations Board, created in Section 63-63-4, is repealed July 1, 1997.

Section 11. Repealer.

Section 63-53-1, Definitions, Utah Code Annotated 1953, as repealed and reenacted by Chapter 176, Laws of Utah 1991;

Section 63-53-2, Division created — Appointment of director, Utah Code Annotated 1953, as repealed and reenacted by Chapter 176, Laws of Utah 1991;

Section 63-53-3, Functions and duties of division, Utah Code Annotated 1953, as repealed and reenacted by Chapter 176, Laws of Utah 1991;

Section 63-53-4, Creation of Utah Energy Advisory Council — Members — Appointment — Qualifications — Terms — Quorum — Duties — Per diem and expenses, Utah Code Annotated 1953, as repealed and reenacted by Chapter 176, Laws of Utah 1991 are repealed.

Section 12. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 67
S. B. No. 9
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

HIGHER EDUCATION BOND AMENDMENTS

By Lane Beattie

AN ACT RELATING TO HIGHER EDUCATION; PROVIDING AN EXEMPTION FOR REFUNDING BONDS FROM THE $10,000,000 LIMIT REQUIRING LEGISLATIVE APPROVAL; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
11-17-17, AS LAST AMENDED BY CHAPTER 271, LAWS OF UTAH 1992
53B-21-102, AS LAST AMENDED BY CHAPTER 271, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 11-17-17, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1992, is amended to read:

11-17-17. State universities granted same powers as municipalities and counties — Authority to issue bonds.

(1) The State Board of Regents may, on behalf of the University of Utah and Utah State University [~~of Agriculture and Applied Science~~] exercise all powers granted to municipalities and counties pursuant to this chapter, except as provided in Subsection [~~(b)~~] (2).

(2) The board may not issue bonds in excess of $10,000,000 in any one fiscal year under this chapter on behalf of either institution as the borrower without prior approval from the Legislature.

(3) Refunding bonds are exempt from the requirements of Subsection (2) if:

(a) the bonds are issued to reduce debt service costs; and

(b) the refunding bonds mature during the same time frame as the original obligation.

Section 2. Section Amended.

Section 53B-21-102, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1992, is amended to read:

53B-21-102. Bonds do not create state indebtedness — Special obligations — Discharge of bonded indebtedness — Agreements and covenants by the board regarding bonds — Enforcement by court action.

(1)(a) The bonds issued under this chapter are not an indebtedness of the state, of the institution for which they are issued, or of the board.

(b) They are special obligations payable solely from the revenues derived from the operation of the building and student building fees, land grant interest, net profits from proprietary activities, and any other revenues pledged other than appropriations by the Legislature as provided in Sections 53B-21-101 and 53B-21-111.

(2) The board shall pledge all or any part of the revenues to the payment of principal of and interest on the bonds.

(3) In order to secure the prompt payment of principal and interest and the proper application of the revenues pledged, the board may, by appropriate provisions in the resolution authorizing the bonds[~~, do the following~~]:

(a) covenant as to the use and disposition of the proceeds of the sale of the bonds;

(b) covenant as to the operation of the building and the collection and disposition of the revenues derived from the operation;

(c) collect student building fees from all students, and pledge the fees to the payment of building bonds;

(d) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;

(e) covenant and agree to carry insurance on the building, and its use and occupancy, and provide that the cost of any insurance is part of the expense of operating the building;

(f) vest in a trustee:

(i) the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of the bonds issued under this chapter, and to hold, apply, and dispose of the income and revenue; and

(ii) the right to:

(A) enforce any covenant made to secure the bonds;

(B) execute and deliver a trust agreement which sets forth the powers and duties and the remedies available to the trustee and limits the trustee's liabilities; and

(C) prescribe the terms and conditions upon which the trustee or the holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all covenants and resort to any appropriate remedies;

(g) (i) fix rents, charges, and fees, including student building fees, to be imposed in connection with and for the use of the building and its facilities, which are:

(A) income and revenues derived from the operation of the building; and

(B) expressly required to be fully sufficient either by themselves or with land grant interest and net profits from proprietary activities, or from sources other than by appropriations by the Legislature to such issuing institutions to assure the prompt payment of principal of and interest on the bonds as each becomes due; and

(ii) make and enforce rules [~~and regulations~~] with reference to the use of the building and with reference to requiring any class or classes of students to use the building as desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this chapter;

(h) covenant to maintain a maximum percentage of occupancy of the building;

(i) covenant against the issuance of any other obligations payable from the revenues to be derived from the building, unless subordinated;

(j) make provision for refunding;

(k) covenant as to the use and disposition of sources of revenue other than those derived from appropriations by the Legislature, and pledge those sources of revenues to the payment of bonds issued under this chapter;

(l) make other covenants considered necessary or advisable to effect the purposes of this chapter; and

(m) delegate to the [~~chairman or other board member~~] chair, vice-chair, or chair of the Budget and Finance Subcommittee the authority:

(i) to approve any changes with respect to interest rate, price, amount, redemption features, and other terms of the bonds as are within reasonable parameters set forth in the resolution; and

(ii) to approve and execute all documents relating to the issuance of the bonds.

(4)(a) The agreements and covenants entered into by the board under this section are binding in all respects upon the board and its officials, agents, and employees, and upon its successors.

(b) They are enforceable by appropriate action or suit at law or in equity brought by any holder or holders of bonds issued under this chapter.

CHAPTER 68
S. B. No. 13
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

REAUTHORIZATION OF CRIMINAL GANG ACTIVITY TASK FORCE

By Delpha A. Baird

AN ACT RELATING TO THE LEGISLATURE; REAUTHORIZING THE TASK FORCE ON CRIMINAL GANG ACTIVITY; APPROPRIATING $19,000 FROM THE GENERAL FUND; AND PROVIDING A SUNSET DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Reauthorization of Task Force.

The Task Force on Criminal Gang Activity created in uncodified Section 1, Chapter 12[illegible], Laws of Utah 1992, is reauthorized through January 1, 1994, with the same membership, staff, and purposes. The task force shall report to the Judiciary Interim Committee before December 31, 1993.

Section 2. Staffing and sunset.

(1) The Office of Legislative Research and General Counsel shall provide staff support.

(2) The authorization of the task force is repealed December 31, 1993.

Section 3. Appropriation.

There is appropriated from the General Fund for fiscal year 1993-94:

(1) $3,500 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) $3,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) $12,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

CHAPTER 69
S. B. No. 17
Passed March 3, 1993
Approved March 12, 1993
Effective March 12, 1993

SCHOOL FEES TASK FORCE

By David H. Steele
Haven J. Barlow
LeRay McAllister
Stephen J. Rees
Scott N. Howell
Millie M. Peterson

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING FOR A SCHOOL FEES TASK FORCE TO STUDY ISSUES RELATED TO CHARGING FEES IN THE PUBLIC SCHOOLS; PROVIDING FOR A REPORT; PROVIDING FOR A $21,000 APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. School Fees Task Force.

(1) There is created a School Fees Task Force.

(2) The task force shall consist of the following individuals:

(a) three members shall be state senators appointed by the president of the Senate, no more than two of whom may be from the same political party; and

(b) five members shall be state representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(3) (a) The president of the Senate shall name one senator to cochair the task force.

(b) The speaker of the House of Representatives shall name one representative to cochair the task force.

Section 2. Quorum Requirements - Actions - Compensation.

(1) Two of the Senate members and three of the House members constitute a quorum at any meeting.

(2) Action approved by at least two of the Senate members and three of the House members shall be the action of the task force.

(3) Task force members shall receive compensation and expenses as provided by legislative rule.

Section 3. Charge of the task force - Final report - Staff and support services.

(1) The task force shall study and, where appropriate, make recommendations to the Legislature on issues related to the charging of fees in the public schools.

(2) The task force shall report its findings and recommendations to the Education Interim Committee prior to December 31, 1993.

(3) The Office of Legislative Research and General Counsel shall provide staff and support services to the task force.

Section 4. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 1992-93:

(a) $4,500 to the Senate to pay for compensation and expenses of senators on the task force;

(b) $6,500 to the House of Representatives to pay for compensation and expenses of representatives on the task force; and

(c) $10,000 to the Office of Legislative Research and General Counsel to pay for the costs of the task force staff.

(2) The appropriation is nonlapsing.

Section 5. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 70
S. B. No. 60
Passed February 18, 1993
Approved March 12, 1993
Effective May 3, 1993

ABORTION ACT REVISION

By LeRay McAllister

AN ACT RELATING TO ABORTION; PROVIDING FOR A 24-HOUR WAITING PERIOD PRIOR TO MOST ABORTIONS; AMENDING AND CLARIFYING INFORMED CONSENT PROVISIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-7-301, AS LAST AMENDED BY CHAPTER 2, LAWS OF UTAH 1991, FIRST SPECIAL SESSION
76-7-305, AS ENACTED BY CHAPTER 33, LAWS OF UTAH 1974
76-7-305.5, AS LAST AMENDED BY CHAPTER 42, LAWS OF UTAH 1985

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

Section 1. Section Amended.

Section 76-7-301, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1991, First Special Session, is amended to read:

76-7-301. Definitions.

As used in this part:

(1) "Abortion" means the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum, and includes all procedures undertaken to kill a live unborn child and includes all procedures undertaken to produce a miscarriage. "Abortion" does not include removal of a dead unborn child.

(2) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

[~~(2)~~] (3) "Physician" means a medical doctor licensed to practice medicine and surgery under the Utah Medical Practice Act, a physician in the employment of the government of the United States who is similarly qualified, or an osteopathic physician licensed to practice medicine under the Utah Osteopathic Medicine Licensing Act.

[~~(3)~~] (4) "Hospital" means a general hospital licensed by the Department of Health according to Title 26, Chapter 21, and includes a clinic or other medical facility to the extent that such clinic or other medical facility provides equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health. It shall be the responsibility of the Department of Health to determine if such clinic or other medical facility so qualifies and to so certify.

Section 2. Section Amended.

Section 76-7-305, Utah Code Annotated 1953, as enacted by Chapter 33, Laws of Utah 1974, is amended to read:

76-7-305. Informed consent requirements for abortion — 24-hour wait mandatory — Emergency exception.

(1) No abortion may be performed unless a voluntary and informed written consent is first obtained by the attending physician from the woman upon whom the abortion is to be performed. [~~(2) No~~] Except in the case of a medical emergency, consent [~~obtained pursuant to the provisions of this section shall be considered~~] to an abortion is voluntary and informed [~~unless the attending physician has informed the woman upon whom the abortion is to be performed~~] if and only if:

[~~(a) of the names and addresses of two licensed adoption agencies in the state of Utah and the services that can be performed by those agencies, and nonagency adoption may be legally arranged; and~~]

[~~(b) of the details of development of unborn children and abortion procedures, including any foreseeable complications, risks, and the nature of the post-operative recuperation period; and~~]

[~~(c) of any other factors he deems relevant to a voluntary and informed consent.~~]

(a) at least 24 hours prior to the abortion, the physician who is to perform the abortion, the referring physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, or physician's assistant shall orally inform the woman of:

(i) the nature of the proposed procedure or treatment and of the risks and alternatives to that procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(iii) the medical risks associated with carrying her child to term;

(b) the information required to be provided to the pregnant woman under Subsection (a) is also provided by the physician who is to perform the abortion, prior to performance of the abortion, unless the attending or referring physician was the individual providing the information under Subsection (a);

(c) at least 24 hours prior to the abortion the physician who is to perform the abortion, the referring physician, or, as specifically delegated by either of those physicians, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family thera-

pist, clinical social worker, or certified social worker has orally informed the pregnant woman that:

(i) the Department of Health publishes printed material that describes the unborn child and lists agencies that offer alternatives to abortion, and that she has a right to review that printed material, which will be provided to her free of charge if she chooses to review it;

(ii) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of that assistance is contained in the printed materials published by the Department of Health; and

(iii) the father of the unborn child is legally required to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted;

(d) a copy of the printed materials has been provided to the pregnant woman if she chooses to review those materials; and

(e) the pregnant woman has certified in writing, prior to the abortion, that the information required to be provided under Subsections (a), (b), (c), and (d) was provided.

(2) When a medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(3) Any physician who violates the provisions of this section is guilty of unprofessional conduct as defined in Section 58-12-36, and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with Sections 58-12-26 through 58-12-43, Medical Practice Act.

(4) A physician is not guilty of violating this section, for failure to furnish the information described in Subsection (1), if he can demonstrate by a preponderance of the evidence that he reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

(5) A physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent under Section 78-14-5.

Section 3. Section Amended.

Section 76-7-305.5, Utah Code Annotated 1953, as last amended by Chapter 42, Laws of Utah 1985, is amended to read:

76-7-305.5. Consent — Printed materials to be available to patient — Annual report of Department of Health.

(1) In order to insure that the consent to an abortion is truly informed consent, the Department of Health shall publish printed materials, and make those materials available at no cost to any person upon request. The material shall be easily comprehended and shall contain all of the following:

(a) [~~descriptions of the~~] geographically indexed materials designed to inform the woman of public and private services and agencies available to assist [~~a woman~~] her through pregnancy, at childbirth, and while the child is dependent[~~, including~~]. Those materials shall contain a description of available adoption services, including a comprehensive list of the names, addresses, and telephone numbers of public and private agencies that provide those services, and explanations of possible available financial aid. The information regarding adoption services shall include the fact that private adoption is legal, and that the law permits adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The department may, at its option, include printed materials that describe the availability of a toll-free 24-hour telephone number that may be called in order to obtain, orally, the list and description of services and agencies in the locality of the caller;

(b) descriptions of the [~~physical~~] probable anatomical and physiological characteristics of [~~a normal~~] the unborn child at two-week [~~intervals, beginning with the fourth week and ending with the twenty-fourth week of development,~~] gestational increments from fertilization to full term, accompanied by [~~scientifically verified photographs~~] pictures representing the development of an unborn child [~~during those stages of development~~] at those gestational increments. The descriptions shall include information about [~~physiological and anatomical characteristics,~~] brain and heart function[~~,~~] and the presence of external members and internal organs during the applicable stages of development. Any pictures used shall contain the dimensions of the fetus and shall be realistic and appropriate for that woman's stage of pregnancy. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about an unborn child at the various gestational ages; [~~and~~]

(c) objective descriptions of abortion procedures used in current medical practice at the various stages of growth of the unborn child, [~~including the surgical procedure and any reasonably foreseeable complications and risks to the mother,~~] the medical risks commonly associated with each procedure, including those related to subsequent childbearing[~~:~~], the possible detrimental psychological effects of abortion, and the medical risks associated with carrying a child to term;

(d) any relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (b);

(e) information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care;

(f) a statement conveying that it is unlawful for any person to coerce a woman to undergo an abortion;

(g) a statement conveying that any physician who performs an abortion without obtaining the woman's informed consent or without according her a private medical consultation may be liable to her for damages in a civil action at law; and

(h) information regarding the legal responsibility of the father to assist in child support, even in instances where he has agreed to pay for an abortion, including a description of the services available through the Office of Recovery Services within the Department of Human Services, to establish and collect that support.

(2) The material described in Subsection (1) shall be printed in a typeface large enough to be clearly legible.

[~~(2)~~] (3) Every facility in which abortions are performed shall immediately provide the informed consent materials described in Subsection (1) to any patient or potential patient, upon her request.

[~~(3)~~] (4) Prior to the performance of the abortion every facility in which abortions are performed shall notify each patient who seeks an abortion that the informed consent materials described in Subsection (1) are available. This subsection does not apply if the patient's attending or referring physician certifies in writing that [~~exceptional circumstances exist and that disclosure of the materials is likely to cause severe detriment to the patient's~~] he reasonably believes that provision of the materials to that patient would result in a severely adverse effect on her physical or mental health.

[~~(4)~~] (5) The Department of Health shall compile and report the following information annually, preserving physician and patient anonymity:

(a) the total amount of informed consent material described in Subsection (1) that was distributed;

(b) the number of women who obtained abortions in [~~the~~] this state without receiving [~~the informed consent~~] those materials;

(c) the number of statements signed by attending physicians certifying to [~~exceptional circumstances~~] his opinion regarding adverse effects on the patient under Subsection [~~(3)~~] (4); and

(d) any other information pertaining to protecting the informed consent of women seeking abortions.

CHAPTER 71
S. B. No. 79
Passed March 1, 1993
Approved March 12, 1993
Effective July 1, 1993

FAILURE TO RESPOND TO PEACE OFFICERS SIGNAL TO STOP

By Lyle W. Hillyard
Scott N. Howell

AN ACT RELATING TO MOTOR VEHICLES; AMENDING PROVISIONS REGARDING FAILURE TO RESPOND TO A PEACE OFFICERS' SIGNAL TO STOP; AMENDING CRIMINAL PENALTY AND FINE PROVISIONS; PROVIDING VEHICLE FORFEITURE PROVISIONS; REQUIRING POLICE PURSUIT POLICIES IN WRITING AND TRAINING; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-13.5, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1987
41-6-14, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1987
53A-16-101, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1988

ENACTS:
41-6-13.7, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 41-6-13.5, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1987, is amended to read:

41-6-13.5. Failure to respond to officer's signal to stop — Fleeing — Causing property damage or bodily injury — Suspension of drivers license — Forfeiture of vehicle — Penalties.

(1) An operator who, having received a visual or audible signal from a peace officer to bring his vehicle to a stop, operates his vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person, or who attempts to flee or elude a peace officer by vehicle or other means is guilty of a [~~class A misdemeanor~~] felony of the third degree. The court shall, as part of any sentence under this subsection, impose a fine of not less than $1,000.

(2) An operator who violates Subsection (1) and while so doing[~~: (a) travels in excess of 30 miles per hour above the posted speed limit; (b)~~] causes [~~damage to the property of another or~~] death or serious bodily injury to another[~~; or (c) leaves the state,~~] person, under circumstances not amounting to murder or aggravated murder, is guilty of a felony of the [~~third~~] second degree. The court shall, as part of any sentence under this subsection, impose a fine of not less than $5,000.

(3) (a) In addition to the penalty provided under this section or any other section, an operator who, having received a visual or audible signal from a peace officer to bring his vehicle to a stop, operates his vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person, or who attempts to flee or elude a peace officer by vehicle or other means, shall have his driver's license revoked pursuant to Section 41-2-127(1)(h) for a period of one year.

(b) The court shall collect the driver's license to be revoked and forward it to the Division of Drivers' License Services, along with a report of the conviction. If the court is unable to collect the driver's license, the court shall nevertheless forward the report to the division. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the driver's license but shall notify the division and the division shall notify the appropriate officials in the licensing state.

Section 2. Section Enacted.

Section 41-6-13.7, Utah Code Annotated 1953, is enacted to read:

41-6-13.7. Vehicle subject to forfeiture — Seizure — Procedure.

(1) Any conveyance, including vehicles, aircraft, water craft, or other vessel used in violation of Section 41-6-13.5 shall be subject to forfeiture and no property right exists in it, except that:

(a) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this chapter;

(b) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and

(c) any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance;

(2) Property subject to forfeiture under this section may be seized by any peace officer of this state upon notice and service of process issued by any court having jurisdiction over the property. However, seizure without notice and service of process may be made when:

(a) the seizure is incident to an arrest to search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(c) the peace officer has probable cause to believe that the property has been used in violation of the provisions of Section 41-6-13.5.

(3) In the event of seizure under Subsection (2), proceedings under Subsection (6) shall be instituted without unreasonable delay.

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this section, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When any property is forfeited under this section after a finding of the court that no person is entitled to recover the property, it shall be deposited in the custody of the Division of Surplus Property. The director of the Division of Surplus Property shall dispose of the property by public bidding. The net proceeds of such sale shall be paid to the Department of Public Safety Support Fund for use in training peace officers in pursuit driving and providing a public awareness program regarding police pursuits. Property forfeited under this section may not be applied by the court to costs or fines assessed against any defendant in the case.

(6) When any property is subject to forfeiture under this part, a determination for forfeiture to the state shall be made as follows:

(a) A complaint verified on oath or affirmation shall be prepared by the county attorney where the property was seized or is to be seized. The complaint shall be filed in the circuit or district court if the property is not real property and the value is less than $10,000. The complaint shall be filed in the district court if the value of property other than real property is $10,000 or more or the property is real property. If the complaint includes property under the jurisdiction of the circuit court and also property under the exclusive jurisdiction of the district court, the complaint shall be filed in the district court. The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the proceeding;

(ii) the date and place of seizure, if known; and

(iii) the allegations which constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to the sheriff for service, unless the property has previously been seized without a warrant under Subsection 41-6-13.7 (2).

(c) Notice of the seizure and intended forfeiture shall be filed with the court clerk and served together with a copy of the complaint, upon all persons known to the county attorney to have a claim in the property by one of the following methods:

(i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is considered complete even though the mail is refused or cannot be forwarded; and

(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) When property is seized under this chapter, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If the county attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing, all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.

(h) Proceedings of this section are independent of any other proceedings, whether civil or criminal, under this chapter or the laws of this state.

(i) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered to the custody of the Division of Finance. The division shall dispose of the property under Subsection (5).

(j) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the proper-

ty cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:

(i) first, proportionally among the legitimate claimants;

(ii) second, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale; and

(iii) third, to the Division of Finance for the General Fund.

(k) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.

(7) For purposes of this section, it shall be a rebuttable presumption that the owner of a vehicle was the operator of the vehicle at the time of the offense.

Section 3. Section Amended.

Section 41-6-14, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1987, is amended to read:

41-6-14. Emergency vehicles — Policy regarding vehicle pursuits — Applicability of traffic law to highway work vehicles — Exemptions.

(1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges under this section, subject to [~~Subsection~~] Subsections (2) through (4).

(2) The operator of an authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the maximum speed limits [~~if the operator does not endanger life or property~~]; or

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) Privileges granted under this section to the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply only when the operator of the vehicle sounds an audible signal under Section 41-6-146, or uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle.

[~~(a) The privileges under this section do not relieve the operator of an authorized emergency vehicle from the duty to operate the vehicle with regard for the safety of all persons, or protect the operator from the consequences of an arbitrary exercise of the privileges.~~]

(4) Privileges granted under this section to the operator of an authorized emergency vehicle involved in any vehicle pursuit apply only when:

(a) the operator of the vehicle sounds both an audible signal under Section 41-6-146 and uses a visual signal as defined under Section 41-6-132, which is visible from in front of the vehicle;

(b) the public agency employing the operator of the vehicle has, in effect, a written policy which describes the manner and circumstances in which any vehicle pursuit should be conducted and terminated;

(c) the operator of the vehicle has been trained in accordance with the written policy described in Subsection (4)(b); and

(d) the pursuit policy of the public agency is in conformance with standards established by the Department of Public Safety, Division of Peace Officer Standards and Training, which shall adopt minimum standards that shall be incorporated into all emergency pursuit policies adopted by public agencies authorized to operate emergency pursuit vehicles.

[~~(b)~~] (5) Except for Sections 41-6-13.5, 41-6-44, and 41-6-45, this chapter does not apply to persons, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway. However, the entire chapter applies to those persons and vehicles when traveling to or from the work.

Section 4. Section Amended.

Section 53A-16-101, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-16-101. Uniform School Fund — Sources enumerated.

The Uniform School Fund established by Article X, Sec. 5, of the Utah Constitution consists of money received in the state treasury from the following sources:

(1) interest on the State School Fund;

(2) escheats and forfeitures and proceeds from the sale or other disposition of property that may accrue to the state by escheat or forfeiture, except under Section 58-37-13, regarding controlled substances, and Section 41-6-13.7, regarding vehicles involved in police pursuits;

(3) unclaimed shares and proceeds from the sale or other disposition of those shares and unclaimed dividends of any corporation incorporated under Utah law;

(4) all revenues derived from renewable resources on school and state lands, other than those granted for specific purposes;

(5) the proceeds derived from the leasing or renting of school lands and other state lands, including

all forfeitures, penalties, and grazing and other fees received in connection with the leases and rentals;

(6) money received from leases or rentals of land acquired by the state through foreclosure of mortgages securing common school funds or through deeds from mortgagors or owners of those lands; and

(7) all other constitutional or legislative allocations to the fund, including revenues received under Article XIII, Sec. 3, of the Utah Constitution from taxes on income or intangible property.

Section 5. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 72
S. B. No. 83
Passed February 18, 1993
Approved March 12, 1993
Effective May 3, 1993

REPARATIONS FOR CRIME VICTIMS

By Lyle W. Hillyard

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; AMENDING DEFINITIONS; AMENDING MEMBERSHIP ON BOARD; CLARIFYING ELIGIBILITY AND INELIGIBILITY FOR REPARATIONS; PROVIDING FOR COMPENSABLE LOSSES AND SETTING $25,000 CEILING; PROVIDING GROUNDS FOR DENIAL OR REDUCTION OF REPARATION; CLARIFYING COLLATERAL SOURCES; PROVIDING FOR NOTIFICATION OF AN AWARD; ESTABLISHING METHOD OF PAYMENT; PROVIDING GROUNDS FOR EMERGENCY AWARD; CLARIFYING WHEN ATTORNEY FEES MAY BE PART OF AWARD; LIMITING CAUSES OF ACTION; AND MAKING CONFORMING CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-63-2, AS LAST AMENDED BY CHAPTERS 10 AND 84, LAWS OF UTAH 1991
63-63-3, AS LAST AMENDED BY CHAPTER 46, LAWS OF UTAH 1989
63-63-4, AS LAST AMENDED BY CHAPTER 46, LAWS OF UTAH 1989
63-63-6, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-63-8, AS LAST AMENDED BY CHAPTER 84, LAWS OF UTAH 1991
63-63-13, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986

ENACTS:
63-63-25, UTAH CODE ANNOTATED 1953
63-63-26, UTAH CODE ANNOTATED 1953
63-63-27, UTAH CODE ANNOTATED 1953
63-63-28, UTAH CODE ANNOTATED 1953
63-63-29, UTAH CODE ANNOTATED 1953
63-63-30, UTAH CODE ANNOTATED 1953
63-63-31, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
63-63-11, AS LAST AMENDED BY CHAPTERS 91 AND 93, LAWS OF UTAH 1990
63-63-14, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-15, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-16, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-17, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-18, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-19, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-20, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-21, AS LAST AMENDED BY CHAPTER 46, LAWS OF UTAH 1989
63-63-22, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-23, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-24, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986

REPEALS:
63-63-10, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986
63-63-12, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986

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

Section 1. Section Amended.

Section 63-63-2, Utah Code Annotated 1953, as last amended by Chapters 10 and 84, Laws of Utah 1991, is amended to read:

63-63-2. Definitions.

As used in this chapter:

[~~(1) "Allowable expense" means reasonable and necessary charges incurred for products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The expenses include:~~]

[~~(a) mental health counseling for victims of criminally injurious conduct subject to limitations prescribed by the reparations board;~~]

[~~(b) as a consequence of personal injury:~~]

[~~(i) inpatient and outpatient medical treatment and physical therapy;~~]

[~~(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed 66 2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute; and~~]

[~~(iii) care of minor children enabling a victim or his spouse, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;~~]

[~~(c) as a consequence of death:~~]

[~~(i) funeral and burial expenses;~~]

[~~(ii) loss of support to a dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66 2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute; and~~]

[~~(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury at a rate as determined under rules established by the board; and~~]

[~~(d) pecuniary loss does not include loss attributable to pain and suffering, except as otherwise provided in this chapter.~~]

(1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.

(2) "Board" means the Crime Victims' Reparations Board created under Section 63-63-4.

(3) "Claim" means:

(a) the right of a victim to recover reparations; and

(b) the formal action taken by a victim to apply for reparations pursuant to Sections 63-63-1 through 63-63-31.

[~~(3)~~] (4) "Claimant" means any of the following claiming reparations under this chapter:

(a) a victim;

(b) a dependent of a deceased victim;

(c) a representative other than a collateral source; or

(d) [~~an authorized~~] the person [~~acting~~] or representative who files a claim on behalf of [~~any of them~~] a victim.

[~~(4) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to him, from:~~]

[~~(a) the offender;~~]

[~~(b) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages considers them excess or secondary to benefits under this chapter;~~]

[~~(c) Social Security, Medicare, and Medicaid;~~]

[~~(d) state-required temporary nonoccupational disability insurance;~~]

[~~(e) workers' compensation;~~]

[~~(f) wage continuation programs of any employer;~~]

[~~(g) proceeds of a contract of insurance payable to the victim for the loss he sustained because of the criminally injurious conduct; or~~]

[~~(h) a contract providing prepaid hospital and other health care services, or benefits for disability.~~]

(5) "Child" means an unemancipated person who is under 18 years of age.

(6) "Collateral source" means the definition as provided in Subsection 63-63-16(4).

[~~(5)~~] (7) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.

[~~(6)~~] (8) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

(a) is or would be subject to prosecution in this state under Section 76-1-201 and is or would be punishable under the Criminal Code; or

(b) under Subsection [~~63-63-11(9)~~] 63-63-14(5) occurs to a resident of the state while he is outside the state, and is conduct that is or would be subject to criminal prosecution under the laws of the location where the conduct occurred.

[~~(7)~~] (9) (a) "Criminally injurious conduct" includes[~~, but is not limited to,~~] the following crimes:

(i) arson or aggravated arson;

(ii) assault or aggravated assault;

(iii) mayhem;

(iv) threats to do bodily harm;

(v) lewd acts;

(vi) a sexual offense against a child;

(vii) kidnapping or aggravated kidnapping;

(viii) aggravated murder or murder;

(ix) manslaughter;

(x) rape;

(xi) aggravated sexual abuse;

(xii) robbery or aggravated robbery;

(xiii) aggravated burglary; or

(xiv) any other crime involving violence against a person.

(b) "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when the conduct:

(i) causes personal injury or death with criminal intent; or

(ii) constitutes the offense of driving while under the influence of alcohol or any drug.

[~~(8)~~] (10) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after his death.

[~~(9)~~] (11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to his dependent, not including services the dependent would have received from the victim if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

[~~(10)~~] (12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for his benefit if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not

subtracted in calculating the dependent's economic loss.

[~~(11)~~] (13) "Director" means the director of the Reparations Office.

[~~(12)~~] (14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:

(a) convicted of a crime [~~or~~];

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

[~~(13)~~] (15) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

[~~(14)~~] (16) "Elderly victim" means a person 60 years of age or older who is a victim.

[~~(15) "Essential personal property" means personal property necessary and essential to the health or safety of the victim.~~]

[~~(16)~~] (17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Subsection 63-63-13(2).

[~~(17) "Intervenor" means any person who suffers physical injury or death as a direct result of his acting in good faith to:~~]

[~~(a) prevent the commission of a crime;~~]

[~~(b) lawfully apprehend a person reasonably suspected of having committed a crime; or~~]

[~~(c) aid the victim of a crime.~~]

(18) "Law enforcement officer" means a peace officer as defined in Section 77-1a-1.

(19) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

(20) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(21) "Misconduct" as provided in Subsection 63-63-15(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

[~~(18)~~] (22) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

[~~(19) "Personal injury" means any personal injury sustained as a result of criminally injurious conduct. In the case of a victim of criminally injurious conduct involving a sexual offense, "personal injury" also includes any harm which results in a need for medical treatment, or any psychological or psychiatric counseling, or both. When mental health counseling is necessary for a victim of a sexual offense, reparations awards shall be made for the counseling for the victim, as necessary, under Subsection 63-63-11 (11).~~]

(23) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.

(24) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether he is arrested, prosecuted, or convicted.

(25) "Offense" means a violation of the criminal code.

(26) "Perpetrator" means the person who actually participated in the criminally injurious conduct.

(27) "Personal property" means the definition as provided in Section 68-3-12.

[~~(20)~~] (28) "Reparations Office" means the office of the reparations staff for the purpose of carrying out this chapter.

[~~(21)~~] (29) "Reparations officer" means a person employed by the Reparations Office to investigate claims of victims and award reparations under this chapter, and includes the director when he is acting as a reparations officer.

[~~(22)~~] (30) "Reparations staff" means the director, the reparations officers, and any other staff employed to administer the Crime Victims' Reparations Act.

[~~(23)~~] (31) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of himself or his dependents if he had not been injured.

[~~(24)~~] (32) "Representative" means [~~one who represents or stands in the place of another person, including but not limited to, an agent, an assignee, an attorney, a~~] the victim, immediate family member, legal guardian, [~~a committee, a~~] attorney, conservator, [~~a partner, a receiver, an administrator, an~~] executor, or an heir of [another] a person[~~, or a parent of a minor~~] but does not include service providers.

[~~(25)~~] (33) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

(34) "Secondary victim" means a person who witnesses or is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(35) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63-63-27.

[~~(26)~~] (36) "Trust fund" means the Crime Victim Reparation Trust Fund under Title 63, Chapter 63a.

[~~(27)~~] (37) (a) "Victim" means a person who suffers personal physical or psychological injury[~~, including injury which may require mental health counseling, suffers death, or is a dependent of a person who suffers death, any of which is a result of: (i) criminally injurious conduct; (ii) acting as an intervenor; or (iii)~~] or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise [~~determined~~] provided by statute or rule.

[~~(28)~~] (38) "Work loss" means loss of income from work the injured victim would have performed if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work he was capable of performing but unreasonably failed to undertake.

Section 2. Section Amended.

Section 63-63-3, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1989, is amended to read:

63-63-3. Restitution — Reparations not to supplant restitution.

(1) [~~The Legislature does not intend that the~~] A reparations [~~program~~] award shall not supplant restitution as established under Section 76-3-201 or as established by any other provisions.

(2) [~~The Legislature desires that judges pursue~~] The court shall not consider a reparations award when determining the order of restitution [~~without taking into account the reparations program~~] nor when enforcing restitution.

Section 3. Section Amended.

Section 63-63-4, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1989, is amended to read:

63-63-4. Crime Victims' Reparations Board — Members.

(1) (a) A Crime Victims' Reparations Board is created, consisting of seven members appointed by the governor with the advice and consent of the Senate.

(b) The membership of the board shall consist of:

(i) a member of the bar of this state[~~,~~];

(ii) a victim of [~~violent crime,~~] criminally injurious conduct;

(iii) a licensed [~~member of the medical profession,~~] physician;

(iv) a representative of law enforcement[~~,~~];

(v) a mental health care provider[~~,~~]; and

(vi) two other private citizens.

(c) The governor may appoint a [~~chairman~~] chair of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the [~~chairman's~~] chair's term. The board may elect a [~~vice-chairman~~] vice-chair to serve in the absence of the [~~chairman~~] chair.

(d) The [~~chairman~~] chair of the board may hear appeals from administrative decisions[~~,~~] as provided in Section [~~63-63-15~~] 63-63-18.

(2) (a) The term of office of each member is six years.

(b) A member resigning from the board shall serve until his successor is appointed and qualified[~~, except that of the members first appointed two each shall be appointed to serve for a term of two, three, and four years~~]. A person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

(c) A member may be reappointed to one successive term.

(3) Members serve part time, without pay, but are entitled to a per diem reimbursement and actual and necessary expenses incurred in the performance of their duties as provided by [~~Section~~] Sections 63-1-14.5 and 63-1-15.

(4) The board shall meet at least once quarterly but may meet more frequently as necessary.

Section 4. Section Amended.

Section 63-63-6, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-63-6. Functions of board.

(1) The board shall:

(a) adopt a description of the organization and prescribe the general operation of the board;

(b) prescribe policy for the Reparations Office;

(c) adopt rules [~~according to the Utah Administrative Rule-making Act~~] to implement [~~this chapter and board policies, and establish procedure and practice requirements of the board and staff, which rules may include but are not limited to,~~] and administer Sections 63-63-1 through 63-63-31 pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;

(d) prescribe forms for applications for reparations;

(e) review all awards made by the reparations staff, although the board may not reverse or modify awards authorized by the reparations staff;

(f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;

(g) cooperate with the director and his staff in formulating standards for the uniform application of Section 63-63-11, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States; [~~and~~]

(h) advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime[~~.~~];

(i) oversee the program to assist victims of criminally injurious conduct and to allocate monies available in the Crime Victims' Reparations Trust Fund.

(2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, and other staff.

Section 5. Section Amended.

Section 63-63-8, Utah Code Annotated 1953, as last amended by Chapter 84, Laws of Utah 1991, is amended to read:

~~63-63-8~~. Reparations officers.

The reparations officers [~~have,~~] shall in addition to any assignments made by the director of the Reparations Office[~~, the following powers and duties~~]:

(1) [~~to~~] hear and determine all matters relating to claims for reparations[~~,~~] and reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;

(2) [~~to~~] obtain from prosecuting attorneys, law enforcement officers, and other criminal justice agencies, investigations and data to enable the reparations officer to determine whether and [~~the~~] to what extent [~~to which~~] a claimant qualifies for reparations;

(3) [~~to~~] hold hearings, administer oaths or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses, require the production of any books, papers, documents, or other evidence which may contribute to the reparations officer's ability to determine particular reparation awards;

(4) [~~to~~] determine who is a victim or dependent;

(5) [~~to~~] award reparations or other benefits determined to be due under this chapter and the rules of the board;

(6) [~~to~~] take notice of judicially recognized facts and general, technical, and scientific facts within their specialized knowledge;

(7) [~~to~~] advise and assist the board in developing policies recognizing the rights, needs, and interests of crime victims;

(8) [~~to~~] render periodic reports as requested by the board concerning:

(a) the officers' activities; and

(b) the manner in which the rights, needs, and interests of crime victims are being addressed by the state's criminal justice system;

(9) [~~to~~] establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships;

(10) [~~to~~] cooperate with the Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and

(11) [~~to~~] assist the director in publicizing the provisions of the Crime Victims' Reparations Act, including the procedures for obtaining reparation, [~~and assist the director~~] and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this chapter and the procedure for applying for reparation.

Section 6. Section Repealed and Reenacted.

Section 63-63-11, Utah Code Annotated 1953, as last amended by Chapters 91 and 93, Laws of Utah 1990, is repealed and reenacted to read:

63-63-11. Grounds for eligibility.

In order to be eligible for a reparations award under this chapter:

(1) The claimant shall be:

(a) a victim of criminally injurious conduct;

(b) a dependent of a deceased victim of criminally injurious conduct; or

(c) a representative acting on behalf of one of the above.

(2) The victim shall be either a resident of Utah or the criminally injurious conduct shall have occurred in Utah.

(3) The application shall be made in writing in a form that conforms substantially to that prescribed by the board.

(4) The claim shall be filed with the reparations staff within one year after the injury or death upon which the claim is based. An extension of time to file may be given to child victims and victims of incest not to exceed four years.

(5) The criminally injurious conduct shall be reported to a law enforcement officer, in his capacity as a law enforcement officer, within seven days after the occurrence. A reasonable extension of time may be given in circumstances in which the victim, because of injury or age, was unable to report the criminally injurious conduct within that time period.

(6) (a) The claimant or victim shall cooperate with the appropriate law enforcement agencies in their

efforts to apprehend or convict the perpetrator of the alleged offense.

(b) An award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim.

(7) The criminally injurious conduct shall have occurred after December 31, 1986.

Section 7. Section Amended.

Section 63-63-13, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is amended to read:

63-63-13. Ineligible persons — Fraudulent claims — Penalties.

(1) The following individuals shall not be eligible to receive an award of reparations:

(a) persons who do not meet all of the provisions set forth in Section 63-63-11;

(b) the offender;

(c) an accomplice of the offender;

(d) any person whose receipt of an award would unjustly benefit the offender, accomplice, or other person reasonably suspected of participating in the offense;

(e) the victim of a motor vehicle injury who was the operator of a motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws;

(f) any convicted offender serving a sentence of imprisonment for that conviction or residing in any other institution which provides for the maintenance of convicted persons; and

(g) residents of halfway houses or any other correctional facilities and all persons who are on probation or parole if the circumstances surrounding the offense of which they are victims constitute a violation of their parole or probation.

[~~(1)~~] (2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on that claim, is guilty of an offense, based on the following award amounts:

(a) for value under $200, a class B misdemeanor;

(b) for value greater than $200, but less than $500, a class A misdemeanor;

(c) for value greater than $500, but less than $1000, a third degree felony; and

(d) for value greater than $1000, a second degree felony.

[~~(2)~~] (3) A person who submits a claim described in Subsection [~~(1)~~] (2) but receives no award based on that claim is guilty of a class B misdemeanor.

[~~(3)~~] (4) The state attorney general may prosecute violations under this section or may make arrangements with county attorneys for the prosecution of violations under this section when the attorney general cannot conveniently prosecute.

[~~(4)~~] (5) The state may also bring a civil action [~~to garnish or attach property of the~~] against a claimant who receives reparation payments that are later found to be unjustified[~~,~~] and who does not return to the board the unjustified amount.

Section 8. Section Repealed and Reenacted.

Section 63-63-14, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-14. Compensable losses and amounts.

A reparations award under this chapter shall be made if:

(1) the reparations officer finds the claim satisfies the requirements for the award under the provisions of this chapter and the rules of the board;

(2) funds are available in the trust fund;

(3) the person for whom the award of reparations is to be paid is otherwise eligible under this act;

(4) the claim is for an allowable expense incurred by the victim, as follows:

(a) reasonable and necessary charges incurred for products, services, and accommodations;

(b) inpatient and outpatient medical treatment and physical therapy, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(c) mental health counseling which:

(i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and

(ii) qualifies within any further rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;

(e) care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;

(f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(g) loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the

state workers' compensation statute, whichever is less;

(h) personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(i) medical examinations as defined in Subsection 63-63-2(19).

(5) If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a reciprocal crime victims' compensation program, the Utah resident has the same rights under this chapter as if the injurious conduct occurred in this state.

(6) An award of reparations shall not exceed $25,000 in the aggregate unless the victim is entitled to proceeds in excess of that amount as provided in Subsection 76-3-201.2(2).

Section 9. Section Repealed and Reenacted.

Section 63-63-15, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-15. Reparations reduction.

(1) Reparations otherwise payable to a claimant shall be reduced or denied as follows:

(a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources, and the victim was not entitled to nor receiving monies prior to the criminally injurious conduct giving rise to the claim under this chapter; or

(b) the reparations officer considers the claim unreasonable because of the misconduct of the claimant or of a victim through whom he claims.

(2) When two or more dependents are entitled to an award as a result of a victim's death, the award shall be apportioned by the reparations officer among the dependents.

Section 10. Section Repealed and Reenacted.

Section 63-63-16, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-16. Collateral sources.

(1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:

(a) the offender;

(b) the insurance of the offender;

(c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;

(d) social security, Medicare, and Medicaid;

(e) state-required temporary nonoccupational disability insurance;

(f) workers' compensation;

(g) wage continuation programs of any employer;

(h) proceeds of a contract of insurance payable to the victim for the loss he sustained because of the criminally injurious conduct;

(i) a contract providing prepaid hospital and other health care services or benefits for disability; or

(j) veteran's benefits, including veteran's hospitalization benefits.

(2) (a) An order of restitution shall not be considered readily available as a collateral source.

(b) Receipt of an award of reparations under this chapter shall be considered an assignment of the victim's rights to restitution from the offender.

(3) The victim shall not discharge a claim against a person or entity without the state's written permission and shall fully cooperate with the state in pursuing its right of reimbursement, including providing the state with any evidence in his possession.

(4) The state's right of reimbursement applies regardless of whether the victim has been fully compensated for his losses.

(5) Notwithstanding the collateral source provisions in Subsections 63-63-15(1)(a) and 63-63-16(1), a victim of a sexual offense who requests testing of himself may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Section 11. Section Repealed and Reenacted.

Section 63-63-17, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-17. Notification of claimant — Suspension of proceedings.

(1) The Reparations Office shall immediately notify the claimant in writing of any decision and shall forward to the Division of Finance a certified copy of the decision and a warrant request for the amount of the claim. The Division of Finance shall pay the claimant the amount submitted to the division, out of the appropriations from the Crime Victims' Reparations Trust Fund. If funds in the trust fund are temporarily depleted, claimants entitled to receive awards shall be placed on a waiting list and shall receive their awards as funds are available in the order in which their claims were awarded.

(2) The reparations officer may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent.

Section 12. Section Repealed and Reenacted.

Section 63-63-18, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-18. Contested claim — Appeal.

Procedures for contested determinations by a reparations officer shall be in rule adopted pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

Section 13. Section Repealed and Reenacted.

Section 63-63-19, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-19. Waiver of privilege.

(1) A victim filing a claim under the provisions of this chapter shall be considered to have waived any privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the victim except for the attorney-client privilege. The waiver shall apply only to reparations officers, the director of reparations, the board, and legal counsel.

(2) The claimant may be required to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

(3) The reparations officer hearing a claim or an appeal from a claim shall make available to the claimant a copy of the report. If the victim is deceased, the director or his appointee, on request, shall furnish the claimant a copy of the report unless dissemination of that copy is prohibited by law.

Section 14. Section Repealed and Reenacted.

Section 63-63-20, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-20. Additional testing.

(1) If the mental, physical, or emotional condition of a victim is material to a claim, the reparations officer, director, or chair of the board who hears the claim or the appeal may order the claimant to submit to a mental or physical examination by a physician or psychologist and may recommend to the court to order an autopsy of a deceased victim.

(2) Any order for additional examination shall be for good cause shown and shall provide notice to the person to be examined and his representative.

(3) All reports from additional examinations shall set out findings, including results of all tests made, diagnoses, prognoses, other conclusions, and reports of earlier examinations of the same conditions.

(4) A copy of the report shall be made available to the victim or the representative of the victim unless dissemination of that copy is prohibited by law.

Section 15. Section Repealed and Reenacted.

Section 63-63-21, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1989, is repealed and reenacted to read:

63-63-21. Failure to comply.

If a person refuses to comply with an order under this chapter or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the director or reparations officer may make any appropriate determination including denial of the claim.

Section 16. Section Repealed and Reenacted.

Section 63-63-22, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-22. Assignment of recovery — Reimbursement.

(1) By accepting an award of reparations, the victim automatically assigns to the state all claims against any third party to the lesser of:

(a) the amount paid by the state; or

(b) the amount recovered from the third party.

(2) The state reserves the right to make a claim for reimbursement on behalf of the victim and the victim shall not impair the state's claim or the state's right of reimbursement.

Section 17. Section Repealed and Reenacted.

Section 63-63-23, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-23. Judgment — Specify economic loss.

In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards to noneconomic detriment, punitive damages, and economic loss.

Section 18. Section Repealed and Reenacted.

Section 63-63-24, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is repealed and reenacted to read:

63-63-24. Award — Payment methods — Claims against the award.

(1) The reparations officer may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award of allowable expense that would accrue after an initial award is made may not be paid in a lump sum. Except as provided in Subsection (2), the part of an award that may not be paid in a lump sum shall be paid in installments.

(2) At the request of the claimant, the reparations officer may convert future economic loss installment payments, other than allowable expense, to a lump sum payment, discounted to present value, but only upon a finding by the officer that the award in a lump sum will promote the interests of the claimant.

(3) An award for future economic loss payable in installments may be made only for a period for which the reparations officer can reasonably determine future economic loss. The reparations officer

may reconsider and modify an award for future economic loss payable in installments, upon his finding that a material and substantial change of circumstances has occurred.

(4) An award is not subject to execution, attachment, or garnishment, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that he provided products, services, or accommodations, the costs of which are included in the award.

(5) An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:

(a) an assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support;

(b) an assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee; or

(c) an assignment to repay a loan obtained to pay for the obligations or expenses described in Subsection (5) (a) or (b).

Section 19. Section Enacted.

Section 63-63-25, Utah Code Annotated 1953, is enacted to read:

63-63-25. Emergency award.

If the reparations officer determines that the claimant will suffer financial hardship unless an emergency award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award. The board may limit emergency awards to any amount it considers necessary.

Section 20. Section Enacted.

Section 63-63-26, Utah Code Annotated 1953, is enacted to read:

63-63-26. Review of award decision.

The reparations officer shall review at least annually every award being paid in installments. An order on review of an award does not require refund of amounts previously paid unless the award was obtained by fraud or a material mistake of fact.

Section 21. Section Enacted.

Section 63-63-27, Utah Code Annotated 1953, is enacted to read:

63-63-27. Attorney fees.

(1) The claims procedures shall be sufficiently simple that the assistance of an attorney is unnecessary, and no attorney fees shall be paid for the assistance of an attorney or any other representative in filing the claim or providing information to the reparations officer.

(2) Attorney fees may be granted in the following circumstances and shall be paid out of the reparations award not to exceed 15% of the amount of the reparations award:

(a) when an award has been denied and, after a hearing, the decision to deny is overturned; or

(b) when minor dependents of a deceased victim require assistance in establishing a trust or determining a guardian.

(3) An attorney or any other person providing assistance in a reparations claim, who contracts for or receives sums not allowed under this chapter, is guilty of a class B misdemeanor. This provision shall not extend to attorneys who assist the victim in filing a civil action against the perpetrator.

Section 22. Section Enacted.

Section 63-63-28, Utah Code Annotated 1953, is enacted to read:

63-63-28. No cause of action for failure to give or receive notice.

A cause of action based on a failure to give or receive the notice required by this chapter does not accrue to any person against the state or any of its agencies or local subdivisions, or any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees. The failure does not affect or alter any time limitation or other requirement in this chapter for the filing or payment of a claim.

Section 23. Section Enacted.

Section 63-63-29, Utah Code Annotated 1953, is enacted to read:

63-63-29. No cause of action for failure to grant an award.

Failure to grant an award does not create a separate cause of action against Crime Victims' Reparations, the state, nor any of its subdivisions. Review of the denial of an award shall be limited to the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

Section 24. Section Enacted.

Section 63-63-30, Utah Code Annotated 1953, is enacted to read:

63-63-30. No criminal defense action for failure to fully comply.

Failure to comply fully with the provisions of this chapter shall not give rise to a defense in a criminal action in which the offender named in the reparations claim is the defendant.

Section 25. Section Enacted.

Section 63-63-31, Utah Code Annotated 1953, is enacted to read:

63-63-31. Purpose — Nonentitlement program.

(1) Crime Victims' Reparations is a program with the purpose to assist victims of criminally injurious conduct. Reparations to a victim is limited to the

monies available in the Crime Victims' Reparations Trust Fund.

(2) This program is not an entitlement program. Awards may be limited or denied as determined appropriate by the board to insure the viability of the fund.

Section 26. Repealer.

Section 63-63-10, Reparations award justification and funds, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986; and

Section 63-63-12, Notification of claimant, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, are repealed.

CHAPTER 73
S. B. No. 92
Passed March 1, 1993
Approved March 12, 1993
Effective July 1, 1993

SPECIAL LICENSE PLATES - WILDLIFE RESOURCES

By Scott N. Howell
Robert C. Steiner
Millie M. Peterson
Winn L. Richards
Joseph L. Hull
Blaze D. Wharton
Mike Dmitrich
Wilford R. Black, Jr.

AN ACT RELATING TO MOTOR VEHICLES; AUTHORIZING WILDLIFE LICENSE PLATES; ESTABLISHING REQUIREMENTS FOR OBTAINING WILDLIFE LICENSE PLATES; SETTING FEES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-408, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 30, 152, 174, AND 218, LAWS OF UTAH 1992
41-1A-1216, AS ENACTED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 174, 218, AND 250, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-1a-408, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 30, 152, 174, and 218, Laws of Utah 1992, is amended to read:

41-1a-408. Special group plates — Design — Application — Issuance.

(1) As used in this section:

(a) "Collegiate license plates" means the special group license plates issued under this section to a contributor to an institution after payment of the appropriate fees.

(b) (i) "Contributor" means a person who has donated or in whose name at least $25 has been donated to:

(A) a scholastic scholarship fund of a single institution; or

(B) the Division of Wildlife Resources for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat.

(ii) The donation must be made in the 12 months prior to registration [~~and who has received~~ a] or renewal of registration as shown by the completed contribution verification form.

(c) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(d) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(e) "Wildlife license plates" means the special group license plates issued under this section to a contributor to the Division of Wildlife Resources after payment of the appropriate fees.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (b).

(b) Each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) [~~(i)~~] The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

[~~(ii)~~] (b) Collegiate and wildlife license plates may not be redesigned under this section more frequently than every five years.

[~~(b) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.~~]

(4) Subject to [~~Subsection (10)~~] Subsections (9) and (11), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a handicapped person or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) a contributor to the Division of Wildlife Resources;

[~~(i)~~] (j) licensing a special interest vehicle;

[~~(j)~~] (k) licensing a vintage vehicle;

[~~(k)~~] (l) a licensed amateur radio operator; or

[~~(l)~~] (m) licensing a farm vehicle.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection [~~(12)~~] (11), the division shall issue a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying disabled person; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a handicapped special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a handicapped special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form to the division at the time of application.

[~~(8)~~] (b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

[~~(a)~~] (i) the name of the contributor;

[~~(b)~~] (ii) the institution to which a donation was made;

[~~(c)~~] (iii) the date of the donation; and

[~~(d)~~] (iv) an attestation that the donation was for a scholastic scholarship.

[~~(9)~~] (c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(8) (a) An applicant for original or renewal wildlife license plates must be a contributor to the Division of Wildlife Resources and present the original contributor verification form to the division at the time of application.

(b) The Division of Wildlife Resources shall issue to a contributor a verification form designed by the commission containing:

(i) the name of the contributor;

(ii) the date of the donation; and

(iii) an attestation that the donation was for preservation of big game habitat, trout streams, or both.

(c) After an applicant has been issued wildlife license plates or renewal decals, the commission shall charge the Division of Wildlife Resources a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the wildlife license plates.

[~~(10)~~] (9) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 50 applications with the fees required under Section 41-1a-1216.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

[~~(11)~~] (10) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

[~~(12)~~] (11) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

[~~(ii)~~] (iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and one year for a removable windshield placard; and

(C) the seal or other identifying mark of the division[~~; and~~].

[~~(iii) establish the maximum number of numerals or characters for special group license plates.~~]

(b) The qualifying criteria under Subsection (a) for a handicapped special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a disabled person be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

[~~(13) All existing temporary removable windshield placards and removable windshield placards shall be returned to the division by January 1, 1993, to implement the provisions of Subsection (12)(a)(ii).~~]

Section 2. Section Amended.

Section 41-1a-1216, Utah Code Annotated 1953, as enacted by Chapter 1 and last amended by Chapters 174, 218, and 250, Laws of Utah 1992, is amended to read:

41-1a-1216. Fees for special group license plates.

(1) (a) Except as provided in Subsections (c), (d), and (e), an applicant for special group license plates shall pay:

(i) the registration fee under Section 41-1a-1206; and

(ii) a $50 application fee for the special group license plates.

(b) Except as provided in Subsections (c), (d), and (e), to renew special group license plates, an applicant shall pay:

(i) the registration renewal fee under Section 41-1a-1206; and

(ii) a $10 annual renewal fee for special group license plates.

(c) In lieu of the $50 application fee and $10 renewal fee for special group license plates, a person who qualifies for a licensed amateur radio operator special group license plate shall only pay a $5 fee for an original set of license plates.

(d) Applicants for legislative, United States Congressional, handicapped, collegiate, wildlife, National Guard, Purple Heart, Prisoner of War, survivor of the Japanese attack on Pearl Harbor, and farm vehicle special group license plates are exempt from paying an additional application or renewal fee.

(e) (i) In lieu of the registration and registration renewal fees under Section 41-1a-1206, the initial registration fee for a vintage vehicle is $10.

(ii) Applicants for vintage vehicle special group license plates shall pay the application fee for a special group license plate, but are exempt from paying additional renewal fees.

(iii) No annual renewal of registration is required; however, vintage vehicle special group license plates shall be renewed every five years at no additional cost.

(2) (a) In addition to the registration and special group license plate application fees required under Subsection (1), an applicant for personalized special group license plates shall pay $50.

(b) In addition to the registration and special group license plate renewal fees required under Subsection (1), the renewal fee for personalized special group license plates is $10.

(3) The fees collected by the commission under this section for registration and special group license plates, less the actual cost incurred by the commission in purchasing decals for special group license plates, shall be deposited in the Transportation Fund.

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 74
S. B. No. 94
Passed March 2, 1993
Approved March 12, 1993
Effective May 3, 1993

HIGHER EDUCATION LEGAL COUNSEL

By Lyle W. Hillyard
Scott N. Howell
Ronald J. Ockey

AN ACT RELATING TO HIGHER EDUCATION; PROVIDING PRESIDENTS OF INSTITUTIONS OF HIGHER EDUCATION WITH THE AUTHORITY TO APPOINT LEGAL COUNSEL, SUBJECT TO POLICY ESTABLISHED BY THE STATE BOARD OF REGENTS AND APPROVAL BY THE BOARD AND THE INSTITUTION'S BOARD OF TRUSTEES; AND PROVIDING FOR AN ANNUAL REPORT ON THE ACTIVITIES OF APPOINTED LEGAL COUNSEL.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53B-2-106, AS LAST AMENDED BY CHAPTER 58, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 53B-2-106, Utah Code Annotated 1953, as last amended by Chapter 58, Laws of Utah 1991, is amended to read:

53B-2-106. Duties and responsibilities of the president of each institution — Approval by board of trustees.

(1) The president of each institution may exercise grants of power and authority as delegated by the board, as well as the necessary and proper exercise of powers and authority not specifically denied to the institution, its administration, faculty, or students by the board or by law, to assure the effective and efficient administration and operation of the institution consistent with the statewide master plan for higher education.

(2) Except as provided by the board, the president of each institution, with the approval of the institution's board of trustees may:

(a) [~~appoints~~] (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members, and other professional and support personnel, [~~prescribes~~] prescribe their duties, and [~~determines~~] determine their salaries; and

(ii) subject to the authority of, policy established by, and the approval of the board of regents, and recognizing the status of the institutions within the state system of higher education as bodies politic and corporate, appoint attorneys to provide legal advice to the institution's administration and to coordinate legal affairs within the institution. The board of regents shall coordinate activities of attorneys at the institutions of higher education. The institutions shall provide an annual report to the board of regents on the activities of appointed attorneys. These appointed attorneys may not conduct litigation, settle claims covered by the State Risk Management Fund, or issue formal legal opinions but shall, in all respects, cooperate with the Office of the Attorney General in providing legal representation to the institution;

(b) [~~may~~] provide for the constitution, government, and organization of the faculty and administration, and enact implementing rules, including the establishment of a prescribed system of tenure;

(c) [~~may~~] authorize the faculty to determine the general initiation and direction of instruction and of the examination, admission, and classification of students. In recognition of the diverse nature and traditions of the various institutions governed by the board, the systems of faculty government need not be identical but should be designed to further faculty identification with and involvement in the institution's pursuit of achievement and excellence and in fulfillment of the institution's role as established in the statewide master plan for higher education; and

(d) [~~may~~] enact rules for administration and operation of the institution which are consistent with the prescribed role established by the board, rules enacted by the board, or the laws of the state. The rules may provide for administrative, faculty, student, and joint committees with jurisdiction over specified institutional matters, for student government and student affairs organization, for the establishment of institutional standards in furtherance of the ideals of higher education fostered and subscribed to by the institution, its administration, faculty, and students, and for the holding of classes on legal holidays, other than Sunday.

(3) Compensation costs and related office expenses for appointed attorneys shall be funded within existing budgets.

[~~(3)~~] (4) The State Board of Regents shall establish guidelines relating to the roles and relationships between institutional presidents and boards of trustees, including those matters which must be approved by a board of trustees before implementation by the president.

CHAPTER 75
S. B. No. 101
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

EXPLOSIVE, CHEMICAL, OR INCENDIARY DEVICES AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING PROVISIONS ON EXPLOSIVES; PROVIDING DEFINITIONS; PROVIDING PENALTIES FOR POSSESSION, USE, OR REMOVAL OF EXPLOSIVES AND COMPONENTS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-10-307, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

REPEALS AND REENACTS:
76-10-306, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-308, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

REPEALS:
76-10-309, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

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

Section 1. Section Repealed and Reenacted.

Section 76-10-306, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is repealed and reenacted to read:

76-10-306. Definitions — Persons exempted — Penalties for possession, use, or removal of explosives, chemical, or incendiary devices and possession of components.

(1) As used in this section:

(a) "Explosive, chemical, or incendiary device" means:

(i) dynamite and all other forms of high explosives, including water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, ammonium nitrate, fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord, detcord, or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, nitroglycerin and nitroglycerin mixtures, or any other chemical mixture intended to explode with fire or force;

(ii) any explosive bomb, grenade, missile, or similar device; and

(iii) any incendiary bomb, grenade, fire bomb, chemical bomb, or similar device, including any device, except kerosene lamps, if criminal intent has not been established, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting the flammable liquid or compound or any breakable container which consists of, or includes a chemical mixture that explodes with fire or force and can be carried, thrown, or placed.

(b) "Explosive, chemical, or incendiary device" shall not include rifle, pistol, or shotgun ammunition.

(c) "Explosive, chemical, or incendiary parts" means any substances or materials or combinations which have been prepared or altered for use in the creation of an explosive, chemical, or incendiary device. These substances or materials include:

(i) timing device, clock, or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(ii) pipe, end caps, or metal tubing which has been prepared for a pipe bomb; and

(iii) mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any explosive, chemical, or incendiary device.

(d) "Explosive, chemical, or incendiary parts" shall not include rifle, pistol, or shotgun ammunition, or any signaling device customarily used in operation of railroad equipment.

(2) The provisions in Subsections (3) and (6) shall not apply to:

(a) any public safety officer while acting in his official capacity transporting or otherwise handling explosives, chemical, or incendiary devices;

(b) any member of the armed forces of the United States or Utah National Guard while acting in his official capacity;

(c) any person possessing a valid permit issued under the provisions of Uniform Fire Code, Article 77, or any employee of such permittee acting within the scope of his employment;

(d) any person possessing a valid license as an importer, wholesaler, or display operator under the provisions of the Utah Fireworks Act, Sections 11-3-3.2 and 11-3-3.5; and

(e) any person or entity possessing or controlling an explosive, chemical, or incendiary device as part of its lawful business operations.

(3) Any person who knowingly, intentionally, or recklessly possesses or controls an explosive, chemical, or incendiary device is guilty of a felony of the second degree.

(4) Any person who knowingly, intentionally, or recklessly:

(a) uses or causes to be used an explosive, chemical, or incendiary device in the commission of or an attempt to commit a felony; or

(b) injures another or attempts to injure another in his person or property through the use of an explosive, chemical, or incendiary device, is guilty of a felony of the first degree.

(5) Any person who knowingly, intentionally, or recklessly removes or causes to be removed or carries away any explosive, chemical, or incendiary device from the premises where said explosive, chemical, or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is guilty of a felony of the second degree.

(6) Any person who knowingly, intentionally, or recklessly possesses any explosive, chemical, or incendiary parts is guilty of a felony of the third degree.

Section 2. Section Amended.

Section 76-10-307, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-307. Delivery to common carrier, mailing, or placement on premises.

Every person who delivers or causes to be delivered to any express or railway company or other common carrier, or to any person, any [~~infernal machine, knowing it to be such,~~] explosive, chemical, or incendiary device, knowing it to be the device, without informing the common carrier or person of [~~the~~] its nature [~~thereof~~], [~~or~~] sends it through the mail, or throws or places it on or about the premises or property of another[~~,~~] or in any place where another may be injured thereby in his person or property, is guilty of a felony of the second degree.

Section 3. Section Repealed and Reenacted.

Section 76-10-308, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is repealed and reenacted to read:

76-10-308. Explosive, chemical, or incendiary device — Venue of prosecution for shipping.

Any person who knowingly, intentionally, or recklessly delivers any explosive, chemical, or incendiary device to any person for transmission without the consent or direction of the lawful possessor may be prosecuted in the county in which he delivers it or in the county to which it is transmitted.

Section 4. Repealer.

Section 76-10-309, Infernal machine — Venue of prosecution for shipping, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is repealed.

CHAPTER 76
S. B. No. 126
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

LIMITED LIABILITY FOR JUNIOR LIVESTOCK EVENTS

By Eldon A. Money

AN ACT RELATING TO THE JUDICIAL CODE; LIMITING THE LIABILITY OF JUNIOR LIVESTOCK SHOW SPONSORS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
78-27C-101, UTAH CODE ANNOTATED 1953
78-27C-102, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 78-27c-101, Utah Code Annotated 1953, is enacted to read:

78-27c-101. Definitions.

(1) "Junior Livestock Show" means livestock shows, fairs, competitions, performances, races, or sales, in which persons under the age of 21 participate.

(2) "Junior Livestock Show Sponsor" means an individual, group, governmental entity, club, partnership, or corporation who donates money, goods, services, livestock, or facilities for a Junior Livestock Show.

(3) "Livestock" means cattle, sheep, pigs, and horses.

Section 2. Section Enacted.

Section 78-27c-102, Utah Code Annotated 1953, is enacted to read:

78-27c-102. Junior Livestock Show liability limitation.

A junior livestock show sponsor is not liable for an injury to or the death of a participant engaged in a junior livestock show activity unless the sponsor:

(1) (a) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(b) that act or omission causes the injury or death; or

(2) intentionally injures, kills, or causes the injury or death of the participant.

CHAPTER 77
S. B. No. 127
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

SENTENCING COMMISSION

By Craig A. Peterson

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; CREATING THE SENTENCING COMMISSION; PROVIDING FOR APPOINTMENT AND QUALIFICATIONS OF MEMBERS; PROVIDING FOR FILLING VACANCIES; STATING THE PURPOSE OF THE COMMISSION; PROVIDING FOR COMPENSATION OF MEMBERS AND REPORTING; SETTING OUT TERMS OF MEMBERS AND REAPPOINTMENT; PROVIDING FOR COMMISSION AUTHORITY TO EMPLOY STAFF AND PUBLISH REPORTS; AND PROVIDING SUNSET DATE AND EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
63-89-1, UTAH CODE ANNOTATED 1953
63-89-2, UTAH CODE ANNOTATED 1953
63-89-3, UTAH CODE ANNOTATED 1953
63-89-4, UTAH CODE ANNOTATED 1953
63-89-5, UTAH CODE ANNOTATED 1953
63-89-6, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 63-89-1, Utah Code Annotated 1953, is enacted to read:

63-89-1. Creation — Members — Appointment — Qualifications.

(1) There is created a state commission to be known as the Sentencing Commission composed of 19 members. The commission shall develop by-laws and rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and elect its officers.

(2) The commission's members shall be:

(a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;

(b) two members of the Senate, appointed by the president of the Senate and not of the same political party;

(c) the executive director of the Department of Corrections or a designee appointed by the executive director;

(d) the executive director of the Commission on Criminal and Juvenile Justice or a designee appointed by the executive director;

(e) the chair of the Board of Pardons or a designee appointed by the chair;

(f) two trial judges and an appellate judge appointed by the chair of the Judicial Council;

(g) an attorney in private practice who is a member of the Utah State Bar and experienced in criminal defense appointed by the Utah Bar Commission;

(h) the director of Salt Lake Legal Defenders or a designee appointed by the director;

(i) the attorney general or a designee appointed by the attorney general;

(j) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;

(k) a representative of the Utah Sheriffs Association appointed by the governor;

(l) a chief of police appointed by the governor;

(m) a licensed professional appointed by the governor who assists in the rehabilitation of offenders;

(n) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population; and

(o) one member from the public at large appointed by the governor.

Section 2. Section Enacted.

Section 63-89-2, Utah Code Annotated 1953, is enacted to read:

63-89-2. Terms of members — Vacancies — Reappointment.

(1) The commission's members who are appointed shall serve for six-year terms or until their vacancy is filled. Appointed members shall draw lots for two-, four-, and six-year terms to establish staggered replacement as provided in Subsections (2) through (4).

(2) Any member whose service on the commission is not mandated because of his office under Subsection 63-89-1(2) shall serve initially from the date of his appointment until June 30, 1995. After July 1, 1995, members shall be appointed as provided in Section 63-89-1, except that those appointed shall draw by lot for terms of office of two, four, and six years each so that the terms of office expire every two years on June 30th.

(3) Successors shall be appointed for terms of six years each, except that when a vacancy occurs in the membership of the commission for any reason, the replacement shall be appointed for the unexpired term.

(4) All members of the commission, including those appointed before July 1, 1995, shall be eligible for reappointment one time.

Section 3. Section Enacted.

Section 63-89-3, Utah Code Annotated 1953, is enacted to read:

63-89-3. Vacancies.

If a commission member no longer holds a qualifying position, resigns, or is unable to serve, the vacancy shall be filled by the appointing authority.

Section 4. Section Enacted.

Section 63-89-4, Utah Code Annotated 1953, is enacted to read:

63-89-4. Purpose — Duties.

The purpose of the commission shall be to develop and propose recommendations to the Legislature, the governor, and the Judicial Council about adult offenders to:

(1) respond to public comment;

(2) relate sentencing practices and correctional resources;

(3) increase equity in criminal sentencing;

(4) better define responsibility in criminal sentencing; and

(5) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons.

Section 5. Section Enacted.

Section 63-89-5, Utah Code Annotated 1953, is enacted to read:

63-89-5. Compensation of members — Reports to the Legislature, the courts, and to the governor.

(1) The members of the commission shall receive a per diem for their services and necessary travel and subsistence expenses as provided in Sections 63-1-14.5 and 63-1-15.

(2) The commission shall submit to the Legislature, the courts, and to the governor at least 60 days prior to the annual general session of the Legislature its reports and recommendations for sentencing guidelines and amendments. It is intended that the commission utilize existing data and resources from state criminal justice agencies. The commission is authorized to employ professional assistance and other staff members as it considers necessary or desirable.

(3) The commission shall have autonomy to be responsive to all three branches of government, but be part of the Commission on Criminal and Juvenile Justice for coordination of the guidelines, budget, and administrative support.

Section 6. Section Enacted.

Section 63-89-6, Utah Code Annotated 1953, is enacted to read:

63-89-6. Publication of reports.

The commission shall also be authorized to prepare, publish, and distribute from time to time reports of its studies, recommendations, and statements.

Section 6.1. Sunset Date.

This act is repealed on January 1, 2002.

Section 7. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 78
S. B. No. 128
Passed March 2, 1993
Approved March 12, 1993
Effective March 12, 1993

COMMUNITY AND ECONOMIC DEVELOPMENT TECHNICAL AMENDMENTS

By Leonard M. Blackham

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; MAKING TECHNICAL CORRECTIONS TO THE COMMUNITY AND ECONOMIC DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-2-706, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1106, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
9-3-202, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-3-308, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1992
9-3-311, AS ENACTED BY CHAPTER 182, LAWS OF UTAH 1992
9-4-307, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-5-208, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-6-302, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-403, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-503, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-2-706, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-706. Exemption from certain statutes.

The corporation is exempt from:

[~~(1) Title 51, Chapter 7, State Money Management Act of 1974;~~]

[~~(2)~~] (1) Title 51, Chapter 5, Funds Consolidation Act;

(2) Title 51, Chapter 7, State Money Management Act of 1974;

(3) Title 63, Chapter 1, Utah Administrative Services Act; and

(4) Title 63, Chapter 38, Budgetary Procedures Act.

Section 2. Section Amended.

Section 9-2-1106, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 53, Laws of Utah 1992, is amended to read:

9-2-1106. Duties of Job Training Coordinating Council.

The council shall:

(1) develop and recommend to the governor an employment and training coordination and special services plan;

(2) recommend to the governor substate service delivery areas, plan resource allocations not subject to Section 202 (a) of the Job Training Partnership Act, provide management guidance and review for employment and training programs in the state, develop appropriate linkages with other programs, coordinate activities with private industry councils, and recommend variations in performance standards;

(3) advise the governor and local entities on job training plans and certify to the governor the consistency of these plans with criteria under the governor's coordination and special services plan for coordination of activities under the Job Training Partnership Act with other federal, state, and local employment and training-related programs;

(4) review the operation of and evaluate the results of programs conducted in each service delivery area, and the availability, responsiveness, and adequacy of state services, and make recommendations to the governor, appropriate chief elected officials, private industry councils, service providers, the Legislature, and the general public on ways to improve the effectiveness of those programs or services;

(5) review and comment on the state employment service plan developed for the Utah Department of Employment Security;

(6) make an annual report of accomplishments to the governor related to employment and training programs coordinated by the council, and issue any other studies, reports, or documents the council considers advisable to assist service delivery areas in carrying out the purposes of the Job Training Partnership Act;

(7) (a) coordinate efforts to identify the employment and training, and applied technology education needs, and assess the extent to which employment and training, applied technology education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting those needs; and

[~~(b) comment at least once annually on the reports required by Section 105(d)(3) of the Vocational Education Act of 1963;~~]

[~~(c)~~] (b) review and advise on the State Job Opportunities and Basic Skills Training Program, Family Support Act, plan developed for the Department of Human Services;

(8) review plans of all state agencies providing employment and training and related services, and provide comments and recommendations to the governor, the Legislature, the state agencies, the general public, and the appropriate federal agencies on the relevancy and effectiveness of employment and training and related service delivery systems in the state;

(9) conduct public hearings on the operation of job training programs; and

(10) perform other duties and functions as may be required by the Job Training Partnership Act as it is amended, or by other federal laws.

Section 3. Section Amended.

Section 9-3-202, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-3-202. Members — Meetings — Expenses.

(1) The board shall consist of seven members appointed by the governor to four-year terms of office with the advice and consent of the Senate. The appointment shall be for four-year overlapping terms.

(2) The members may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

(3) Not more than four members of the board may be of the same political party.

(4) The members shall be representative of all areas of the state with not more than two members being appointed from each judicial district.

(5) Any vacancy that occurs on the board shall be filled for the unexpired term of the vacated member by appointment of the governor and shall be from the same judicial district as the member whose office was vacated.

(6) Four members of the board constitutes a quorum for conducting board business and exercising board powers.

(7) The governor shall select one of the board members as chairman for a two-year term.

(8) Each member of the board shall receive a per diem and all actual and necessary expenses incurred in carrying out [~~their~~] official board duties, as established by the Division of Finance.

Section 4. Section Amended.

Section 9-3-308, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1992, is amended to read:

9-3-308. Relation to certain acts.

(1) The authority is exempt from:

(a) [~~Title 63, Chapter 38, Budgetary Procedures Act~~] Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 63, Chapter 1, Utah Administrative Services Act;

(c) [~~Title 51, Chapter 5, Funds Consolidation Act~~] Title 63, Chapter 38, Budgetary Procedures Act;

(d) Title 63, Chapter 56, Utah Procurement Code; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority shall be subject to audit by the state auditor pursuant to Title 67, Chapter 3, and by the legislative auditor general pursuant to Section 36-12-5.

Section 5. Section Amended.

Section 9-3-311, Utah Code Annotated 1953, as enacted by Chapter 182, Laws of Utah 1992, is amended to read:

9-3-311. Sales tax exemption.

The authority and its operators [~~is~~] are exempt from sales and use tax imposed under Title 59, Chapter 12.

Section 6. Section Amended.

Section 9-4-307, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-307. Impact fund administered by impact board — Eligibility for assistance — Review by board — Administration costs — Annual report — Compliance with tax commission directives.

(1) The impact board shall administer the impact fund in a manner which will keep a portion of the impact fund revolving and shall determine provisions for repayment of loans. In order to receive assistance under this part, subdivisions shall submit formal applications with such information as the impact board prescribes. The impact board shall establish criteria for determining eligibility for assistance under this part which are consistent with the purposes of Section 35 of the Leasing Act. In determining eligibility for loans and grants under this part, the impact board shall consider the following:

(a) the subdivision's current federal mineral lease production;

(b) the feasibility of the actual development of a resource which may impact the subdivision directly or indirectly;

(c) current taxes being paid by the subdivision's residents;

(d) the borrowing capacity of the subdivision, its ability and willingness to sell bonds or other securities in the open market, and its current and authorized indebtedness, except that the impact board may not fund any education project which could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments;

(e) all possible additional sources of state and local revenue, including utility user charges;

(f) the availability of federal assistance funds;

(g) probable growth of population due to actual or prospective natural resource development in an area;

(h) existing public facilities and services;

(i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and

(j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63, Chapter 51, Resource Development, or otherwise.

(2) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.

[~~(2)~~] (3) The impact board shall review the proposed usages of the impact fund for loans or grants prior to approval and may condition approval on such assurances as the impact board deems necessary to ensure that the proceeds of the loan or grant will be used in accordance with the provisions of the Leasing Act. Any loan shall specify the terms for repayment and shall be evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision issued to the impact board pursuant to such authority for the issuance thereof as may exist at the time of the loan.

[~~(3)~~] (4) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.

[~~(4)~~] (5) The department shall make an annual report to the Legislature concerning the number and type of loans and grants made as well as a list of subdivisions which received this assistance.

[~~(5)~~] (6) Notwithstanding anything to the contrary in this part, no loan or grant may be made to any subdivision that is not in compliance by January 1, 1983, with the directives of the State Tax Commission with respect to factoring.

Section 7. Section Amended.

Section 9-5-208, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-5-208. Annual exhibitions — Conditions of entry.

(1) The division shall hold an annual exhibition.

(2) The division may:

(a) hold an annual exhibition of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral, and industrial products, manufactured articles, and domestic animals, as in its opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of this state;

(b) award premiums for the best specimens of such exhibited articles and animals; and

(c) permit competition by livestock exhibited by citizens of other states and territories of the United States.

(3) The division shall fix the conditions of entry and shall publish [~~biennially or annually, as the case may be,~~] a list of premiums.

Section 8. Section Amended.

Section 9-6-302, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-6-302. Honorary life membership.

(1) Any person who submits to the board a work of art executed by himself which is accepted by the board[,] shall, by the tender and acceptance of that work of art[,] and on receipt of a certificate of membership issued by the board, become an honorary member for life.

(2) The board may also confer an honorary life membership for outstanding achievement in art, literature, or music upon any resident of the state of Utah.

Section 9. Section Amended.

Section 9-7-403, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-403. Library board terms — Officers — Removal — Vacancies.

(1) Each director shall be appointed for a three-year term, or until their successors are appointed. Initially, appointments shall be made for one-, two-, and three-year terms. Annually thereafter, the city governing body shall, before the first day of July of each year, appoint for a three-year term directors to take the place of the retiring directors.

(2) Directors shall serve not more than two consecutive full terms.

(3) The [~~governor~~] directors shall annually select a chairman and other officers.

(4) The city governing body may remove any director for misconduct or neglect of duty.

(5) Vacancies in the board of directors shall be filled for the unexpired term in the same manner as original appointments.

Section 10. Section Amended.

Section 9-7-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-503. Library board terms — Officers — Removal — Vacancies.

(1) Each director shall be appointed for a four-year term, or until their successors are appointed. Initially, appointments shall be made for one-, two-, three-, and four-year terms, and one member of the county governing body for the term of his elected office. Annually thereafter, the county governing body shall, before the first day of July of each year, appoint, for a four-year term, one director to take the place of the retiring director.

(2) Directors shall serve not more than two consecutive full terms.

(3) The [~~governor~~] directors shall annually select a chairman and other officers.

(4) The county governing body may remove any director for misconduct or neglect of duty.

(5) Vacancies in the board of directors shall be filled for the unexpired terms in the same manner as original appointments.

Section 11. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 79
S. B. No. 149
Passed March 2, 1993
Approved March 12, 1993
Effective May 3, 1993

PROFESSIONAL INCORPORATION OF NURSES

By Lyle W. Hillyard

AN ACT RELATING TO HEALTH; AMENDING DEFINITIONS REGARDING PROFESSIONAL CORPORATIONS TO INCLUDE PERSONS LICENSED TO PRACTICE IN THE NURSING PROFESSIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
16-11-2, AS LAST AMENDED BY CHAPTERS 240 AND 277, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 16-11-2, Utah Code Annotated 1953, as last amended by Chapters 240 and 277, Laws of Utah 1992, is amended to read:

16-11-2. Definitions.

As used in this chapter:

(1) "Filed" means the division has received and approved, as to form, a document submitted under the provisions of this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(2) "Professional corporation" means a corporation organized under this chapter.

(3) "Professional service" means the personal service rendered by:

(a) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 12, and any subsequent laws regulating the practice of medicine;

(b) a doctor of dentistry holding a license under Title 58, Chapter 7, and any subsequent laws regulating the practice of dentistry;

(c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 12, Part 1, and any subsequent laws regulating the practice of osteopathy;

(d) a chiropractor holding a license under Title 58, Chapter 12, Part 7 and any subsequent laws regulating the practice of chiropractic;

(e) a podiatrist holding a license under Title 58, Chapter 5, and any subsequent laws regulating the practice of podiatry;

(f) an optometrist holding a license under Title 58, Chapter 16a, and any subsequent laws regulating the practice of optometry;

(g) a veterinarian holding a license under Title 58, Chapter 28, and any subsequent laws regulating the practice of veterinary medicine;

(h) an architect holding a license under Title 58, Chapter 3, and any subsequent laws regulating the practice of architecture;

(i) a public accountant holding a license under Title 58, Chapter 26, and any subsequent laws regulating the practice of public accounting;

(j) a naturopath holding a license under Title 58, Chapter 12, Part 3, and any subsequent laws regulating the practice of naturopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17, and any subsequent laws regulating the practice of pharmacy;

(l) an attorney granted the authority to practice law by the Supreme Court, as provided in Title 78, Chapter 51;

(m) a professional engineer registered under Title 58, Chapter 22;

(n) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;

(o) a psychologist holding a license under Title 58, Chapter 25a, and any subsequent laws regulating the practice of psychology;

(p) a clinical or certified social worker holding a license under Title 58, Chapter 35, and any subsequent laws regulating the practice of social work;

(q) a physical therapist holding a license under Title 58, Chapter 24a, and any subsequent laws regulating the practice of physical therapy; or

(r) [~~a nurse whose professional nursing license designates him as a nurse anesthetist pursuant to Subsection 58-31-9.1 (1)~~] a nurse licensed under Title 58, Chapter 31, Nurse Practice Act, or Title 58, Chapter 44, Certified Nurse Midwifery Practice Act.

(4) "Regulating board" means the board which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter unless the context clearly indicates that a different meaning is intended.

CHAPTER 80
S. B. No. 151
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

MONEY LAUNDERING BY DRUG DEALERS

By Lyle W. Hillyard

AN ACT RELATING TO THE CRIMINAL CODE; ALLOWING FOR FORFEITURE IN MONEY LAUNDERING BY FINANCIAL TRANSACTION OR BY TRANSPORTATION; CLARIFYING DEFINITIONS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-10-1902, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1989
76-10-1906, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1989

ENACTS:
76-10-1908, UTAH CODE ANNOTATED 1953

REPEALS:
76-10-1905, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1989

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

Section 1. Section Amended.

Section 76-10-1902, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1989, is amended to read:

76-10-1902. Definitions.

As used in this part:

(1) "Bank" means each agent, agency, or office in this state of any person doing business in any one of the following capacities:

(a) a commercial bank or trust company organized under the laws of this state or of the United States;

(b) a private bank;

(c) a savings and loan association or a building and loan association organized under the laws of this state or of the United States;

(d) an insured institution as defined in Section 401 of the National Housing Act;

(e) a savings bank, industrial bank, or other thrift institution;

(f) a credit union organized under the laws of this state or of the United States; or

(g) any other organization chartered under Title 7 and subject to the supervisory authority set forth in that title.

[~~(1)~~] (2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

[~~(2)~~] (3) (a) "Currency" means the coin and paper money of the United States or of any other country that is designated as legal tender, that circulates, and is customarily used and accepted as a medium of exchange in the country of issuance.

(b) "Currency" includes United States silver certificates, United States notes, Federal Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange in a foreign country.

(4) "Financial institution" means any agent, agency, branch, or office within this state of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(a) a bank, except bank credit card systems;

(b) a broker or dealer in securities;

(c) a currency dealer or exchanger, including a person engaged in the business of check cashing;

(d) an issuer, seller, or redeemer of travelers checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of the instruments within any 30-day period;

(e) a licensed transmitter of funds or other person engaged in the business of transmitting funds;

(f) a telegraph company;

(g) a person subject to supervision by any state or federal supervisory authority; or

(h) the United States Postal Service regarding the sale of money orders.

[~~(3)~~] (5) "Financial transaction" means a transaction:

(a) involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce; or

(b) involving the use of a financial institution that is engaged in, or its activities affect commerce in any way or degree.

[~~(4)~~] (6) The phrase "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knows the property involved in the transaction represents proceeds from a form, though he does not necessarily know which form, of activity that constitutes a felony under state or federal law, regardless of whether or not the activity is specified in Subsection (9).

[~~(5)~~] (7) "Monetary instruments" means coins or currency of the United States or of any other country, travelers checks, personal checks, bank checks, money orders, and investment securities or negotiable instruments in bearer form or in other form so that title passes upon delivery.

[~~(6)~~] (8) "Person" means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all other entities cognizable as legal personalities.

(9) "Prosecuting agency" means the office of the attorney general or the office of the county attorney, including any attorney on the staff whether acting in a civil or criminal capacity.

[~~(7) "Reporting institution" has the same definition as the definition of "bank" in 31 C.F.R. 103.11 and means each agent, agency, or office in the state of any person doing business in one or more of the following capacities:~~]

[~~(a) a commercial bank or trust company organized under the laws of the state or the United States;~~]

[~~(b) a private bank;~~]

[~~(c) a savings and loan association or a building and loan association organized under the laws of the state or the United States;~~]

[~~(d) an insured institution as defined in Section 401 of the National Housing Act;~~]

[~~(e) a savings bank, industrial bank, or other thrift institution;~~]

[~~(f) a credit union organized under the laws of the state or of the United States; or~~]

[~~(g) any other organization chartered under Title 7 and subject to the supervisory authorities set forth in that title.~~]

[~~(8) "Reporting person" has the same definition as the definition of "financial institution" in 31 C.F.R. 103.11 and means each agent, agency, branch, or office within the state of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:~~]

[~~(a) a bank, except bank credit card systems;~~]

[~~(b) a broker or dealer in securities;~~]

[~~(c) a currency dealer or exchanger, including a person engaged in the business of check cashing;~~]

[~~(d) an issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of the instruments within any 30-day period;~~]

[~~(e) a licensed transmitter of funds or other person engaged in the business of transmitting funds;~~]

[~~(f) a telegraph company;~~]

[~~(g) a person subject to supervision by any state or federal bank supervisory authority; or~~]

[~~(h) the United States Postal Service regarding the sale of money orders.~~]

[~~(9)~~] (10) "Specified unlawful activity" means any unlawful activity [as] defined as an unlawful activity in Section 76-10-1602, except Subsection (4)(aaaa), and includes activity committed outside this state which, if committed within this state, would be unlawful activity.

[~~(10)~~] (11) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

[~~(11)~~] (12) "Transaction in currency" means a transaction involving the physical transfer of currency from one person to another. A transaction that is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency is not a transaction in currency under this chapter.

Section 2. Section Amended.

Section 76-10-1906, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1989, is amended to read:

76-10-1906. Reporting by financial institutions — Criminal and civil penalties — Enforcement.

(1) (a) All financial institutions in this state required to file reports under Title 31, Section 5311 through 5313, United States Code Annotated, as prescribed by 31 Code of Federal Regulations Section 103.22, shall file a duplicate copy of the required report with the Utah Division of Investigation.

(b) All persons engaged in a trade or business, except financial institutions referred to in Subsection (1)(a), who receive more than $10,000 in domestic or foreign currency in one transaction, or who receive this amount through two or more related transactions during any one business day, shall complete and file with the Utah Division of Investigation the information required by Title 26 [~~U.S.C.~~], Section 6050I, United States Code Annotated, concerning returns relating to currency received in trade or business.

(c) Any person who knowingly and intentionally fails to comply with the reporting requirements of this subsection is:

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

(ii) on a second or subsequent conviction, guilty of a class A misdemeanor.

(d) A person is guilty of a third degree felony who knowingly and intentionally violates any part of this subsection and the violation is committed either:

(i) in furtherance of the commission of any other violation of state law; or

(ii) as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period.

(2) [~~In addition to the criminal penalties which may be imposed for violation of this Subsection (d), the person is liable for a civil penalty of not more than the greater of the value of the amount of the currency transaction or $10,000. (3)~~] The Utah Di-

vision of Investigation shall enforce compliance with Subsection (1) and is custodian of all information and documents filed under Subsection (1). The information is confidential except any law enforcement agency, county attorney, or the attorney general, when establishing a clear need for the information for investigative purposes, shall have access and shall maintain the information in a confidential manner except as otherwise provided by the Utah Rules of Criminal Procedure.

Section 3. Section Enacted.

Section 76-10-1908, Utah Code Annotated 1953, is enacted to read:

76-10-1908. Forfeiture — Grounds — Procedure — Disposition of property forfeited.

(1) Any of the following property shall be subject to civil forfeiture and no property right exists in it:

(a) any conveyance including vehicles, aircraft, watercraft, or other vessel used in violation of Section 76-10-1904;

(b) any property involved in a financial transaction in violation of Section 76-10-1903; and

(c) any monetary instruments or funds which are the subject of a violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

(2) Property subject to forfeiture under Subsection (1) may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant, an inspection under an administrative inspection warrant, under a writ of attachment, or under a writ of garnishment;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(c) the peace officer has probable cause to believe that the property has been used in violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

(3) In the event of seizure under Subsection (2), proceedings under Subsection (4) shall be instituted promptly.

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When any property is subject to civil forfeiture, a determination for forfeiture to the state shall be made as follows:

(a) A complaint verified on oath or affirmation shall be prepared by the prosecuting agency where the property was seized or is to be seized. A complaint shall be filed in the circuit or district court if the property is not real property and the value is less than $20,000. The complaint shall be filed in the district court if the value of property other than real property is $20,000 or more or the property is real property. If the complaint includes property under the jurisdiction of the circuit court and also property under the exclusive jurisdiction of the district court, the complaint shall be filed in the district court. The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the proceedings;

(ii) the date and place of seizure, if known; and

(iii) the allegations which constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to a peace officer for service, unless the property has previously been seized without a warrant under Subsection (2). If the property was seized under Subsection (2), the warrant of seizure shall be delivered to the officer having custody of the property who shall proceed as directed in the warrant.

(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the prosecuting agency to have a claim in the property by one of the following methods:

(i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is considered complete even though the mail is refused or cannot be forwarded; and

(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Except under Subsection (5)(e), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) When property is seized under this section, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the

seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If a prosecuting agency has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the prosecuting agency to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.

(h) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered as provided in Subsection (6).

(i) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:

(i) first, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale;

(ii) second, proportionally among the legitimate claimants; and

(iii) third, as provided under Subsection (6).

(6) Disposition of all property forfeited under Subsections (1) through (5) by a finding of the court that no person is entitled to recover the property shall be as follows:

(a) Property forfeited under Subsections (1)(a), (b), or (c), if the property is involved in a financial transaction in violation of Section 76-10-1903 or is transported in violation of Section 76-10-1904, may be awarded to the seizing agency upon a petition the property in the complaint filed under Subsection (5)(a) and a finding by the court that the seizing agency is able to use the forfeited property in the enforcement of offenses under Title 58 and Title 76, Chapter 10.

(b) If the seizing agency makes no application or the court does not make a finding under Subsection (6)(a) that the seizing agency should be awarded the property, the forfeited property shall be deposited in the custody of the Division of Finance. Any state agency, bureau, county, municipality, or drug strike force which demonstrates a need for specific property or classes of property which has been forfeited shall be given the property for use in enforcement of laws prohibiting specified unlawful activity or in enforcement of this part after payment to the prosecuting agency of legal costs for filing and pursuing the forfeiture and upon the application for the property to the director of the Division of Finance. The application shall clearly set forth the need for the property and the use to which the property will be put.

(c) The director of the Division of Finance shall review all applications for property deposited under Subsection (6)(b) and make a determination based on necessity and advisability as to final disposition and shall notify the designated applicant, who may obtain the property after payment of all costs to the appropriate department. The Division of Finance shall reimburse the prosecuting agency for costs of filing and pursuing the forfeiture action, not to exceed the amount of the net proceeds received from the sale of the property.

(d) If no disposition is made upon an application under Subsections (6)(a), (b), or (c), the Division of Finance shall dispose of the property by public bidding, or, as considered appropriate, by destruction. Proceeds from the sale of the property under this subsection shall be distributed as provided in Subsection (e).

(e) Property forfeited under Subsection (1)(c) for violation of Subsection 76-10-1906 and proceeds from the sale of the property under Subsection (6)(d) shall be awarded and ordered distributed to the General Fund.

(7) Any person who violates any provision of Section 76-10-1903, 76-10-1904, or 76-10-1906 shall forfeit to the state all property, funds, or monetary instruments involved in the violation or, if unavailable for forfeiture in species, its value whether or not located in this state.

(8) Upon conviction for violating any provision of Section 76-10-1903, 76-10-1904, or 76-10-1906, the court may make an order with respect to any property of the defendant, or in which the defendant has an interest, whether or not in this state, to accomplish or further the forfeiture provided under Subsection (7) or the collection of costs under this section.

(9) All rights, title, and interest in forfeitable property described in this section vest in the state upon the commission of the act or conduct giving rise to the forfeiture under this section.

(10) (a) After forfeiture of property under this section, the court shall direct the disposition of the property by sale or other commercially feasible means, making provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the state ex-

pires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale ordered by the court.

(b) The court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property would result in irreparable injury, harm, or loss to him.

(c) The proceeds of any sale or other disposition of property forfeited under this section or any monies forfeited may be used first to pay the expenses of the forfeiture and the sale including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs.

(d) Disposition of property forfeited under Subsections (7) through (13) shall be as provided in Subsection (6).

(e) Notwithstanding any provisions of this section to the contrary, the state is obligated to search the lien records applicable to the forfeitable property to determine whether any valid lien against the property has been perfected. As long as the lien holder did not violate the provisions of this section, title to forfeitable property shall be subject to such lien, and the state will either give possession of the property to the lien holder or pay to the lien holder the amount secured by the lien.

(11) In any forfeiture proceeding under Subsections (7) through (13), the prosecutor prosecuting the defendant may:

(a) petition the court for mitigation or remission of forfeiture, for restoration of forfeited property to victims of a violation of this section or to take any other action to protect the rights of innocent persons in the interest of justice and the court may, in its discretion, grant the petition;

(b) compromise claims arising under this section;

(c) award compensation to persons providing information resulting in a forfeiture under this section; or

(d) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(12) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall:

(a) determine the costs incurred by the prosecuting agency prosecuting the forfeiture which shall be paid by the recipient of forfeited assets from the proceeds from the assets; and

(b) assess all costs of the forfeiture proceeding including seizure and storage of the property against the individual or individuals whose conduct was the basis for the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.

(13) Proceedings under this section are independent of any other proceedings whether civil or criminal under this section or the laws of this state.

Section 4. Repealer.

Section 76-10-1905, Civil penalties, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1989, is repealed.

CHAPTER 81
S. B. No. 174
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

JUDICIAL RETENTION ELECTION INFORMATION

By Delpha A. Baird

AN ACT RELATING TO JUDICIAL PERFORMANCE INFORMATION; MAKING JUDICIAL PERFORMANCE REQUIREMENTS MORE EXPLICIT; CLARIFYING REQUIREMENTS FOR THE CONTENT OF, PUBLICATION OF, AND PUBLIC DISTRIBUTION OF INFORMATION ABOUT JUDICIAL PERFORMANCE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20-11A-8, AS LAST AMENDED BY CHAPTER 244, LAWS OF UTAH 1991
78-3-21, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 20-11a-8, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1991, is amended to read:

20-11a-8. Voter information pamphlets — Contents.

The voter information pamphlets shall contain the following items in this order:

(1) a cover title page;

(2) an introduction to the pamphlet by the lieutenant governor;

(3) a table of contents;

(4) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing in the following order for each measure:

(a) a copy of the number and ballot title of the measure;

(b) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(c) an analysis of the measure by the Office of Legislative Research and General Counsel;

(d) arguments in favor of the measure, a rebuttal to the arguments in favor, arguments against the measure, and a rebuttal to the arguments against, with the name and title of the authors at the end of each argument or rebuttal; and

(e) (i) in the case of a constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; or

(ii) in the case of an initiative petition, a copy of the measure as certified by the lieutenant governor;

(5) (a) a description of the selection and retention process for judges, including, in the following order:

[~~(a)~~] (i) information pertaining to the judicial performance program;

[~~(b)~~] (ii) a description of the evaluation process;

[~~(c)~~] (iii) a list of the criteria and minimum standards; and

[~~(d)~~] (iv) the names of the judges standing for retention election; [~~and~~]

[~~(e) a statement as to whether each judge has met the evaluation criteria during the judge's term of office.~~]

(b) for each judge, the results of the judicial performance evaluation process provided by the judicial council, including:

(i) a statement identifying the number of hours of approved judicial education that the judge completed each year and whether or not the judge met the minimum number of hours required by the Judicial Council each year;

(ii) a statement indicating whether or not the judge certified that he is physically and mentally competent to serve and is complying with the Codes of Judicial Conduct and Judicial Administration;

(iii) a statement identifying the number of recommended formal sanctions from the Judicial Conduct Commission that the judge has received during his current term; and

(iv) a statement identifying whether or not the judge received at least a 70% approval rating on the bar survey;

(6) an explanation of ballot marking procedures prepared by the Office of Legislative Research and General Counsel, with the counties using each ballot marking procedure indicated and an explanation of the procedure;

(7) voter registration information;

(8) an index of subjects in alphabetical order; and

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

"I, _____ (print name), Lieutenant Governor of the State of Utah, do hereby certify that the foregoing measures will be submitted to the voters of the State of Utah at the election to be held throughout the state on ____ (date of election), and that the foregoing pamphlet is complete and correct according to law.

SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)
(signed) _____
Lieutenant Governor"

Section 2. Section Amended.

Section 78-3-21, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.

(1) The Judicial Council, established by Article VIII, Sec. 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) three members elected by the judges of the district courts;

(e) two members elected by the judges of the circuit courts;

(f) two members elected by the judges of the juvenile courts;

(g) two members elected by the justice court judges; and

(h) the president of the Utah State Bar or a designee, who is an ex officio member of the council and has no vote.

(2) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All voting members of the council shall serve for three-year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office. In courts having more than one member, the members shall be elected to staggered terms.

(c) Elections shall be held under rules made by the Judicial Council.

(3) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

[~~(4) (a) The Judicial Council shall by rule establish standards for judicial competence and by rule implement a formal program for the evaluation of judicial performance, the goal of which is to improve the performance of individual judges and court commissioners, and the judiciary as a whole.~~]

[~~(b) Not fewer than 90 days prior to retention election the Judicial Council shall publish whether a judge standing for retention election has met the evaluation criteria during his term of office.~~]

(4) (a) The judicial council shall make rules establishing:

(i) standards for judicial competence; and

(ii) a formal program for the evaluation of judicial performance containing the elements of and meeting the requirements of this subsection.

(b) The judicial council shall ensure that the formal judicial performance evaluation program has improvement in the performance of individual judges, court commissioners, and the judiciary as its goal.

(c) The judicial council shall ensure that the formal judicial performance evaluation program includes at least all of the following elements:

(i) a requirement that judges complete a certain number of hours of approved judicial education each year;

(ii) a requirement that each judge certify that he is:

(A) physically and mentally competent to serve; and

(B) in compliance with the Codes of Judicial Conduct and Judicial Administration;

(iii) a requirement that the judge receive a satisfactory score on questions identified by the Judicial Council as relating to judicial certification on a survey of members of the bar developed by the judicial council in conjunction with the American Bar Association.

(d) (i) The judicial council shall publish judicial performance evaluation results in a newspaper of general circulation in the area where the judge is subject to a retention election at least once not later than one week before the election and not earlier than one month before the election.

(ii) The judicial council shall ensure that the publication contains, for each judge:

(A) a statement identifying the number of hours of approved judicial education that the judge completed each year and whether or not the judge met the minimum number of hours required by the Judicial Council each year;

(B) a statement indicating whether or not the judge certified that he is physically and mentally

competent to serve and is complying with the Codes of Judicial Conduct and Judicial Administration;

(C) a statement identifying the number of recommended formal sanctions from the Judicial Conduct Commission that the judge has received during his current term; and

(D) a statement identifying whether or not the judge received at least a 70% approval rating on the bar survey.

(e) The judicial council shall provide the judicial performance evaluation information required by Subsection (d) (ii) to the Office of Legislative Research and General Counsel for publication in the voter information pamphlet.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78-3-24 (10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of the district, juvenile, and circuit court. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the obligation of the administrative office of the courts or whether the administrative office of the courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district or circuit court location be administered from another court location within the county.

CHAPTER 82
S. B. No. 183
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

HOLDING A COURT PLEA IN ABEYANCE

By Lyle W. Hillyard

AN ACT RELATING TO CRIMINAL PROCEDURE; CLARIFYING THE POWER OF THE COURTS TO ACCEPT AND HOLD IN ABEYANCE A PLEA OF GUILTY OR NO CONTEST DURING A PROBATIONARY PERIOD; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-2-126, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989
62A-12-228, AS LAST AMENDED BY CHAPTERS 189 AND 231, LAWS OF UTAH 1992
77-18-1, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1992
77-26-9, AS LAST AMENDED BY CHAPTERS 30 AND 233, LAWS OF UTAH 1992

ENACTS:
77-2A-1, UTAH CODE ANNOTATED 1953
77-2A-2, UTAH CODE ANNOTATED 1953
77-2A-3, UTAH CODE ANNOTATED 1953
77-2A-4, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 41-2-126, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

41-2-126. Court to report convictions and may recommend suspension of license — Severity of speeding violation defined.

(1) When a person is convicted of any offense for which this title requires the revocation, suspension, or disqualification of the person's license, the court in which the conviction takes place shall require the surrender to it of all license certificates held by the person convicted. The court shall forward them together with the record of conviction to the division within ten days.

(2) A court having jurisdiction over offenses committed under this title or any other law of this state, or under any city ordinance regulating the operation of motor vehicles on highways, shall forward to the division within ten days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(3) The abstract shall be made upon a form approved and furnished by the division and shall include the name and address of the party charged, the number of his license, the registration number of the vehicle involved, whether the vehicle was a commercial vehicle, whether the vehicle carried hazardous materials, the nature of the offense, the date of hearing, the plea, the judgment or whether bail was forfeited, and the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum." The severity of a speeding violation shall be graded as "minimum" for exceeding the posted speed limit by up to 9 miles per hour; as "intermediate" for exceeding the posted speed limit by from 10 to 19 miles per hour; and as "maximum" for exceeding the posted speed limit by 20 or more miles per hour.

(4) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate his operator's license and return his license certificate immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

(5) In this section, "conviction" means conviction by the court of first impression. A forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which has not been vacated, is equivalent to a conviction.

Section 2. Section Amended.

Section 62A-12-228, Utah Code Annotated 1953, as last amended by Chapters 189 and 231, Laws of Utah 1992, is amended to read:

62A-12-228. Voluntary admission of adults.

(1) The director or his designee may admit to the division for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.

(2) No person may be committed or continue to be committed against his will except as provided in this chapter.

(3) A person may be voluntarily admitted to the division for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Subsection 77-18-1 [~~(12)~~] (13) have been met.

Section 3. Section Enacted.

Section 77-2a-1, Utah Code Annotated 1953, is enacted to read:

CHAPTER 2A. PLEAS IN ABEYANCE

77-2a-1. Definitions.

For the purposes of this chapter:

(1) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(2) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and condi-

tions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

Section 4. Section Enacted.

Section 77-2a-2, Utah Code Annotated 1953, is enacted to read:

77-2a-2. Plea in abeyance agreement — Negotiation — Contents — Terms of agreement — Waiver of time for sentencing.

(1) At any time after acceptance of a plea of guilty or no contest but prior to entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

(2) The defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant shall have knowingly and intelligently waived his right to counsel.

(3) The defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(4) (a) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(b) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, prior to acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(5) A plea shall not be held in abeyance for a period longer than 18 months if the plea was to any class of misdemeanor or longer than three years if the plea was to any degree of felony or to any combination of misdemeanors and felonies.

(6) A plea in abeyance agreement shall not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure.

Section 5. Section Enacted.

Section 77-2a-3, Utah Code Annotated 1953, is enacted to read:

77-2a-3. Manner of entry of plea — Powers of court.

(1) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court shall reduce the degree of the offense, dismiss the case only as provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under Section 77-18-1.

(5) The court may upon acceptance of a plea in abeyance agreement and pursuant to the terms of the agreement:

(a) order the defendant to pay a nonrefundable plea in abeyance fee, which shall be allocated in the same manner as if it had been paid as a fine and shall not exceed in amount the maximum fine which could have been imposed upon conviction and sentencing for the same offense;

(b) order the defendant to pay all or a portion of the costs of administration of the agreement;

(c) order the defendant to pay full restitution to the victims of his actions as provided in Section 76-3-201;

(d) order the defendant to pay the costs of any rehabilitative program required by the terms of the agreement; and

(e) order the defendant to comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a plea in abeyance is not subject to judicial review.

(7) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under the age of 14.

Section 6. Section Enacted.

Section 77-2a-4, Utah Code Annotated 1953, is enacted to read:

77-2a-4. Violation of plea in abeyance agreement — Hearing — Entry of judgment and imposition of sentence — Subsequent prosecutions.

(1) If, at any time during the term of the plea in abeyance agreement, information comes to the at-

tention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(2) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.

Section 7. Section Amended.

Section 77-18-1, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1992, is amended to read:

77-18-1. Suspension of sentence — Pleas held in abeyance — Probation — Supervision — Presentence investigation — Standards — Confidentiality — Terms and conditions — Restitution — Termination, revocation, modification, or extension — Hearings.

(1) "Confidential" as used in this section means that the disclosure of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, is limited to:

(a) the court, prosecutor, and the defendant or his counsel for sentencing purposes only;

(b) law enforcement agencies and other agencies approved by the Department of Corrections in the supervision, confinement, and treatment of the offender; and

(c) the Board of Pardons in its decision-making process.

(2) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Sections 77-2a-1 through 77-2a-4 and under the terms of the plea in abeyance agreement.

[~~(2)~~] (3) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the Department of Corrections.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court. The court has continuing jurisdiction over all probationers.

[~~(3)~~] (4) (a) The Department of Corrections shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the Department of Corrections to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and Board of Pardons on an annual basis for review and comment prior to adoption by the Department of Corrections.

(c) The Judicial Council and department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

[~~(4)~~] (5) Notwithstanding other provisions of law, the Department of Corrections is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions, or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

[~~(5)~~] (6) (a) (i) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the Department of Corrections or information from other sources about the defendant.

(ii) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the Department of Corrections regarding the payment of restitution by the defendant.

(iii) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are confidential and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the Department of Corrections.

(b) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(c) After the sentencing, the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, and all copies of the presentence investigation report, become the property of the Department of Corrections and are for internal use of the department only.

[~~(6)~~] (7) While on probation, and as a condition of probation, the defendant may be required to perform any or all of the following:

(a) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(b) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(c) provide for the support of others for whose support he is legally liable;

(d) participate in available treatment programs;

(e) serve a period of time in the county jail not to exceed one year;

(f) serve a term of home confinement;

(g) participate in community service restitution programs, including the community service program provided in Section 78-11-20.7;

(h) pay for the costs of investigation, probation, and treatment services;

(i) make restitution or reparation to the victim or victims in accordance with Subsections 76-3-201 (3) and (4); and

(j) comply with other terms and conditions the court considers appropriate.

[~~(7)~~] (8) (a) The Department of Corrections is responsible, upon order of the court, for the collection of fines and restitution during the probation period in cases for which the court orders supervised probation by the department.

(b) The prosecutor shall provide notice of the restitution order to the clerk of the court.

(c) The clerk shall place the order on the civil docket and shall provide notice of the order to the parties.

(d) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure.

[~~(8)~~] (9) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) If the defendant, upon expiration or termination of the probation period, has outstanding fines or restitution owing, the court may retain jurisdiction of the case and continue the defendant on bench probation or place the defendant on bench probation for the limited purpose of enforcing the payment of fines and restitution.

(iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court or why the suspended jail or prison term should not be imposed.

(b) The Department of Corrections shall notify the sentencing court and prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law. The notification shall include a probation progress report and complete report of details on outstanding fines and restitution orders.

[~~(9)~~] (10) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

[~~(10)~~] (11) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a war-

rant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c)(i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d)(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e)(i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

[~~(11)~~] (12) Restitution imposed under this chapter is considered a debt for willful and malicious injury for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11, Section 523, U.S.C.A. 1985.

[~~(12)~~] (13) The court may order the defendant to commit himself to the custody of the Division of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) that persons described in Subsection 62A-12-209 (2)(g) are receiving priority for treatment over the defendants described in this subsection.

[~~(13)~~] (14)(a) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, regarding disclosure of presentence diagnostic evaluation and investigation reports to maintain confidentiality of the report.

(b) Disclosure of a presentence investigation report, including any supplemental diagnostic evaluation report, is exempt from the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

Section 8. Section Amended.

Section 77-26-9, Utah Code Annotated 1953, as last amended by Chapters 30 and 233, Laws of Utah 1992, is amended to read:

77-26-9. Magistrates and court clerks to supply information — Statewide warrant system responsibility — Quality control — Training — Technical support — Transaction costs.

(1) Every magistrate or clerk of a court responsible for court records in this state shall furnish the bureau with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convictions, dismissals, acquittals, pleas held in abeyance, or probations granted, within 30 days of the disposition and on forms provided by the bureau; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the bureau.

(2) The bureau is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering warrant information on the system;

(b) establish system procedures and provide training to all criminal justice agencies having access to warrant information;

(c) provide technical support, program development, and systems maintenance for the operation of the system; and

(d) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to warrant information.

(3) Notwithstanding Subsection (2)(d), any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

CHAPTER 83
S. B. No. 197
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

NOT A DROP AMENDMENTS

By Lane Beattie

AN ACT RELATING TO MOTOR VEHICLES; EXPANDING NOT A DROP ALCOHOL OFFENSE; MAKING TECHNICAL CHANGES; AND INCLUDING A COORDINATING CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-44.4, AS ENACTED BY CHAPTER 78, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-6-44.4, Utah Code Annotated 1953, as enacted by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.4. Person under 21 may not operate vehicle with detectable alcohol in body — Chemical test procedures — Temporary license — Hearing and decision — Suspension of license or operating privilege — Fees — Judicial review.

(1) (a) As used in this section "local substance abuse authority" has the same meaning as provided in Section 62A-8-101.

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6-44(2).

[~~(1)~~] (2)(a) A person [~~less~~] younger than 21 years of age may not operate or be in actual physical control of a vehicle [~~while there is~~] with any measurable [~~or detectable alcohol, other than naturally occurring alcohol, in his body with a~~] blood, breath, or urine alcohol concentration [~~of less than .08 grams as calculated under Subsection 41-6-44 (2)~~] in his body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (a), in addition to any other applicable penalties arising out of the incident, shall have his operator license denied or suspended as provided in Subsection (ii).

(ii) (A) For a first offense under Subsection [~~(i)~~] (a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 31st day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection [~~(i)~~] (a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a period of one year beginning on the 31st day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the [~~department~~] Driver License Division may not issue the person an operator license or learner's permit.

[~~(2)~~] (3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection [~~(1)~~] (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection [~~(1)(a)~~] (2) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection [~~(1)(a)~~] (2), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection [~~(1)(a)~~] (2), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection [~~(1)~~] (2).

[~~(3)~~] (4) When the officer serves immediate notice on behalf of the Driver License Division, he shall:

(a) take the Utah license certificate or permit, if any, of the operator;

(b) issue a temporary license certificate effective for only 30 days if the driver had a valid operator's license; and

(c) supply to the operator, on a form to be approved by the Driver License Division, basic information regarding how to obtain a prompt hearing before the Driver License Division.

[~~(4)~~] (5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection [~~(3)~~] (4)(b).

[~~(5)~~] (6) The peace officer serving the notice shall send to the Driver License Division within five days after the date of arrest and service of the notice:

(a) the person's driver license certificate, if any;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection [~~(1)~~] (2).

[~~(6)~~] (7) (a) (i) Upon written request, the Driver License Division shall grant to the person an opportunity to be heard within 30 days after the date of arrest under Section [~~31A-12-209~~] 32A-12-209.

(ii) The request shall be made within ten days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of Subsection [~~(1)(a)~~] (2);

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) In connection with a hearing the Driver License Division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(e) One or more members of the Driver License Division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the Driver License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

(g) After the hearing, the Driver License Division shall order whether the person:

(i) with a valid license to operate a motor vehicle will have his license denied or not or suspended or not; or

(ii) without a valid operator license will be refused a license under Subsection [~~(1)~~] (2)(c).

[~~(7)~~] (8) (a) Following denial or suspension the Driver License Division shall assess against a person, in addition to any fee imposed under Subsection 41-2-112(15), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License Division hearing or court decision that the suspension was not proper.

(b) A person whose operator license has been denied, suspended, or postponed by the Driver License Division under this section may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 41-2-131.

[~~(8)~~] (9) After reinstatement of an operator license for a first offense under this section, a report authorized under Section 41-2-119 may not contain evidence of the denial or suspension of the person's operator license under this section if he has not been convicted of any other offense for which the denial or suspension may be extended.

[~~(9)~~] (10) The provisions of Sections 41-12a-411 and 41-12a-412 do not apply to a denial or suspension imposed for a first offense under this section if the denial or suspension is based solely on a violation of Subsection [~~(1)(a)~~] (2).

[~~(10)~~] (11) (a) In addition to the penalties in Subsection [~~(1)~~] (2), a person who violates Subsection [~~(1)(a)~~] (2) shall be referred by the Driver License Division [~~of the Department of Public Safety~~] to the local substance abuse authority[~~, as defined in Section 62A-8-101,~~] for an assessment and recommendation for appropriate action.

(b) (i) Reinstatement of the person's [~~driver~~] operator license or the right to obtain [a] an operator license is contingent upon successful completion of the action recommended by the local substance abuse authority.

(ii) The local substance abuse authority's recommended action shall be determined by an assessment of the person's alcohol abuse and may include:

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

(iii) Successful completion of the recommended action shall be determined by standards established by the Division of Substance Abuse.

(c) At the conclusion of the penalty period imposed under Subsection [~~(1)~~] (2), the local substance abuse authority shall notify the Driver License Division of the person's status regarding completion of the recommended action.

(d) The local substance abuse authorities shall cooperate with the Driver License Division in:

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

(iii) notifying the Driver License Division about the person's status regarding completion of the recommended action.

(e) (i) The local substance abuse authority is responsible for:

(A) the cost of the assessment of the person's alcohol abuse; and

(B) for making a referral to an appropriate program on the basis of the findings of the assessment.

(ii) (A) The person who violated Subsection [~~(1)~~] (2)(a) is responsible for all costs and fees associated with the recommended program to which the person is referred.

(B) The costs and fees under Subsection (A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services.

Section 2. Coordinating Clause.

If this bill and S.B. 19, Reorganization of the Department of Public Safety, both pass in the 1993 General Session, it is the intent of the Legislature that Section 41-6-44.4 of S.B. 19 be amended as follows:

(1) delete Subsection (1)(a) and insert Subsection (1)(a) of this bill;

(2) delete Subsection (1)(c) referencing Section 41-6-44; and

(3) delete Subsection (2)(a) and insert Subsection (2)(a) of this bill.

CHAPTER 84
S. B. No. 209
Passed March 3, 1993
Approved March 12, 1993
Effective May 3, 1993

FLYING WHILE INTOXICATED PROHIBITION

By Howard A. Stephenson

AN ACT RELATING TO AERONAUTICS; PROHIBITING FLYING WHILE UNDER THE INFLUENCE; PROVIDING A PENALTY; INCLUDING IMPLIED CONSENT PROVISIONS; PROVIDING FOR TESTING AND TESTING STANDARDS; AND SPECIFYING ADMISSIBILITY.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
2-6-101, UTAH CODE ANNOTATED 1953
2-6-102, UTAH CODE ANNOTATED 1953
2-6-103, UTAH CODE ANNOTATED 1953
2-6-104, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 2-6-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 2. FLYING WHILE INTOXICATED

2-6-101. Flying under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant.

(1) (a) A person may not operate or be in actual physical control of an aircraft within this state if the person:

(i) has a blood or breath alcohol concentration of .04 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating an aircraft.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted of a violation of Subsection (1) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person has also inflicted bodily injury upon another as a proximate result of having operated the aircraft in a negligent manner.

(b) In this section, the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(4) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe:

(a) the violation has occurred, although not in his presence; and

(b) the violation was committed by that person.

Section 2. Section Enacted.

Section 2-6-102, Utah Code Annotated 1953, is enacted to read:

2-6-102. Implied consent to chemical tests for alcohol or drug — Number of tests — Refusal — Person incapable of refusal — Results of test available — Who may give test — Evidence.

(1) (a) A person operating an aircraft in this state consents to a chemical test or tests of his breath, blood, or urine:

(i) for the purpose of determining whether he was operating or in actual physical control of an aircraft while having a blood or breath alcohol content statutorily prohibited under Section 2-6-101, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 2-6-101, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of an aircraft in violation of Section 2-6-101; or

(ii) if the person operating the aircraft is involved in an accident that results in death, serious injury, or substantial aircraft damage.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) The peace officer may order any or all tests of the person's breath, blood, or urine.

(iii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest and has then been requested by a peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and refuses to submit to any chemical test, the person shall be warned by the peace officer requesting the test that a refusal to submit to the test is admissible in civil or criminal proceedings as provided under Subsection (8).

(b) Following this warning, unless the person immediately requests that the chemical test offered by a peace officer be administered, a test may not be given.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30(1)(r) to draw blood under Section 41-6-44.10, acting at the request of a peace officer, may withdraw blood to determine the alcohol or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Subsection 26-1-30(1)(r) to draw blood under Section 41-6-44.10 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is flying in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of an aircraft while under the influence of alcohol, any drug, or combination of alcohol and any drug.

(9) The results of any test taken under this section or the refusal to be tested shall be reported to the Federal Aviation Administration by the peace officer requesting the test.

Section 3. Section Enacted.

Section 2-6-103, Utah Code Annotated 1953, is enacted to read:

2-6-103. Standards for chemical breath analysis — Evidence.

(1) The commissioner of the Department of Public Safety shall establish standards for the administration and interpretation of chemical analysis of a person's breath, including standards of training.

(2) In any action or proceeding in which it is material to prove that a person was operating or in actual physical control of an aircraft while under the influence of alcohol or any drug or operating with a blood or breath alcohol content statutorily prohibited, documents offered as memoranda or records of acts, conditions, or events to prove that the analysis was made and the instrument used was accurate, according to standards established in Subsection (1), are admissible if:

(a) the judge finds that they were made in the regular course of the investigation at or about the time of the act, condition, or event; and

(b) the source of information from which made and the method and circumstances of their preparation indicate their trustworthiness.

(3) If the judge finds that the standards established under Subsection (1) and the conditions of Subsection (2) have been met, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.

Section 4. Section Enacted.

Section 2-6-104, Utah Code Annotated 1953, is enacted to read:

2-6-104. Admissibility of chemical test results in actions for flying under the influence — Weight of evidence.

(1) (a) In any civil or criminal action or proceeding in which it is material to prove that a person was operating or in actual physical control of an aircraft while under the influence of alcohol, drugs, or with a blood or breath alcohol content statutorily prohibited, the results of a chemical test or tests as authorized in Section 2-6-102 are admissible as evidence.

(b) In a criminal proceeding, noncompliance with Section 2-6-102 does not render the results of the chemical test inadmissible. Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(2) If the chemical test was taken more than two hours after the alleged flying or actual physical con-

trol, the test result is admissible as evidence of the person's blood or breath alcohol level at the time of the alleged operating or actual physical control, but the trier of fact shall determine what weight is given to the result of the test.

(3) This section does not prevent a court from receiving otherwise admissible evidence as to a defendant's blood or breath alcohol level or drug level at the time of the alleged operating or actual physical control.

CHAPTER 85
S. B. No. 218
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

ACCOUNTING PROCEDURES AMENDMENTS

By LeRay McAllister

AN ACT RELATING TO ACCOUNTING PROCEDURES; REVISING DEFINITIONS; REVISING ACCOUNTING PRINCIPLES; MODIFYING FINANCIAL REPORTING PROCEDURES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
51-5-3, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1991
51-5-6, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 51-5-3, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1991, is amended to read:

51-5-3. Definitions.

As used in this chapter:

(1) "Account groups" means a self-balancing set of accounts used to establish accounting control and accountability for the state's general fixed assets and general long-term obligations.

(2) "Accrual basis" means the basis of accounting under which revenues are recorded when earned and expenditures are recorded when they result in liabilities for benefits received, even though the receipt of the revenue or payment of the expenditures may take place, in whole or in part, in another accounting period.

(3) "Activity" means a specific and distinguishable line of work performed by one or more organizational components of a governmental unit to accomplish a function for which the governmental unit is responsible.

(4) "Appropriation" means a legislative authorization to make expenditures and to incur obligations for specific purposes.

(5) "Budgetary accounts" means those accounts necessary to reflect budgetary operations and conditions, such as estimated revenues, appropriations, and encumbrances.

(6) "Cash basis" means the basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

(7) "Dedicated credit" means:

(a) revenue that is required by law or by the contractual terms under which the revenue is accepted, to be expended for specified activities; and

(b) revenue that is appropriated by provisions of law to the department, institution, or agency that assessed the revenue, to be expended for the specified activities.

(8) "Encumbrances" means obligations in the form of purchase orders, contracts, or salary commitments that are chargeable to an appropriation and for which a part of the appropriation is reserved. Encumbrances cease when paid or when the actual liability is set up.

(9) (a) "Expenditures" means decreases in net financial resources from other than interfund transfers, refundings of general long-term capital debt, and other items indicated by GASB.

(b) "Expenditures" may include current operating expenses, debt service, capital outlays, employee benefits, earned entitlements, and shared revenues.

(10) (a) "Financial resources" means assets that are obtained or controlled as a result of past transactions or events that in the normal course of operations will become cash.

(b) "Financial resources" includes cash, claims to cash such as taxes receivable, and claims to goods or services such as prepaids.

(11) "Fiscal period" means any period at the end of which a governmental unit determines its financial position and the results of its operations.

(12) "Function" means a group of related activities aimed at accomplishing a major service or regulatory program for which a governmental unit is responsible.

(13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts, composed of financial resources and other assets, all related liabilities and residual equities or balances and changes in those resources, assets, liabilities, and equities that, when recorded, are segregated for the purpose of carrying on specific activities or attaining certain objectives, according to special regulations, restrictions, or limitations.

(14) "Fund accounts" [mean] means all accounts necessary to set forth the financial operations and financial position of a fund.

(15) "GASB" means the Governmental Accounting Standards Board that is responsible for accounting standards used by public entities.

(16) (a) "Governmental fund" means funds used to account for the acquisition, use, and balances of expendable financial resources and related liabilities using a measurement focus that emphasizes the flow of financial resources.

(b) "Governmental fund" includes the following types: General Fund, special revenue funds, debt service funds, and capital projects funds.

(17) "Lapse," as applied to appropriations, means the automatic termination of an unexpended appropriation.

(18) "Liabilities" are the probable future sacrifices of economic benefits, arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future.

(19) "Net financial resources" means:

(a) the difference between the amount of a governmental fund's financial resources and liabilities; and

(b) the fund balance of a governmental fund.

(20) "Postemployment" means that period of time following:

(a) the last day worked by an employee as a result of his long-term disability; or

(b) the date that an employee identifies as the date on which the employee intends to retire or terminate from state employment.

(21) "Postemployment benefits" means benefits earned by employees that will not be paid until postemployment, including unused vacation leave, unused converted sick leave, sick leave payments, and health and life insurance benefits as provided in Section 67-19-14.

(22) "Proprietary funds" means those funds or subfunds that show actual financial position and the results of operations, such as actual assets, liabilities, reserves, fund balances, revenues, and expenses.

(23) "Restricted revenue" means revenue that is required by law to be expended only:

(a) for specified activities; and

(b) to the amount of the legislative appropriation.

(24) "Revenue" means the increase in ownership equity during a designated period of time that is recognized as earned [~~according to standards established by GASB~~].

(25) "Subfund" means a restricted account, established within an independent fund, that has a self-balancing set of accounts to restrict revenues, expenditures, or the fund balance.

(26) "Surplus" means the excess of the assets of a fund over its liabilities and restricted fund equity.

(27) "Unappropriated surplus" means that portion of the surplus of a given fund that is not segregated for specific purposes.

(28) "Unrestricted revenue" means revenue of a fund that may be expended by legislative appropriation for functions authorized in the provisions of law that establish each fund.

Section 2. Section Amended.

Section 51-5-6, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1991, is amended to read:

51-5-6. Accounting principles and specific accounting and financial reporting procedures.

(1) The Division of Finance shall:

(a) use generally accepted accounting principles applicable to governmental units in:

(i) its accounting procedures; and [in]

(ii) its reports of the state's financial position and results of operations in each fiscal period[.]; and

(b) note any deviation for budget purposes in the state's financial statements.

(2) Unless otherwise required by generally accepted accounting principles, the following specific procedures shall be implemented:

(a) The Division of Finance shall use the basis of accounting established by GASB [~~to account~~] for financial reporting of each fund type.

(b) The Division of Finance shall:

(i) calculate the liabilities associated with postemployment benefits by applying:

(A) GASB standards as they become available; or

(B) appropriate standards available for private business if GASB standards are not available;

(ii) recognize all liabilities associated with postemployment benefits in a separate fund for budget purposes and in the General Fund or other funds as required by GASB for reporting purposes;

[~~(iii) recognize the initial post-employment liabilities in the year new GASB standards for revenue recognition become effective;~~]

[~~(iv)~~] (iii) provide for an ongoing labor additive beginning in the budget request for fiscal year 1995 to charge all federal, state, or other programs at a rate sufficient to cover the annual change in the postemployment benefits liabilities of the separate budget fund; and

[~~(v)~~] (iv) provide for ongoing payments against the postemployment liabilities budget fund as employees qualify for receiving the postemployment benefits [~~after post-employment liabilities are recognized~~].

(c) The Division of Finance shall post receipts of revenues and other resources of each fund when collected directly to the fund designated to receive them.

(d) The Division of Finance shall use budgetary accounts to:

(i) account for budgetary funds to the extent necessary to reflect the budget position and budget operations; and

(ii) account for the remaining funds when administrative expenses of the remaining funds are subject to appropriations, in order to fully reflect the various budgetary commitments as provided by law.

(e) The Division of Finance shall prepare statements of revenues and expenditures in a form that accurately reflects the results of operations for a particular fiscal period.

(f) The Division of Finance shall determine:

(i) all costs associated with all internal service funds that are eligible for federal reimbursement; and

(ii) all costs that are required to be included in the funds to comply with generally accepted accounting principles.

(g) (i) All costs currently borne by a fund or an account that is not an internal service fund that should be allocated to an internal service fund may be charged as an expense to the internal service fund, paid to the fund bearing the costs, and recorded as interfund revenue in that fund.

(ii) The Division of Finance may transfer the interfund revenue recorded in funds or accounts that are not internal service funds to the internal service fund as contributed working capital.

(h) The Division of Finance shall record revenue in the various funds and accounts in accordance with [~~GASB standards~~] generally accepted accounting principles.

(i) (i) The Division of Finance and each administrative unit of state government shall record accrued revenue net of any liabilities for revenue refunds [~~occurring at the time of a change in accounting standards by recording accrual of net revenue to the specific revenue account and designating it as an accrual equity account of the fund~~] as required by Division of Finance policy.

(ii) [~~Before changing the accrual equity account of the General Fund, any increases in accrued equity may be used to offset actuarial deficits of the State Risk Management Fund, created in Section 63-1-47, and the State Post-Employment Benefit Account~~] Accrued revenue may be used to offset postemployment benefit liabilities and other liabilities of the state.

CHAPTER 86
S. B. No. 249
Passed March 1, 1993
Approved March 12, 1993
Effective May 3, 1993

INHERENT RISK OF SKIING

By Alarik Myrin

AN ACT RELATING TO THE JUDICIAL CODE; EXTENDING PROTECTIONS REGARDING THE INHERENT RISK OF SKIING TO SKI JUMPING AND SNOWBOARDING.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-27-52, AS ENACTED BY CHAPTER 166, LAWS OF UTAH 1979

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

Section 1. Section Amended.

Section 78-27-52, Utah Code Annotated 1953, as enacted by Chapter 166, Laws of Utah 1979, is amended to read:

78-27-52. Inherent risks of skiing — Definitions.

As used in this act:

(1) "Inherent risks of skiing" means those dangers or conditions which are an integral part of the [~~sport~~] sports of skiing, snowboarding, and ski jumping, including, but not limited to: changing weather conditions, variations or steepness in terrain; snow or ice conditions; surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, impact with lift towers and other structures and their components; collisions with other skiers; and a skier's failure to ski or jump within [~~his~~] the skier's own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, and snowboarding.

(4) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

CHAPTER 87
S. B. No. 265
Passed March 2, 1993
Approved March 12, 1993
Effective May 3, 1993

DAMAGE TO UNDERGROUND FACILITIES

By Lane Beattie

AN ACT RELATING TO PUBLIC UTILITIES; AMENDING PROVISIONS RELATING TO DAMAGE TO UNDERGROUND UTILITY FACILITIES; ESTABLISHING COLOR CODING FOR DIFFERENT OPERATORS; AND AMENDING CIVIL PENALTY AND LIABILITY PROVISIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
54-8A-2, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1989
54-8A-3, AS LAST AMENDED BY CHAPTER 39, LAWS OF UTAH 1989
54-8A-4, AS LAST AMENDED BY CHAPTER 173, LAWS OF UTAH 1986
54-8A-5, AS LAST AMENDED BY CHAPTER 173, LAWS OF UTAH 1986
54-8A-6, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1985
54-8A-7, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1985
54-8A-8, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1989
54-8A-9, AS LAST AMENDED BY CHAPTER 39, LAWS OF UTAH 1989
54-8A-10, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1986

ENACTS:
54-8A-11, UTAH CODE ANNOTATED 1953

REPEALS:
54-8A-1, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1985

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

Section 1. Section Amended.

Section 54-8a-2, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1989, is amended to read:

54-8a-2. Definitions.

As used in this chapter:

[~~(1) "Business day" means any day other than Saturday, Sunday, or a legal holiday.~~]

[~~(2) "Cable operator" means any person who provides cable service over a cable system.~~]

[~~(3) "Cable service" means the transmission to subscribers of video or other programming.~~]

[~~(4) "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that provides cable service to multiple subscribers within a community. It does not include:~~]

[~~(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or~~]

[~~(b) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless the facility uses any public right-of-way.~~]

(1) "Association" means two or more operators organized to receive notification of excavation activities in a specified area, as provided by Section 54-8a-9.

[~~(5)~~] (2) "Emergency" means an occurrence [~~demanding~~] necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

[~~(6)~~] (3) "Excavate" or "Excavation" means [~~any~~] an operation in which earth, rock, or other material on or below the ground is moved or displaced by [~~means of~~] tools, equipment, or explosives.

(4) "48 hours" means a 48-hour period occurring during business days which includes any day except Saturday, Sunday, or a legal holiday.

(5) (a) "Operator" means a person or entity which owns, operates, or maintains underground facilities.

(b) "Operator" does not include an owner of real property where underground facilities are:

(i) located solely within the property;

(ii) used exclusively to furnish services on the property; and

(iii) maintained under the operation and control of that owner.

(c) "Operator" does not include any municipality, city, or town which has chosen not to participate in an association and has a program of noticing and marking its underground facilities for purposes of excavation.

[~~(7)~~] (6) "Person" includes individuals, government entities, corporations, partnerships, associations, and companies and their trustees, receivers, assignees, and personal representatives.

[~~(8)~~] (7) "Underground facility" means [~~any~~] personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:

(a) water;

(b) sewage;

(c) communications, including electronic, photonic, telephonic, or telegraphic communications;

(d) television, cable television, or other telecommunication signals, including transmission to subscribers of video or other programming;

(e) electric [~~energy~~] power; [~~or~~]

(f) oil, gas, or other fluid and gaseous substances;

(g) steam;

(h) slurry; or

(i) dangerous materials or products.

Section 2. Section Amended.

Section 54-8a-3, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1989, is amended to read:

54-8a-3. Information filed with county clerk.

[~~Every public utility and cable~~] (1) An operator shall file with the county clerk of a county in which the operator has underground facilities the following:

(a) the name of [~~every~~] each municipality, city, or town [~~with the county clerk of a county~~] in which [~~it~~] the operator has underground facilities[~~, and a list containing~~] within that county;

(b) the operator's name [~~of the public utility or cable operator~~]; and

(c) the title, telephone number, and address of [~~its~~] the operator's representative designated to receive calls [~~concerning~~] regarding excavation.

(2) In counties where an association [~~as provided in Section 54-8a-9~~] is established, [~~the telephone number of that~~] the association shall [~~be filed~~] file its telephone number with the county clerk on behalf of all participating [~~public utilities and cable~~] operators.

Section 3. Section Amended.

Section 54-8a-4, Utah Code Annotated 1953, as last amended by Chapter 173, Laws of Utah 1986, is amended to read:

54-8a-4. Notice of excavation.

[~~No person, except in an emergency or while gardening or tilling private ground, may make an excavation without first notifying~~] (1)(a) Before excavating, an excavator must notify each [~~public utility company, private culinary water company, or cable~~] operator [~~which may have~~] with underground facilities in the area of the proposed excavation. [~~Initial notice shall~~]

(b) The requirements of Subsection (a) do not apply:

(i) if there is an emergency;

(ii) while gardening; or

(iii) while tilling private ground.

(2) Notice must:

(a) be given by telephone [~~or~~], in person, or by other means acceptable to each operator;

(b) be given not less than [~~two business days~~] 48 hours nor more than seven days before the commencement of excavation; and [~~shall~~]

(c) include the proposed excavation's anticipated location, dimensions, and duration.

(3) If there is an association in the county, notice to that association constitutes notice to each operator in the county.

(4) If an excavation on a single project lasts more than 14 days, the excavator [~~shall~~] must give [~~such~~] notice at least once each additional 14-[~~days during the continuation of the project. If there is an association as provided in Section 54-8a-9 in the county, a call to that association is notice to each public utility and cable operator in the county~~] day period.

(5) If markings made by the operator have been disturbed so that they no longer identify the underground facilities:

(a) an excavator shall notify the association or each operator before excavating the site; and

(b) the operator shall mark the area again within 48 hours of the renotification.

(6) (a) An excavator may begin excavation if:

(i) all underground facilities have been located and marked;

(ii) 48 hours have elapsed from the time of initial notice and the excavator has not received a request for a meeting under Subsection 54-8a-5(2); or

(iii) 48 hours have elapsed from the time of renotification under Subsection (5).

Section 4. Section Amended.

Section 54-8a-5, Utah Code Annotated 1953, as last amended by Chapter 173, Laws of Utah 1986, is amended to read:

54-8a-5. Marking of underground facilities.

[~~A public utility or cable operator, upon~~] (1) (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall [~~advise~~] mark the [~~excavator as promptly as practical, but in no event later than one business day after notice, of the~~] location of its underground facilities in the area proposed for excavation [~~by marking such~~].

(b) The underground facilities shall be marked with stakes, paint, or in some other customary way, indicating horizontal location within 24 inches of the outside dimensions of both sides of the underground facility.

(2)(a) The operator is not required to mark the underground facilities within 48 hours if the proposed excavation:

(i) is not clearly described by street address or description;

(ii) is located in a remote area;

(iii) is an extensive excavation; or

(iv) presents other constraints that make it unreasonably difficult for the operator to comply with the marking requirements of this section.

(b) If the operator cannot proceed with the marking because of a situation described in Subsection (2)(a), the operator shall contact the excavator within 48 hours and request a meeting at the proposed excavation site or some other mutually agreed upon location.

(c) For the situations described under Subsections (2)(a)(i) and (2)(a)(ii), the meeting will constitute the

beginning of a new 48-hour period within which the operator must mark the underground facilities.

(d) For the situations described under Subsections (2)(a)(iii) and (2)(a)(iv), the meeting will constitute the beginning of a new 48-hour period within which the operator must begin marking the underground facilities.

(3) The markings required by this section shall conform to the following color code for each type of installation:

(a) safety red - electric power;

(b) safety yellow - gas, oil, a dangerous material or product, or steam;

(c) safety orange - communications or cable television;

(d) safety blue - water or slurry; and

(e) safety green - sewer.

(4) Each marking [~~shall be effective~~] is valid for not more than [~~15~~] 16 calendar days from the date [~~it~~] notice is [~~made~~] given. [~~No person may begin excavation before the location and marking is complete or before two business days have expired from the date of initial notification.~~]

(5) If multiple lines exist:

(a) the markings must indicate the number of lines; or

(b) all lines must be marked.

Section 5. Section Amended.

Section 54-8a-6, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1985, is amended to read:

54-8a-6. Duties and liabilities of the person who excavates.

[~~(1) A person who is informed under Section 54-8a-5 is not excused from excavating in a careful and prudent manner, nor is that person excused from liability for damage or injury which results from negligent excavation.~~]

[~~(2) An~~] Damage to an underground facility [~~damaged~~] by [~~a person who~~] an excavator who excavates but fails to comply with Section 54-8a-4, is prima facie evidence that the excavator is liable for any damage [~~was~~] caused [~~through~~] by the negligence of that [~~person~~] excavator.

(2) An excavator is not liable for damage to an underground facility if:

(a) he has given proper notice of the proposed excavation as required in this chapter; and

(b) an operator has failed to comply with Section 54-8a-5 or 54-8a-9.

Section 6. Section Amended.

Section 54-8a-7, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1985, is amended to read:

54-8a-7. Notice of damage — Repairs.

[~~A person who in the course of excavation~~] (1) If an excavator contacts or damages an underground facility, he shall immediately notify the [~~designated representative of the~~] appropriate [~~public utility or cable~~] operator.

(2) Upon receipt of notice, the [~~representative~~] operator shall immediately [~~dispatch personnel to~~] examine the underground facility, and, if necessary, [~~the personnel shall~~] make repairs.

Section 7. Section Amended.

Section 54-8a-8, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1989, is amended to read:

54-8a-8. Civil penalty for damage — Action by operator or county attorney — Exceptions — Remedies supplemental.

[~~(1) Any person who excavates without first complying with Sections 54-8a-4 and 54-8a-5 and who damages, dislocates, or disturbs an underground facility is, upon proof of negligence, subject to a civil penalty of up to the maximum fine for a class B misdemeanor under Section 76-3-301 for the first offense and also for each subsequent offense.~~]

(1) (a) An excavator or operator who negligently violates any of the provisions of this chapter is subject to a civil penalty in the amount of $500 for each violation, not to exceed $5,000 total penalty.

(b) An excavator or operator who knowingly and willfully violates any of the provisions of this chapter is subject to a civil penalty in an amount of $1,000 for each violation, not to exceed $25,000 total penalty.

(2) (a) Actions to recover the civil penalties under this section shall be brought either by the [~~public utility or the cable~~] excavator, the operator whose underground facilities are damaged, or by the county attorney of the county in which the damage occurs.

(b) All penalties recovered from the action shall be paid into the General Fund.

(3) Subsection (1) does not apply to an excavation made:

(a) during an emergency, if reasonable precautions are taken to protect underground facilities;

(b) in agricultural operations;

(c) for the purpose of finding or extracting natural resources; or

(d) with hand tools on property owned or occupied by the [~~person performing the excavation~~] excavator.

(4) The civil penalties in this section are in addition to any damages that an [~~injured public utility or cable~~] operator or an excavator may seek to recover.

Section 8. Section Amended.

Section 54-8a-9, Utah Code Annotated 1953, as last amended by Chapter 39, Laws of Utah 1989, is amended to read:

54-8a-9. Association for mutual receipt of notification of excavation activities.

(1)(a)(i) Two or more [~~public utilities or cable~~] operators may form and operate [an] a statewide association providing for mutual receipt of [~~notification~~] notice of excavation activities [~~in a specified area~~]. [~~In areas where~~]

(ii) If an association is [~~formed, notification~~] operational, notice to the association [~~is effected as set forth in~~] shall be given pursuant to Section 54-8a-4. [~~In areas where~~]

(b)(i) If an association is formed, [~~public utilities and cable operators~~] each operator with underground facilities in the area shall become [~~members~~] a member of the association or participate in [~~and~~] it to:

(A) receive a notice of a proposed excavation submitted to the association;

(B) receive the services furnished by it[~~. A public utility owned by a public agency or municipality shall participate in and receive the service furnished by the association~~]; and

(C) pay its share of the cost for the service furnished. [~~The~~]

(ii) If an operator does not comply with Subsection (b)(i), he is liable for damages incurred by an excavator who has complied with the requirements under this chapter.

(c) An association whose members or participants have underground facilities within a county shall:

(i) file a description of the geographical area served by the association; and [~~list~~]

(ii) file the name and address of every member and participating [~~public utility or cable~~] operator with the county clerk.

(2) [~~If notification is made by telephone, an adequate~~] An association receiving notice as provided in Subsection 54-8a-4(1) shall:

(a) notify members and participants in the relevant geographic area within 24 hours after receiving notice from the person who proposes to excavate; and

(b) maintain a record [~~shall be maintained by the association~~] of notices received to document compliance with the requirements of this chapter.

Section 9. Section Amended.

Section 54-8a-10, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1986, is amended to read:

54-8a-10. Installation of fiberoptic nonmetallic facilities.

Any [~~public utility~~] operator utilizing a fiberoptic [~~cable~~] or other nonmetallic facility shall install the fiberoptic [~~cable~~] or other nonmetallic facility so that it can be located with standard underground facility detection devices or in a concrete [~~multiduct~~] conduit system [~~or so that it can be located with standard metal detection devices~~].

Section 10. Section Enacted.

Section 54-8a-11, Utah Code Annotated 1953, is enacted to read:

54-8a-11. Applicability of federal law.

The following persons or entities are subject to the provisions of Title 49 Code of Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs, including those provisions relating to damage to underground facilities:

(1) an operator, to the extent subject to the Natural Gas Pipeline Safety Act of 1968, 49 U.S. Code 1671 et seq. or the Hazardous Liquid Pipeline Safety Act of 1979, 49 App. U.S.C. 2001 et seq.;

(2) an excavator; and

(3) a person who operates an association.

Section 11. Repealer.

Section 54-8a-1, Purpose of chapter, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1985, is repealed.

CHAPTER 88
H. B. No. 28
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

REAUTHORIZATION OF DIVORCE, CHILD CUSTODY, AND VISITATION TASK FORCE

By J. Brent Haymond

AN ACT RELATING TO AND REAUTHORIZING THE DIVORCE, CHILD CUSTODY, AND VISITATION TASK FORCE; AND PROVIDING AN APPROPRIATION OF $19,200 FROM THE GENERAL FUND.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Reauthorization of task force — Completion of studies and final report — Staffing.

The Divorce, Child Custody, and Visitation Task Force created in Sections 1 and 2, Chapter 143, Laws of Utah 1992 is reauthorized through December 31, 1993. The task force shall retain the same staff, follow the same purposes, and retain the same membership. The task force shall complete its studies and make a final report to the Judiciary Interim Committee at the December 1993 meeting.

Section 2. Appropriation.

There is appropriated from the General Fund for fiscal year 1992-93:

(1) $3,600 to the Senate to pay for the compensation and expenses of the senators on the task force;

(2) $3,600 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) $12,000 to the Office of Legislative Research and General Counsel to pay for costs of the task force staff.

CHAPTER 89
H. B. No. 40
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

LAND GRANT MAINTENANCE ACCOUNT AMENDMENTS

By Melvin R. Brown
Kevin S. Garn
Grant D. Protzman
John B. Arrington
Beverly Ann Evans
Ronald J. Greensides
Patricia B. Larson
Nancy S. Lyon
Kurt E. Oscarson
Jordan Tanner
Neal B. Hendrickson
Phil H. Uipi
Michael G. Waddoups
Rob W. Bishop
Gerry A. Adair

AN ACT RELATING TO PUBLIC EDUCATION; MODIFYING THE PERCENTAGE OF STATE TRUST LAND REVENUES DEPOSITED IN THE LAND GRANT MAINTENANCE ACCOUNT; REQUIRING THE STATE LAND BOARD TO APPROVE PROPOSED EXPENDITURES FROM THE LAND GRANT MAINTENANCE ACCOUNT INCLUDED IN THE DIVISION OF STATE LANDS AND FORESTRY'S PROPOSED BUDGET; PROVIDING FOR DISBURSEMENT OF EXCESS REVENUES TO BENEFICIARIES; MAKING CERTAIN TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
65A-4-3, AS LAST AMENDED BY CHAPTER 87, LAWS OF UTAH 1989
65A-5-1, AS LAST AMENDED BY CHAPTER 137, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 65A-4-3, Utah Code Annotated 1953, as last amended by Chapter 87, Laws of Utah 1989, is amended to read:

65A-4-3. Mineral leases — Made exclusively by division — Disposition of state mineral lease revenues.

(1) Mineral leases of all lands owned by the state shall be made exclusively by the division, under rules made by the board, with the consent of the state agency using or holding the land.

(2)(a) Twenty percent of all revenues from mineral leases of lands owned by the state that are not school or institutional trust lands shall be deposited in the Land Grant Maintenance Account.

(b) The balance of state mineral lease revenues from the lands referred to in Subsection (2)(a) shall be deposited in the permanent State School Fund, except[:]

[~~(a) the balance of revenues from mineral leases on institutional trust lands shall be distributed to the respective state institution; and~~]

[~~(b)~~] the balance of revenues from mineral leases on lands acquired by state agencies through gift or purchase shall be utilized as directed by the agency or donor.

Section 2. Section Amended.

Section 65A-5-1, Utah Code Annotated 1953, as last amended by Chapter 137, Laws of Utah 1992, is amended to read:

65A-5-1 (Effective 07/01/93). Land Grant Maintenance Account — Creation — Contents — Appropriation to fund division expenses — Balance.

(1) There is created within the General Fund a restricted account known as the Land Grant Maintenance Account.

(2) This account shall consist of the following:

(a) [~~20% of~~] all revenues derived from state school and institutional trust lands except revenues from the sale of [~~state~~] these lands; and

(b) 20% of all revenues derived from mineral leases on other lands owned by the state that are not school or institutional trust lands [~~or sovereign lands~~].

(3) All expenditures of the division relating directly to the management of any lands owned by the state shall be funded by appropriation by the Legislature from the Land Grant Maintenance Account or other sources, except that revenues in the account from school and institutional trust lands shall be used to pay for expenditures only related directly to the management of school and institutional trust lands.

[~~(4) As of June 30 of each calendar year, the unappropriated portion of the Land Grant Maintenance Account from the fiscal year ending June 30 of that calendar year shall be transferred to the various land grant institutions.~~]

(4)(a) The board shall approve all proposed expenditures from the Land Grant Maintenance Account included in the division's proposed annual budget request prior to its submission to the governor.

(b) Any changes in proposed land grant maintenance expenditures in the division's budget request that are made by the department after approval by the board and prior to their submission to the governor shall be acknowledged and justified in writing.

(c) A change by the department under Subsection (b) is not subject to board approval.

(5) In each fiscal year after the revenue in the account exceeds the appropriation required under Subsection (3), the division shall disburse the excess revenue to the various school and institutional trust land beneficiaries on a monthly basis.

(6) The division shall transfer to the various beneficiaries on a prorated basis the remaining balance of the appropriation from the account as of June 30 of each fiscal year.

Section 3. Effective Date.

This act will take effect on July 1, 1993, and is subject to sunset on June 30, 1995, unless reenacted.

CHAPTER 90
H. B. No. 42
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SALE OF SCHOOL OR INSTITUTIONAL TRUST LANDS AMENDMENTS

By Melvin R. Brown
Kevin S. Garn
Grant D. Protzman
John B. Arrington
Beverly Ann Evans
Ronald J. Greensides
Patricia B. Larson
Nancy S. Lyon
Kurt E. Oscarson
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Phil H. Uipi
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Rob W. Bishop
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AN ACT RELATING TO STATE LANDS; REMOVING STATUTORY PROVISIONS THAT ALLOW STATE LANDS TO BE SOLD FOR LESS THAN FAIR MARKET VALUE; DISCONTINUING DETERMINABLE FEE SALES; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
65A-7-4, AS LAST AMENDED BY CHAPTER 283, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 65A-7-4, Utah Code Annotated 1953, as last amended by Chapter 283, Laws of Utah 1991, is amended to read:

65A-7-4. Sale of state lands — Geologic hazards to be disclosed — Analysis of sale or retention required — Notice of sale — Sales procedures — Defaults.

(1) State lands may not be sold for less than the fair market value[~~, unless:~~].

[~~(a) the law permits;~~]

[~~(b) the land is sold to a political subdivision of the state for a public purpose; and~~]

[~~(c) the sale is in the public interest.~~]

(2) The division shall disclose any known geologic hazard affecting property to be sold.

(3) (a) The board shall make rules that require an analysis of whether disposal or retention of all or a portion of a property interest in state lands is in the best interest of the trusts.

(b) When it is determined that the disposal of an interest in state lands is in the best interests of the applicable trust, the transaction shall be accomplished in an orderly and timely manner.

(4) (a) The board shall make rules for notice of sale or exchange of an interest in school or institutional trust lands.

(b) The rules shall require that notice of a proposed sale or exchange of all or a portion of a property interest in a specific parcel is published at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located.

(c) Notice of the proposed sale shall be sent by certified mail, no less than 30 days prior to the sale, to each person who owns property adjoining the land proposed for sale.

(d) The notice shall give a general description of the lands proposed for sale, including the township, range, and section.

[~~(5) In accordance with rules established by the board, determinable fee estates in state lands may be sold to political subdivisions or agencies of the state without auction, but publication of notice in accordance with this section is required. The estate of the purchaser in those lands shall endure so long as the lands are used for a public purpose and, upon failure of that use, shall revert to the appropriate trust.~~]

[~~(6)~~] (5) (a) Any tract of state land may be subdivided into lots and sold, leased, or exchanged at not less than fair market value in accordance with a management plan or other plan designating the land to be subdivided that is approved by the board.

(b) The division may survey the tract and direct its subdivision.

(c) A plat of the survey shall be filed in the office of the county recorder of the county where the land is located and in the office of the division.

(d) When the land is subdivided for residential purposes, the state's interest shall be offered for disposal.

[~~(7)~~] (6) (a) Down payments for lands sold [~~under the provisions of~~] pursuant to this chapter may not be less than one-tenth of the purchase price.

(b) This sum shall be paid in cash at the time of the sale, and the balance may not exceed 20 yearly payments.

[~~(b)~~] (c) The board shall make rules providing for other specifics of sales, in accordance with accepted real estate practices.

[~~(8)~~] (7) (a) Payments of principal, interest, or rental shall be made to the division, and it shall issue its receipt in duplicate.

(b) The division shall transmit the original receipt to the person making the payment and retain the duplicate.

[~~(9)~~] (8) (a) Any person purchasing land upon which improvements have been made by any other person shall pay to the division, in addition to the amount of principal and interest required to be paid

at the time of sale, the full appraised value of those improvements.

(b) The amount paid for improvements shall be paid by the division to the owner of the improvements, unless the owner removes the improvements within 90 days after the sale, for which purpose he has the right to go upon the land.

(c) If the owner removes the improvements within the 90 days, the board shall return the amount paid for improvements to the purchaser.

[~~(10)~~] (9) Upon the sale of land, the division shall issue to the purchaser a certificate of sale which shall:

(a) describe the land purchased; and

(b) state:

(i) the amount paid;

(ii) the amount due; and

(iii) the time when the principal and interest will become due.

[~~(11)~~] (10) Upon payment in full of principal and interest and the surrender of the original certificate of sale for any tract of land sold, or as provided by a rule for the partial release of property, the governor shall issue a patent to the purchaser, heir, assignee, successor in interest, or other appropriate grantee as determined by the division.

[~~(12)~~] (11) (a) If a purchaser of land from the state defaults in the payment of any installment of principal or interest due under the terms of his contract of sale and the default continues for a period of more than 30 days after the due date, then the division shall notify the purchaser of:

(i) the default; and

(ii) any remedy which the division may pursue under the contract of sale.

(b) The notice shall be sent by registered or certified mail to the purchaser at his latest address as shown by the records of the division.

(c) If the default is not corrected by compliance with the requirements of the notice of default within the time provided by the notice, the division may pursue any available remedy under the contract of sale.

(d) In the event forfeited lands are sold again to the same purchaser, the sale may be by a new and independent contract without regard to the forfeited agreement.

CHAPTER 91
H. B. No. 43
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

ADMINISTRATIVE PROCEDURES AMENDMENTS

By Melvin R. Brown
Kevin S. Garn
Grant D. Protzman
John B. Arrington
Beverly Ann Evans
Ronald J. Greensides
Patricia B. Larson
Nancy S. Lyon
Kurt E. Oscarson
Jordan Tanner
Neal B. Hendrickson
Phil H. Uipi
Michael G. Waddoups
Rob W. Bishop
Gerry A. Adair

AN ACT RELATING TO THE ADMINISTRATIVE PROCEDURES ACT; PROVIDING FOR AN EXCLUSION FROM THE ADMINISTRATIVE PROCEDURES ACT FOR ACTIONS RELATED TO THE MANAGEMENT AND DISPOSAL OF SCHOOL AND INSTITUTIONAL TRUST LAND ASSETS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-46B-1, AS LAST AMENDED BY CHAPTERS 30, 280, AND 303, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-46b-1, Utah Code Annotated 1953, as last amended by Chapters 30, 280, and 303, Laws of Utah 1992, is amended to read:

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state of Utah and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of all such actions.

(2) [~~The provisions of this~~] This chapter [do] does not govern:

(a) the procedures for promulgation of agency rules, or the judicial review of those procedures or rules;

(b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of, and penalties or interest on, taxes, or the issuance of any tax assessment, except that [~~the provisions of~~] this chapter [~~govern~~] governs any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;

(c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to actions and decisions of the Psychiatric Security Review Board relating to discharge, conditional release, or retention of persons under its jurisdiction, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of Mental Health, or persons on probation or parole, or judicial review of those actions;

(d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

(e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;

(f) the issuance of any citation or assessment under Title 35, Chapter 9, Utah Occupational Safety and Health Act of 1973, and Title 58, Chapter 55, Utah Construction Trades Licensing Act, except that [~~the provisions of~~] this chapter [~~govern~~] governs any agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of such a citation or assessment;

(g) state agency actions relating to management of state funds, the management and disposal of school and institutional trust land assets, except that this chapter governs any agency's final action commenced by any person pursuant to Section 65A-1-7, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in such contracts, or judicial review of those actions;

(h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions, and Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 8a, Utah Industrial Loan Corporation Guaranty Act, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63, Chapter 30, Governmental Immunity Act, or judicial review of those actions;

(i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Title 35, Chapter 1, Worker's Compensation, and Title 35, Chapter 2, Utah Occupational Disease Disability Law, or the initial determination of a person's unemployment tax liability;

(j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;

(k) the issuance of any notice of violation or order under Title 26, Chapter 8, Utah Emergency Medical Services System Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 2, Air Conservation Act, or Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, except that [~~the provisions of~~] this chapter [~~govern~~] governs any agency action commenced by any person authorized by law to contest the validity or correctness of any such notice or order;

(l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;

(m) the initial determination of any person's eligibility for government or public assistance benefits;

(n) state agency actions relating to wildlife licenses, permits, tags, and certificates of registration;

(o) licenses for use of state recreational facilities; and

(p) state agency actions under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603.

(3) [~~The provisions of this~~] This chapter [~~do~~] does not affect any legal remedies otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering conferences with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceedings; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5)(a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are governed by this chapter.

(6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.

(7)(a) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review.

CHAPTER 92
H. B. No. 52
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SEVERANCE TAX INCENTIVES FOR PETROLEUM INDUSTRY RECOVERY

By Dan Q. Price
Beverly Ann Evans
M. Keele Johnson
R. Lee Ellertson
J. Brent Haymond
Rob W. Bishop
Bradley Johnson
John William Hickman
Irby N. Arrington
Don E. Bush
Frank R. Pignanelli
R. Mont Evans
David Ure
James Gowans
Patricia B. Larson
Nora B. Stephens
Lowell A. Nelson
Allan C. Rushton
J. Reese Hunter
Stephen M. Bodily
Michael R. Styler
Robert H.M. Killpack
Evan L. Olsen
Douglas S. Peterson
Ronald J. Greensides
Steve Barth
Judy Ann Buffmire
Met Johnson
Darrell L. Jorgensen
DeMar Bowman
Doyle M. Mortimer
Russell A. Cannon
John L. Valentine

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING DEFINITIONS; EXTENDING TAX CREDIT FOR RECOMPLETIONS AND WORKOVERS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-5-101, AS LAST AMENDED BY CHAPTERS 247 AND 284, LAWS OF UTAH 1990
59-5-102, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 59-5-101, Utah Code Annotated 1953, as last amended by Chapters 247 and 284, Laws of Utah 1990, is amended to read:

59-5-101. Definitions.

As used in this part:

(1) "Development [~~wells~~] well" means [all] any oil and gas producing [wells] well other than a wildcat [wells] well.

(2) "Division" means the Division of Oil, Gas and Mining established under Title 40, Chapter 6.

(3) "Gas" means natural gas or natural gas liquids or any mixture thereof, [~~except it~~] but does not include solid hydrocarbons.

(a) "Natural gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form.

(b) "Natural gas liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

(4) "Net-back method" means a method for calculating the fair market value of oil or gas at the well. Under this method, costs of transportation, not to exceed 50% of the value of the oil or gas, and processing shall be deducted from the proceeds received for the oil or gas and any extracted or processed products, or from the value of the oil or gas or any extracted or processed products at the first point at which the fair-market value for those products is determined by a sale pursuant to an arm's-length contract or comparison to other sales of those products. Processing and transportation costs shall be deducted only from the value of the processed or transported product.

[~~(5) "New production" means any increased production resulting from a recompletion, workover, and new well drilling between January 1, 1990, and December 31, 1994, as approved by the division.~~]

[~~(6)~~] (5) "Oil" means crude oil or condensate or any mixture thereof, [~~except it~~] but does not include solid hydrocarbons.

(a) "Crude oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

(b) "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.

[~~(7)~~] (6) "Oil or gas field" means a geographical area overlying oil or gas structures. The boundaries of [~~such~~] oil or gas fields shall conform with the boundaries as fixed by the Board of Oil, Gas[~~,~~] and Mining under Title 40, Chapter 6.

[~~(8)~~] (7) "Owner" means any person having a working interest, royalty interest, payment out of production, or any other interest in the oil or gas produced or extracted from an oil or gas well in the state, or in the proceeds of this production.

[~~(9)~~] (8) "Processing costs" means the reasonable actual costs of processing gas. Processing costs de-

termined by an arm's-length contract are the actual costs. Where processing costs are not determined by an arm's-length contract, including those situations where the producer performs the processing for himself, the actual costs of processing shall be those reasonable costs associated with the actual operating and maintenance expenses, overhead directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the processing facilities as determined by the tax commission. The tax commission shall adopt rules to implement this definition, and may adopt federal regulations where applicable.

[~~(10)~~] (9) "Producer" means any working interest owner in any lands in any oil or gas field from which gas or oil is produced.

[~~(11)~~] (10) "Recompletion" means any [~~completion in a new perforated interval or pool within an established wellbore and approved as a recompletion by the division~~] downhole operation that is:

(a) conducted to reestablish the producibility or serviceability of a well in any geologic interval; and

(b) approved by the division as a recompletion.

[~~(12)~~] (11) "Royalty interest owner" means the owner of an interest in oil or gas, or in the proceeds of production from the oil or gas who does not have the obligation to share in the expenses of developing and operating the property.

[~~(13)~~] (12) "Solid hydrocarbons" means coal, gilsonite, ozocerite, elaterite, oil shale, tar sands, and all other hydrocarbon substances that occur naturally in solid form.

[~~(14)~~] (13) "Stripper well" means:

(a) an oil well whose average daily production for the days the well has produced has been 20 barrels or less of crude oil a day during any consecutive 12-month period; or

(b) a gas well whose average daily production for the days the well has produced has been 60 MCF or less of natural gas a day during any consecutive 90-day period.

[~~(15)~~] (14) "Transportation costs" means the reasonable actual costs of transporting oil or gas products from the well to the point of sale except the transportation allowance deduction may not exceed 50% of the value of the oil or gas. Transportation costs determined by an arm's-length contract are the actual costs. Where transportation costs are not determined by an arm's-length contract, including those situations where the producer performs the transportation service for himself, the actual costs of transportation shall be those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system as determined by the commission. The tax commission shall adopt rules to implement this definition, and may adopt federal regulations where applicable.

[~~(16)~~] (15) "Value at the well" means the value of oil or gas at the point production is completed.

[~~(17)~~] (16) "Well or wells" means any extractive means from which oil or gas is produced or extracted, located within an oil or gas field, and operated by one person.

[~~(18)~~] (17) "Wildcat [~~wells~~] well" means an oil and gas producing [~~wells~~] well which [~~are~~] is drilled and completed in a [~~"~~]pool,[~~"~~] as defined under Section 40-6-2, in which a well has not been previously completed as a well capable of producing in commercial quantities.

[~~(19)~~] (18) "Working interest owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

[~~(20)~~] (19) (a) "Workover" means any [~~operation designed to sustain, to restore, or to increase the production rate, the ultimate recovery, or the reservoir pressure system of a well or group of wells and approved as a workover, a secondary recovery, a tertiary recovery, or a pressure maintenance project by the division. It is not intended that this definition shall include operations which are conducted principally as routine maintenance or as the replacement of worn or damaged equipment~~] downhole operation that is:

(i) conducted to sustain, restore, or increase the producibility or serviceability of a well in the geologic intervals in which the well is currently completed; and

(ii) approved by the division as a workover.

(b) "Workover" does not include operations that are conducted primarily as routine maintenance or to replace worn or damaged equipment.

Section 2. Section Amended.

Section 59-5-102, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1991, is amended to read:

59-5-102. Severance tax — Rate — Computation — Annual exemption.

(1) (a) [~~Every~~] Each person owning an interest, working interest, royalty interest, payments out of production, or any other interest, in oil or gas produced from a well in the state, or in the proceeds of the production, shall pay to the state a severance tax equal to 4% of the value, at the well, of the oil or gas produced, saved, and sold or transported from the field where the substance was produced.

(b) Beginning January 1, 1992, the severance tax rate for oil is as follows:

(i) 3% of the value up to and including the first $13 per barrel for oil; and

(ii) 5% of the value from $13.01 and above per barrel for oil.

(c) Beginning January 1, 1992, the severance tax rate for natural gas is as follows:

(i) 3% of the value up to and including the first $1.50 per MCF for gas; and

(ii) 5% of the value from $1.51 and above per MCF for gas.

(d) Beginning January 1, 1992, the severance tax rate for natural gas liquids is 4% of the taxable value for natural gas liquids.

(e) If the oil or gas is shipped outside the state, this constitutes a sale, and the oil or gas is subject to the severance tax.

(f) If the oil or gas is stockpiled, the tax is not applicable until it is sold, transported, or delivered. [~~Oil~~] However, oil or gas that is stockpiled for more than two years[~~, however,~~] is subject to the severance tax.

(2) No tax is imposed upon:

(a) the first $50,000 annually in gross value of each well or wells as defined in this part, to be prorated among the owners in proportion to their respective interests in the production or in the proceeds of the production;

(b) stripper wells, unless the exemption prevents the severance tax from being treated as a deduction for federal tax purposes;

(c) the first six months of production for wells started after January 1, 1984, but before January 1, 1990;

(d) the first 12 months of production for wildcat wells started after January 1, 1990; or

(e) the first six months of production for development wells started after January 1, 1990.

(3)(a) A working interest owner who pays for all or part of the expenses of a recompletion or workover is entitled to a tax credit equal to 20% of the amount paid.

(b) The tax credit for each recompletion or workover may not exceed $50,000 per well during each calendar year through December 31, 1994, and beginning January 1, 1995, $30,000 per well during each calendar year through December 31, 1999. The tax credit shall apply [~~under this chapter for~~] to the taxable year in which the recompletion or workover is completed and shall be claimed quarterly beginning on the third quarter after recompletion or workover is completed under rules made by the commission.

(c) This subsection shall terminate at midnight on December 31, [~~1994~~] 1999.

(4) These taxes are in addition to all other taxes provided by law and are delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year when the oil or gas is produced, saved, and sold or transported from the premises.

(5) With respect to the tax imposed by this chapter on each owner of oil or gas or in the proceeds of the production of those substances produced in the state, each owner is liable for the tax in proportion to the owner's interest in the production or in the proceeds of the production.

(6) The tax shall be reported and paid by each producer who takes oil or gas in kind pursuant to agreement on behalf of the producer and on behalf of each owner entitled to participate in the oil or gas sold by the producer or transported by the producer from the field where the oil or gas is produced.

(7) Each producer shall deduct the tax from the amounts due to other owners for the production or the proceeds of the production.

CHAPTER 93
H. B. No. 53
Passed March 3, 1993
Approved March 15, 1993
Effective March 15, 1993

INDOOR CLEAN AIR TASK FORCE

By Jordan Tanner

AN ACT RELATING TO HEALTH; CREATING A LEGISLATIVE TASK FORCE TO STUDY ISSUES REGARDING ENVIRONMENTAL TOBACCO SMOKE AND TO RECOMMEND STATE ACTION REGARDING THOSE ISSUES; ESTABLISHING DATES FOR THE BEGINNING AND TERMINATION OF THE TASK FORCE; AND APPROPRIATING $22,000 TO FUND THE TASK FORCE.

THIS ACT ENACTS NEW MATERIAL.

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

Section1. Environmental Tobacco Smoke Task Force.

(1) There is created the Environmental Tobacco Smoke Task Force, to be referred to in this act as "the task force."

(2) The task force shall exist from May 3, 1993, through December 31, 1993.

(3) The task force consists of 11 members:

(a) three members of the House of Representatives, with two representing urban areas and one representing rural areas;

(b) three members of the Senate, with two representing urban areas and one representing rural areas;

(c) a representative of the executive branch of state government who is not an employee of the Department of Health and does not represent that department;

(d) two representatives of health care interests, one being from the Department of Health; and

(e) two representatives of business interests.

(4) (a) The president of the Senate and the speaker of the House of Representatives shall appoint the task force members from their respective bodies. The governor shall appoint the balance of the members, after consultation with the president of the Senate and the speaker of the House of Representatives.

(b) If any membership position becomes vacant, another person shall be appointed to fill the position by the same process as the prior appointment to the position.

(5) The president of the Senate and the speaker of the House of Representatives shall each appoint a cochairman of the task force from among the task force members they appoint.

(6) Six members of the task force constitute a quorum for conducting the official business of the task force.

(7) The task force shall consider the following issues:

(a) the impact of environmental tobacco smoke on the residents of Utah;

(b) the effectiveness of the current law in Utah under Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Solvents;

(c) recommendations for statutory changes regarding exposure to environmental tobacco smoke; and

(d) the economic impact, if any, on state and local government and on Utah's business community of any recommended statutory changes.

(8) The task force shall report its findings and recommendations to the Health and Environment and Business and Labor Interim Committees of the Legislature not later than at the November 1993 meetings of the committees.

(9) (a) Compensation and expenses of the legislators who are members of the task force shall be paid in accordance with Section 36-2-2.

(b) Task force members who are not legislators receive no compensation or reimbursement for expenses in their service as task force members.

(10) The Office of Legislative Research and General Counsel shall provide staff and support services for the task force.

Section2. Appropriation.

There is appropriated from the General Fund for the fiscal year 1993-94:

(1) $3,750 to the Senate to pay for the compensation and expenses of senators serving on the task force;

(2) $6,250 to the House of Representatives to pay for the compensation and expenses of representatives serving on the task force; and

(3) $12,000 to the Office of Legislative Research and General Counsel for staffing expenses associated with the task force.

Section3. Repeal date.

This act is repealed December 31, 1993.

Section4. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 94
H. B. No. 81
Passed February 22, 1993
Approved March 15, 1993
Effective May 3, 1993

ELECTION LAW CROSS-REFERENCES

By Afton B. Bradshaw

AN ACT RELATING TO ELECTION LAW RECODIFICATION; CONFORMING CROSS-REFERENCES TO THE RECODIFIED TITLE 20A; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-1-304, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTERS 89 AND 123, LAWS OF UTAH 1992
10-3-301, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1990
17-16-1, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1990
20-1-7.7, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992
20-3-18, AS LAST AMENDED BY CHAPTER 76, LAWS OF UTAH 1987
20-3-40, UTAH CODE ANNOTATED 1953
20-5-11, AS LAST AMENDED BY CHAPTER 2, LAWS OF UTAH 1983, FIRST SPECIAL SESSION
20-5-15, AS ENACTED BY CHAPTER 101, LAWS OF UTAH 1981
20-11-20, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1984
20-18-14, AS LAST AMENDED BY CHAPTER 57, LAWS OF UTAH 1987
59-10-547, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 76, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 9-1-304, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapters 89 and 123, Laws of Utah 1992, is amended to read:

9-1-304. Utah Sports Authority — State controls — Membership — Meetings — Removal — Per diem and expenses.

(1) (a) There is created within the Department of Community and Economic Development the Utah Sports Authority.

(b) The authority is subject to all laws, rules, policies, and other conditions and limitations that govern agencies of state government, including the procurement procedures contained in Title 63, Chapter 56, Utah Procurement Code, the personnel procedures contained in Title 67, Chapter 19, Utah State Personnel Management Act and those coming from oversight departments, divisions, agencies, or offices such as the Department of Administrative Services, the Division of Finance, the Division of Facilities Construction and Management, the state treasurer, the state auditor, and the attorney general.

(c) Notwithstanding any other provisions of this part, the Division of Finance shall provide or contract for all accounting related to public sports facilities, including budgeting, financial reporting, and internal controls of both state and nonstate funds of the authority. All nonstate funds may be accounted for and controlled outside of the state accounting system.

(2) The policy of the authority shall be determined by the authority board rather than the executive director of the Department of Community and Economic Development.

(3) The authority board shall consist of 15 members appointed by the governor as follows:

(a) five persons from a list of ten nominees provided by the Utah League of Cities and Towns, with not more than one being a resident of any given county;

(b) two persons from a list of four nominees provided by the Utah Association of Counties;

(c) three persons from a list of six nominees provided by the mayor of Salt Lake City;

(d) four persons from the state at large; and

(e) the executive director of the Department of Community and Economic Development.

(4) The authority board membership shall include, but is not limited to, representatives of private business and industry, including the banking, accounting, legal, financial services, and amateur sports industries.

(5) (a) In making appointments to the authority board the governor shall consider geographical representation.

(b) A member of the authority board may not hold an elective public office.

(c) Each board member shall be a resident of the state as defined in Section [~~20-2-14~~] 20A-2-105.

(d) No more than eight board members may have the same political party affiliation and the political party affiliation of each board member and any change in that affiliation shall be disclosed to the board.

(e) No member of the authority board, any of its employees, or any employees of the Department of Community and Economic Development may be on the board of, be employed by, contract with, or in any way be affiliated with any private entity that is using or seeking to use state funds to solicit, attract, organize, schedule, conduct, book, provide, operate, or create any public sports event, or that uses or seeks to use any public sports facility, unless any affiliation with the private entity is fully disclosed to the authority board and the oversight committee in an open and public meeting.

(6) Each board member shall serve a four-year term beginning January 1, 1990, except that seven

of the members first appointed shall serve two-year terms beginning January 1, 1990, as determined by the governor.

(7) The appointment of each member is subject to the consent of the Senate.

(8) The governor shall appoint one of the members appointed to a four-year term as the chairman of the authority board. The members shall elect from among their number a vice-chairman and other officers they may determine. The chairman shall serve at the pleasure of the governor.

(9) (a) The authority board shall meet at least quarterly unless otherwise determined by a majority of the members and at other times at the discretion of the chairman.

(b) A majority of the authority board is a quorum for conducting authority business. A majority vote of those present is required for any action to be taken by the authority.

(c) The authority board shall invite the members of the oversight committee and other agencies and individuals listed in Subsection (d) to all of its meetings. The authority shall allow members of the oversight committee and other agencies and individuals listed in Subsection (d) to attend, participate in discussions, and review all materials presented in all meetings of the authority. The authority shall include at least two members of the oversight committee on each subcommittee the authority may create.

(d) The authority board shall provide meeting notices, agendas, and minutes of meetings to members of the oversight committee, the governor, the attorney general, the Division of Finance, the Department of Administrative Services, the Division of Facilities Construction and Management, the state auditor, the legislative auditor general, the Office of Legislative Research and General Counsel, and the Office of the Legislative Fiscal Analyst.

(10) Any member may be removed from office with cause by the governor or for cause by an affirmative vote of eight members. Vacancies in the membership of the board by reason of removal, death, resignation, disqualification, or otherwise shall be filled for the unexpired term of the vacant member by appointment by the governor in the same manner as the original appointment, subject to the consent of the Senate. Members shall continue to hold office until their successors have been appointed and qualified. Any member is eligible for reappointment, but may not serve more than four full consecutive terms.

(11) The authority shall exist as long as it has obligations outstanding and until its existence is terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.

(12) Each authority board member shall receive per diem and travel expenses as established by the Division of Finance, except the executive director of the Department of Community and Economic Development shall receive only travel expenses as established by the Division of Finance.

Section 2. Section Amended.

Section 10-3-301, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1990, is amended to read:

10-3-301. Eligibility and residency requirements for elected municipal office.

(1) A person filing a declaration of candidacy for a municipal office shall:

(a) have been a resident of the municipality in which the person seeks office for at least one year immediately before the date of the election; and

(b) meet the other requirements of Section 20-5-9.

(2) Any person elected to municipal office shall be a registered voter in the municipality in which he was elected.

(3) (a) Each elected officer of a municipality shall maintain residency within the boundaries of the municipality during his term of office.

(b) If an elected officer of a municipality establishes his principal place of residence as provided in Section [~~20-2-14~~] 20A-2-105 outside the municipality during his term of office, the office is automatically vacant.

(4) If an elected municipal officer is absent from the municipality any time during his term of office for a continuous period of more than 60 days without the consent of the municipal legislative body, the municipal office is automatically vacant.

Section 3. Section Amended.

Section 17-16-1, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1990, is amended to read:

17-16-1. Eligibility and residency requirements for county, district, or precinct office.

(1) A person filing a declaration of candidacy for a county, district, or precinct office shall have been a resident of the county, district, or precinct in which the person seeks office for at least one year immediately before the date of the election.

(2) Any person elected to a county, district, or precinct office shall be a registered voter in the county, district, or precinct in which he was elected.

(3) (a) A county, district, or precinct officer shall maintain residency within the county, district, or precinct in which he was elected during his term of office.

(b) If a county, district, or precinct officer establishes his principal place of residence as provided in Section [~~20-2-14~~] 20A-2-105 outside the county, district, or precinct in which he was elected, the office is automatically vacant.

(4) If an elected county, district, or precinct officer is absent from the county, district, or precinct any time during his term of office for a continuous period of more than 60 days without the consent of the county legislative body, the county, district, or precinct office is automatically vacant.

(5) The residency requirement of this section is inapplicable to the appointment of a county attorney under the conditions prescribed in Section 17-5-21.

Section 4. Section Amended.

Section 20-1-7.7, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992, is amended to read:

20-1-7.7. Judicial appointees — Retention elections.

(1) Each appointee to a court of record is subject to an unopposed retention election at the first general election held more than three years after appointment. Following initial voter approval, each Supreme Court justice every tenth year, and each judge of other courts of record every sixth year, is subject to an unopposed retention election at the corresponding general election.

(2) (a) Any appointee to the office of justice of the Supreme Court or judge of any other court of record or any incumbent retained in those offices shall, if the justice or judge desires to retain the office, file a declaration of candidacy with and pay a filing fee of $50 to the lieutenant governor in accordance with the time requirements of Subsection 20-4-9 (1).

(b) County justice judges shall file a declaration of candidacy with and pay a filing fee of $25 to the clerk of the county in which they are a justice judge.

(3) In form similar to Section 20-3-17, but omitting any reference to party affiliation and only for the general election, the lieutenant governor shall certify the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county of the state and shall certify the names of judges of other courts of record declaring their candidacy to the county clerk of each county in the geographic division in which the declaring judge holds office. The county clerks to whom the certificates are sent by the lieutenant governor shall place the names on the ballot to be used at the general election under a separate heading, without any political or partisan designation.

(4) At the general election the ballots shall contain, as to each justice or judge of any court of record to be voted on in the county, the following question: Shall (name of justice or judge) be retained in the office of (name of office, such as "Justice of the Supreme Court of Utah," "Judge of the Court of Appeals of Utah," "Judge of the District Court of the Third Judicial District," "Judge of the Juvenile Court of the Fourth Juvenile Court District," "County Justice Judge of (name of county) County," or "Judge of the Circuit Court of the Fifth Circuit")? Yes ( ) No ( ).

(5) (a) If there are more "yes" than "no" answers to the question on the ballot as to the justice or judge, the justice or judge is retained for the term of office provided by law.

(b) If there are not more "yes" than "no" answers to the question on the ballot as to the justice or judge, the justice or judge is not retained, a vacancy occurs in the office as of the first Monday in January following the general election, and the vacancy shall be filled as provided in [~~Sections 20-1-7.1 and 20-1-7.6~~] Title 20A, Chapter 1.

(c) Any justice or judge not retained is not eligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

Section 5. Section Amended.

Section 20-3-18, Utah Code Annotated 1953, as last amended by Chapter 76, Laws of Utah 1987, is amended to read:

20-3-18. Notice of election.

(1) After the county clerk receives the certified list, as provided in Section 20-3-17, the county clerk shall post or publish the primary election notice [~~as provided in Section 20-1-14~~].

(2) The notice shall be in substantially the following form:

Notice is given that a primary election will be held Tuesday, September ____, 19__, to nominate party candidates for the parties and nonpartisan offices listed on the primary ballot. The polling place for district ____ is ____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. tf Attest: county clerk.

Section 6. Section Amended.

Section 20-3-40, Utah Code Annotated 1953, is amended to read:

20-3-40. General election laws applicable — Powers of state board of canvassers.

The provisions of existing statutes concerning elections and any amendments now or hereafter made thereto, so far as the same are consistent with the provisions of this act, shall apply to the election provided in this act, the intent of this act being to place the nominating election under the regulations and protections in all respects of the laws in force as to general elections. That all the powers and duties conferred and imposed by the laws of this state upon all public officials relative to elections and all laws relative to the conducting of general elections are, in every detail and particular, conferred and imposed upon each and all of such officers in connection with the nominating elections conducted under the provisions of this act except as herein otherwise specifically provided. And whenever the provisions of this act in operation prove to be of doubtful or uncertain meaning or not sufficiently explicit in directions and details the general provisions of Title 20, Utah Code Annotated, 1953, and as subsequently amended, and the customs, practice, usage, and forms thereunder, in the same circumstances or under like conditions, shall be followed in the construction and operation of this act to the end that the protection of the spirit and intention of said laws shall be extended so far as possible to all nominating elections. If the provisions of this act and the general provisions of said laws are found to be inadequate or in any way in conflict with each other, the state board of canvassers[~~, as constituted by section 25-6-10, Revised Statutes of Utah, 1933 [20-8-10, Utah~~

~~Code Annotated 1953],~~] shall and are authorized to make modifications and make and adopt such rules and regulations as will be effective in making possible the proper and orderly operation of this act, and such modifications, rules and regulations as are of necessity made shall be binding and of the same effect as if they were a part of this act.

Section 7. Section Amended.

Section 20-5-11, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1983, First Special Session, is amended to read:

20-5-11. Nominations by convention or committee.

(1) Any third class city or town by ordinance adopted before June 1 in any year, preceding a municipal election, may exempt itself from a primary election by providing that the nomination of candidates for municipal office to be voted upon at a municipal election, be nominated by a convention or committee. A primary election exemption ordinance shall remain in effect until repealed by ordinance. For purposes of this section, "convention" means an organized assemblage of voters or delegates. A committee appointed at a convention, if authorized by a duly passed enabling resolution, may also make nominations or fill vacancies in nominations made at a convention.

(2) No convention or committee may nominate more than one group of candidates or have placed on the ballot more than one group of candidates for the municipal offices to be voted upon at the municipal election. A convention or committee, however, may nominate a person who has been nominated by a different convention or committee, but in making such a nomination in the name of such nominee shall be placed upon the regular ticket of the political party represented at the convention making such nomination and no political party may have placed upon the ballot more than one group of candidates or to group the same candidates on different tickets by the same party under a different name or emblem.

(3) All nominations made by such convention or committee shall be certified in writing. The certificate of nomination shall contain the name of the office for which each person is nominated, the name, post-office address, and, if in a city, the street number of residence and place of business, if any, of each person nominated and shall designate in not more than five words the party which such convention or committee represents. It shall also contain a statement that the name of any such candidate will not appear on the ballot otherwise than as a candidate of the political party for which such certificate is made. The certificate shall be signed by the presiding officer and secretary of the convention or committee, who shall add to their signature their respective places of residence and post-office addresses and make oath before an officer qualified to administer the same that the affiants were such officers of such convention or committee and that such certificates and the statements contained in the certificate are true to the best of their knowledge and belief. When the nomination is made by a committee the certificate of nomination shall also contain a copy of the resolution passed at the convention which authorized the committee to make such nomination. Certificates of nomination shall be filed with the clerk not later than the sixth Tuesday before the November municipal election.

(4) The election ballot shall substantially comply with the form prescribed in [~~section 20-5-12~~] Title 20A, Chapter 5, but the party name shall be included with the candidate's name.

Section 8. Section Amended.

Section 20-5-15, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1981, is amended to read:

20-5-15. Objection to declaration of candidacy.

A declaration of candidacy filed in conformity with Section 20-5-9 is valid unless written objection is made within three days after the declaration is filed. If an objection is made, notice of the objection shall be mailed or personally delivered to the affected candidate immediately. All objections shall be decided within 48 hours after they are filed with the clerk. If the objection is sustained by the clerk, it may be cured by an amendment or by filing a new declaration within three days after the objection is sustained, but in no event later than 18 days before the day of the election. The clerk's decision upon objections to form is final. The clerk's decision upon substantive matters is reviewable by a district court if prompt application is made to the court in accordance with [~~section 20-5-66~~] Title 20A, Chapter 1. The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

Section 9. Section Amended.

Section 20-11-20, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1984, is amended to read:

20-11-20. Return and canvass — Conflicting measures — Law effective on proclamation.

The votes on measures and questions submitted to the people shall be counted, canvassed, and returned by the regular boards, judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the lieutenant governor in the manner provided [~~by Section 20-8-8~~] for abstracts of votes for state officers. The lieutenant governor shall certify to the governor the vote for and against such measures and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by the greatest number of affirmative votes, provided such number is a majority of those voting thereon, to be in full force and effect as the law of the state of Utah. When the governor is of the opinion that two measures, or that parts of two measures, approved by the people at the same election are entirely in conflict and opposed, he shall proclaim that measure to be law which has received the greatest

number of affirmative votes, regardless of the difference in the majorities which those measures have received. Within ten days after such proclamation any qualified voter, who shall have signed the petition to submit the measure which is declared by the governor to be superseded by another measure approved at the same election, may apply to the Supreme Court to review the governor's decision. The court shall forthwith consider the matter and decide whether or not such measures are in conflict, and shall certify its decision, within ten days after the matter is submitted to it for decision, to the governor. The governor shall, within 30 days after his previous proclamation, proclaim all those measures approved by the people as law which the Supreme Court has decided not to be in conflict, and of all those which the Supreme Court shall have decided to be in conflict he shall proclaim as law the one which has received the greatest number of affirmative votes, regardless of difference in majorities.

Section 10. Section Amended.

Section 20-18-14, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1987, is amended to read:

20-18-14. Assistance to blind or disabled voters.

The provisions of [~~Section 20-20-6~~] Title 20A, Chapter 3 concerning the assistance to be given to blind or physically disabled voters apply also where voting machines are used, and the word "booth," when used in those sections, includes the voting machine enclosure or curtain.

Section 11. Section Amended.

Section 59-10-547, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 76, Laws of Utah 1987, is amended to read:

59-10-547. Election campaign fund designations — Transfer from General Fund — Form and procedure.

(1) (a) Every individual other than a nonresident alien whose income tax liability, less any credit allowed by this chapter, for any taxable year is $1 or more may designate that $1 be paid into the Election Campaign Fund established under Section 59-10-548.

(b) The commission shall transfer $1 from the General Fund to the Election Campaign Fund for each campaign designation made on an individual income tax return.

(c) The transfer shall come from revenue generated from the sales and use tax.

(2) (a) A designation under Subsection (1) may be made with respect to any taxable year at the time of filing the return for that taxable year.

(b) The form for the return shall be prepared by the commission to include provision for a campaign contribution designation for any political party as defined by Subsection [~~20-3-2 (6)~~] 20A-1-102(41) that has qualified as a political party in the first six months of the calendar year for which the return is prepared.

(c) The political parties shall be placed on the form in alphabetical order.

(d) Any individual who chooses to designate funds to the Election Campaign Fund shall place a check mark opposite the name of the political party on the form provided by the commission.

(e) The form shall also contain a box in which the taxpayer can indicate that no contribution is to be made to any political party.

CHAPTER 95
H. B. No. 85
Passed February 22, 1993
Approved March 15, 1993
Effective May 3, 1993

RECOGNIZING CONSTITUTIONAL FREEDOMS IN SCHOOL

By Byron L. Harward

AN ACT RELATING TO EDUCATION; ENACTING STATUTORY CLARIFICATION OF CONSTITUTIONAL FREEDOMS AND CURRICULUM CONTENT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-13-101, AS LAST AMENDED BY CHAPTERS 50 AND 80, LAWS OF UTAH 1988

ENACTS:
53A-13-101.1, UTAH CODE ANNOTATED 1953
53A-13-101.2, UTAH CODE ANNOTATED 1953
53A-13-101.3, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 53A-13-101, Utah Code Annotated 1953, as last amended by Chapters 50 and 80, Laws of Utah 1988, is amended to read:

53A-13-101. Instruction in health — Parental consent requirements — Character habits — Partisan political and religious doctrine prohibited.

(1) The State Board of Education shall establish curriculum requirements under Section 53A-1-402, that include instruction in:

(a) community and personal health;

(b) physiology;

(c) personal hygiene; and

(d) prevention of communicable disease, including acquired immunodeficiency syndrome. That instruction shall stress the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods of prevention of acquired immunodeficiency syndrome.

(2) Instruction in the courses described in Subsection (1) shall be consistent and systematic in grades eight through 12. At the request of the board, the Department of Health shall cooperate with the board in developing programs to provide instruction in those areas.

(3) The board shall adopt rules that provide that the parental consent requirements of Sections 76-7-322 and 76-7-323 are complied with, and rules that require a student's parent or legal guardian to be notified in advance and have an opportunity to review the information for which parental consent is required under Sections 76-7-322 and 76-7-323. The board shall also provide procedures for disciplinary action for violation of Section 76-7-322 or 76-7-323.

(4) Honesty, temperance, morality, courtesy, obedience to law, respect for and an understanding of the Constitutions of the United States and the state of Utah, the essentials and benefits of the free enterprise system, respect for parents and home, and the dignity and necessity of honest labor and other skills, habits, and qualities of character which will promote an upright and desirable citizenry and better prepare students for a richer, happier life shall be taught in connection with regular school work.

(5) [~~Partisan~~] Except as provided in Section 53A-13-101.1, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.

(6) Local school boards and their employees shall cooperate and share responsibility in carrying out the purposes of this chapter.

Section 2. Section Enacted.

Section 53A-13-101.1, Utah Code Annotated 1953, is enacted to read:

53A-13-101.1. Maintaining constitutional freedom in the public schools.

(1) Any instructional activity, performance, or display which includes examination of or presentations about religion, political or religious thought or expression, or the influence thereof on music, art, literature, law, politics, history, or any other element of the curriculum, including the comparative study of religions, which is designed to achieve secular educational objectives included within the context of a course or activity and conducted in accordance with applicable rules of the state and local boards of education, may be undertaken in the public schools.

(2) No aspect of cultural heritage, political theory, moral theory, or societal value shall be included within or excluded from public school curricula for the primary reason that it affirms, ignores, or denies religious belief, religious doctrine, a religious sect, or the existence of a spiritual realm or supreme being.

(3) Public schools may not sponsor prayer or religious devotionals.

(4) School officials and employees may not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.

Section 3. Section Enacted.

Section 53A-13-101.2, Utah Code Annotated 1953, is enacted to read:

53A-13-101.2. Waivers of participation.

(1) If a parent with legal custody or other legal guardian of a student, or a secondary student, determines that the student's participation in a portion of the curriculum or in an activity would require the student to affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of a re-

ligious right or right of conscience, the parent, guardian, or student may request:

(a) a waiver of the requirement to participate; or

(b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.

(2) The school shall promptly notify a student's parent or guardian if the student makes a request under Subsection (1).

(3) If a request is made under this section, the school shall:

(a) waive the participation requirement;

(b) provide a reasonable alternative to the requirement; or

(c) notify the requesting party that participation is required. The school shall ensure that the provisions of Subsection 53A-13-101.3(3) are met in connection with any required participation.

Section 4. Section Enacted.

Section 53A-13-101.3, Utah Code Annotated 1953, is enacted to read:

53A-13-101.3. Expressions of belief—Discretionary time.

(1) Expression of personal beliefs by a student participating in school-directed curricula or activities may not be prohibited or penalized unless the expression unreasonably interferes with order or discipline, threatens the well-being of persons or property, or violates concepts of civility or propriety appropriate to a school setting.

(2)(a) As used in this section, "discretionary time" means noninstructional time during which a student is free to pursue personal interests.

(b) Free exercise of voluntary religious practice or freedom of speech by students during discretionary time shall not be denied unless the conduct unreasonably interferes with the ability of school officials to maintain order and discipline, unreasonably endangers persons or property, or violates concepts of civility or propriety appropriate to a school setting.

(3) Any limitation under Sections 53A-13-101.2 and 53A-13-101.3 on student expression, practice, or conduct shall be by the least restrictive means necessary to satisfy the school's interests as stated in those sections, or to satisfy another specifically identified compelling governmental interest.

CHAPTER 96
H. B. No. 89
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

MINERAL LEASE ACCOUNT AMENDMENTS

By Melvin R. Brown

AN ACT RELATING TO MINERAL LEASE FUNDS; PROVIDING FOR STATE PILT PAYMENTS FROM THE MINERAL LEASE ACCOUNT TO COMPENSATE COUNTIES IN WHICH SCHOOL AND INSTITUTIONAL TRUST LANDS ARE TRANSFERRED TO THE FEDERAL GOVERNMENT AFTER DECEMBER 31, 1992, AND COUNTIES IN WHICH FEDERAL ENTITLEMENT LANDS ARE TRANSFERRED TO SCHOOL OR INSTITUTIONAL TRUSTS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-21-2, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-21-2, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

59-21-2. Mineral Bonus Account — Allocation of monies from Mineral Lease Account.

(1)(a) The Mineral Bonus Account is created within the General Fund.

(b) All bonus money received by the state under Subsection 59-21-1(3) shall be deposited in this account.

(c) The Legislature shall make appropriations from the Mineral Bonus Account in accordance with Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Sec. 191.

(d) The money in the Mineral Bonus Account shall be invested by the state treasurer in accordance with the State Money Management Act of 1974, except that all interest or other earnings derived from the account shall be returned to the Mineral Bonus Account rather than the General Fund.

(2) The following appropriations shall be made from the Mineral Lease Account:

(a) to the Permanent Community Impact Fund established by Subsection 51-5-4(8)(b), 32-1/2% of all deposits made to the Mineral Lease Account;

(b) to the Board of Regents for allocation to the state's institutions of higher [learning] education, 33-1/2% of all deposits made to the Mineral Lease Account, subject to the limitations described in Subsection (3);

(c) to the Utah State Board of Education, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for education research and experimentation in the utilization of staff and facilities designed to improve the quality of education in Utah;

(d) to the Utah Geological Survey, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state of Utah;

(e) to the Water Research Laboratory at Utah State University, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state of Utah;

(f) to the Department of Transportation, 25% of all deposits made to the Mineral Lease Account, to be distributed by the Transportation Commission to special service districts established by counties for the purpose of constructing, repairing, and maintaining roads or other [~~single-purpose special service districts established by counties: (i) in fiscal year 1988-89, $2,000,000; (ii) in fiscal year 1989-90, $4,000,000; (iii) in fiscal year 1990-91, $6,000,000; and (iv) in fiscal year 1991-92 and each year thereafter, 25% of all deposits made to the Mineral Lease Account~~] purposes authorized by law; and

(g) to the extent available [~~from the remaining unallocated portion of the Mineral Lease Account,~~] after the allocations provided in Subsections (2)(a) through (2)(f) are made:

(i) to each county in which [~~are located~~] school or institutional trust lands are located, lands owned by the Division of Parks and Recreation, or lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, an amount equal to the number of acres of those lands in the county multiplied by[:] 52 cents;

[~~(i) $.06, in fiscal year 1988-89;~~]

[~~(ii) $.15, in fiscal year 1989-90;~~]

[~~(iii) $.30, in fiscal year 1990-91;~~]

[~~(iv) $.40, in fiscal year 1991-92; and~~]

[~~(v) $.52, in fiscal year 1992-93 and each year thereafter.~~]

(ii) to each county in which school or institutional trust lands are transferred to the federal government after December 31, 1992, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between 52 cents per acre and the per acre payment made to that county in the most recent payment under the federal payment in lieu of taxes program, P.L. 94-565 as amended, unless the federal payment was equal to or exceeded the 52 cents per acre, in which case no payment shall be made for the transferred lands; and

(iii) to each county in which federal lands, which are entitlement lands under the federal in lieu of taxes program, are transferred to the school or institutional trust, an amount equal to the number of

transferred acres in the county multiplied by a payment per acre equal to the difference between the most recent per acre payment made under the federal payment in lieu of taxes program and 52 cents per acre, unless the federal payment was equal to or less than 52 cents per acre, in which case no payment shall be made for the transferred land.

(3) (a) The total amount of federal mineral lease funds allocated by the Board of Regents during any fiscal year may not be increased above the amount allocated during the immediately preceding fiscal year in excess of the percentage increase in the Consumer Price Index published by the United States Department of Labor for the immediately preceding calendar year, but in any event not more than 10%.

(b) If the total amount of mineral lease funds allocated to a recipient agency or institution in any fiscal year is less than the total amount [so] allocated for the immediately preceding fiscal year, the allocation to that agency or institution during the immediately following fiscal year shall be increased by the amount of the reduction before calculating and applying the percent limitation.

(c) (i) The federal mineral lease funds apportioned to [~~higher educational~~] institutions of higher education shall be expended pursuant to institutional work programs.

(ii) Those programs shall be approved by the Board of Regents when they are satisfied that a majority of the funds will be expended for research, educational, or public service programs of benefit to the subdivisions of the state socially or economically impacted by the development of minerals leased under the Mineral Lands Leasing Act in the planning, construction, and maintenance of public facilities, and the provision of public services.

(d) (i) The amount to which each institution of higher [~~learning~~] education is entitled is that proportion of the total amount available which the average number of full-time students enrolled during the preceding year in those institutions bears to the total enrollment of all institutions.

(ii) Enrollment at the University of Utah and [~~the~~] Utah State University shall first be multiplied by 1.25 and the product shall constitute the enrollment of the University of Utah and [~~the~~] Utah State University for the purposes of this allocation.

(4) The federal mineral lease funds allocated to the Water Research Laboratory at Utah State University are in addition to any other money to which Utah State University is entitled under this section.

(5) Federal mineral lease funds distributed by the Transportation Commission under Subsection (2)(f) shall be allocated to county special service districts in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(6) (a) Each county receiving money under Subsection (2)(g) shall give the money to a school district or other special purpose governmental entity within the county.

(b) Beginning in fiscal year 1994-95 and in each year thereafter, the amount per acre provided in Subsection (2)(g)(i) shall adjust to reflect changes in the rate of inflation as measured by the consumer price index.

CHAPTER 97
H. B. No. 104
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

BUDGETARY PROCEDURES ACT

By Byron L. Harward

AN ACT RELATING TO STATE AFFAIRS; AMENDING THE BUDGETARY PROCEDURES ACT AS TO THE WAY THE GOVERNOR'S BUDGET IS PREPARED.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-38-2, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 63-38-2, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

63-38-2. Governor to submit budget to Legislature — Contents — Preparation — Appropriations based on current tax laws and not to exceed estimated revenues.

(1) The governor shall, within three days after the convening of the Legislature in annual general session, submit a budget for the ensuing fiscal year. The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year. He shall submit the budget by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(2) At least 30 days prior to the governor's submission of any such budget, he shall deliver to the Office of the Legislative Fiscal Analyst on a confidential basis a draft copy of his proposed budget recommendations.

(3) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing year based on the current fiscal year state tax laws and rates. It may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the fiscal year next preceding;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies; and

(e) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue.

(5) The budget shall embrace an itemized estimate of the appropriations for the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House:

(a) for the Executive Department;

(b) for the Judicial Department as certified to the governor by the state court administrator;

(c) for payment and discharge of the principal and interest of the indebtedness of the state of Utah;

(d) for the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the ensuing year;

(e) for other purposes that are set forth in the Utah Constitution or under law; and

(f) for all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) (a) (i) For the purpose of preparing the budget the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures [~~and~~].

(ii) The governor may also require other information under guidelines and at times as the governor may direct. These guidelines may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(b) The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor.

(c) The estimate for the Judicial Department as certified by the state court administrator shall also be included in the budget without revision, but the governor may make separate recommendations on it.

(d) The governor may require the attendance at such meetings of representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations.

(e) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year. If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(9) (a) In submitting the budget for the Department of Human Services, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section 17A-3-606;

(ii) local substance abuse authorities under Section 62A-8-110.5;

(iii) area agencies on aging under Section 62A-3-104.2; and

(iv) programs administered directly by and for operation of the Divisions of Mental Health, Substance Abuse, and Aging and Adult Services.

(b) In his budget recommendations under Subsections (a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local mental health authorities, local substance abuse authorities, and area agencies on aging the same percentage increase for cost-of-living that he includes in his budget for persons employed by the state.

CHAPTER 98
H. B. No. 110
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

PARENTAL INVOLVEMENT IN THE PUBLIC SCHOOLS

By Kelly C. Atkinson

AN ACT RELATING TO PUBLIC EDUCATION; REQUIRING LOCAL SCHOOL BOARDS TO ADOPT POLICIES ON PARENTAL INVOLVEMENT IN SCHOOLS TO BUILD CONSISTENT AND EFFECTIVE COMMUNICATION BETWEEN PARENTS AND TEACHERS AND ADMINISTRATORS AND TO PROVIDE PARENTS WITH THE OPPORTUNITY TO BE ACTIVELY INVOLVED IN THEIR CHILDREN'S EDUCATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-1A-105, AS ENACTED BY CHAPTER 47, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 53A-1a-105, Utah Code Annotated 1953, as enacted by Chapter 47, Laws of Utah 1992, is amended to read:

53A-1a-105. Parental participation in educational process — Employer support.

(1) The Legislature recognizes the importance of parental participation in the educational process in order for students to achieve and maintain high levels of performance.

(2) It is, therefore, the policy of the state to:

[~~(1)~~] (a) expect that parents shall provide a home environment that values education and send their children to school prepared to learn;

[~~(2)~~] (b) rely upon school districts and schools to provide opportunities for parents of students to be involved in establishing and implementing educational goals for their respective schools and students;

[~~(3)~~] (c) expect employers to recognize the need for parents and members of the community to participate in the public education system in order to help students achieve and maintain excellence; and

[~~(4)~~] (d) encourage employers to develop policies and programs that would allow employees opportunities for greater participation in the public education system during school hours.

(3)(a) Each local school board is expected to adopt a policy on parental involvement in the schools of the district.

(b) The board is expected to design its policy to build consistent and effective communication between parents of students enrolled in the district and the teachers and administrators assigned to their children's schools.

(c) The policy is expected to provide parents with the opportunity to be actively involved in their children's education and to be informed of:

(i) the importance of the involvement of parents in directly affecting the success of their children's educational efforts; and

(ii) groups and organizations that may provide instruction and training to parents to help improve their children's academic success and support their academic efforts.

CHAPTER 99
H. B. No. 136
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SMOKING IN PUBLIC SCHOOL BUILDINGS

By Evan L. Olsen
John L. Valentine

AN ACT RELATING TO PUBLIC EDUCATION; PROHIBITING SMOKING IN PUBLIC SCHOOL BUILDINGS OR FACILITIES OR ON PROPERTY ON WHICH THOSE FACILITIES ARE LOCATED; PROVIDING FOR DESIGNATED SMOKING AREAS FOR ADULTS DURING NONSCHOOL HOURS IN PRIVATE SCHOOLS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-10-106, AS LAST AMENDED BY CHAPTER 279, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 76-10-106, Utah Code Annotated 1953, as last amended by Chapter 279, Laws of Utah 1992, is amended to read:

76-10-106. Smoking in public place, public meeting, or government buildings prohibited — Prohibition of smoking in elementary and secondary educational facilities and child care centers.

(1) The Legislature finds that:

(a) tobacco smoke, or smoke from any other plant, in enclosed places is harmful to the health of nonsmokers with allergies or respiratory or cardiovascular disease; [~~that~~]

(b) there is strong evidence that tobacco smoke in enclosed places is harmful to the health of nonsmokers even without allergies or respiratory or cardiovascular disease; [~~that~~]

(c) tobacco smoke, or smoke from any other plant in enclosed public places is a public health nuisance and a cause of material annoyance, discomfort, and physical irritation to nonsmokers; [~~that~~]

(d) nonsmokers have no adequate means to protect themselves from the damages inflicted upon them when they involuntarily inhale tobacco smoke or smoke from other plants; and [~~that~~]

(e) regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.

(2) (a) A person may not smoke in a public place or at a public meeting except in designated smoking areas.

(b) This prohibition does not apply when:

[~~(a)~~] (i) an entire room or hall is used for a private social function; and

[~~(b)~~] (ii) the sponsor of the function determines the seating arrangements.

(3) (a) A person may not smoke in a building, or portion of a building, that is owned, leased, or occupied by the state or any state agency.

(b) Designated smoking areas are prohibited under this subsection.

(c) This subsection takes precedence over any conflicting provision of this section.

(4) A person may not smoke or use tobacco in any area of the following facilities or locations whether or not they are also public places:

(a) public or private elementary [and] or secondary school buildings and educational facilities [and] or the property on which those facilities are located. However, [~~adult faculty and staff members~~] adults may smoke in designated smoking areas in private schools or educational facilities or on the grounds of private schools or facilities during nonschool hours; and

(b) child care facilities licensed by the Office of Licensing within the Department of Human Services, during the period of time when the children cared for under that license are present.

(5) With regard to public places which are places of employment and which are not frequented by the general public, the Department of Health and local health departments may enforce this section, Sections 76-10-108 and 76-10-109, and, if it is determined that the proximity of employees or the inadequacy of ventilation causes smoke pollution detrimental to the health or comfort of nonsmoking employees, the department or local health departments may restrict or prohibit smoking in that place.

(6) (a) Portable or table-top ash trays may not be made available in areas of public places which are designated as no-smoking areas.

(b) Ash tray stands or permanent ash trays may be used at or near the entrance of a no-smoking area.

CHAPTER 100
H. B. No. 142
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SCHOOL DISTRICT INTERFUND TRANSFERS

By Nora B. Stephens
M. Keele Johnson

AN ACT RELATING TO PUBLIC EDUCATION; LIMITING SCHOOL DISTRICT INTERFUND TRANSFERS; PROHIBITING INTERFUND TRANSFERS OF RESIDUAL EQUITY UNLESS AUTHORIZED BY THE STATE BOARD WHEN A DISTRICT STATES ITS INTENT TO CREATE A NEW FUND OR EXPAND, CONTRACT, OR LIQUIDATE AN EXISTING FUND; PROVIDING FOR THE USE, RECORDING, AND REPORTING OF DEBT SERVICE LEVIES; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-19-105, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 53A-19-105, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1991, is amended to read:

53A-19-105. School district interfund transfers.

(1) A school district shall spend revenues only within the fund for which they were originally authorized, levied, collected, or appropriated.

(2) Except as otherwise provided in this section, school district interfund transfers of residual equity are prohibited.

(3) The State Board of Education may authorize school district interfund transfers of residual equity when a district states its intent to create a new fund or expand, contract, or liquidate an existing fund.

[~~(1)~~] (4) The State Board of Education may also authorize school district interfund transfers of residual equity for a financially distressed district if the board determines the following:

(a) the district has a significant deficit in its maintenance and operations fund [~~which has resulted from~~] caused by circumstances not subject to the administrative decisions of the district [~~that~~];

(b) the deficit cannot be reasonably reduced under Section 53A-19-104; and

[~~(b)~~] (c) without the transfer, the school district will not be capable of meeting statewide educational standards adopted by the State Board of Education.

[~~(2)~~] (5) The board shall develop standards for defining and aiding financially distressed school districts under this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(6) (a) All debt service levies not subject to certified tax rate hearings shall be recorded and reported in the debt service fund.

(b) Debt service levies that are exempted from the certified tax rate hearing requirements under Subsection 59-2-924(2)(iii) may not used for any purpose other than retiring general obligation debt.

(c) Amounts from these levies remaining in the debt service fund at the end of a fiscal year shall be used in subsequent years for general obligation debt retirement.

(d) Any amounts left in the debt service fund after all general obligation debt has been retired may be transferred to the capital projects fund upon completion of the budgetary hearing process required under Section 53A-19-102.

CHAPTER 101
H. B. No. 155
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

FIRE ACADEMY

By John L. Valentine
R. Lee Ellertson
Kurt E. Oscarson
Arlo D. James
Paul Shepherd
Allan C. Rushton
Tim Moran
Neal B. Hendrickson
Frank R. Pignanelli
Kelly C. Atkinson
Mary Carlson
Sara Eubank
DeMar Bowman
Pete Suazo
Bradley Johnson
Haynes R. Fuller
Tom Matthews
Daniel H. Tuttle
Gene Davis
John B. Arrington
Darrell L. Jorgenson
Byron L. Harward
Patricia Larson
Grant D. Protzman
David Jones
Judy Ann Buffmire
James Gowans
Ronald J. Greensides
Met Johnson
David Ure
Michael R. Styler

AN ACT RELATING TO PUBLIC SAFETY; CREATING A FIRE ACADEMY SUPPORT ACCOUNT IN THE GENERAL FUND; ALLOCATING A PORTION OF PROPERTY AND LIFE INSURANCE PREMIUM TAXES FOR FIRE SERVICE TRAINING SCHOOLS; REQUIRING RULEMAKING; INCLUDING A COORDINATING CLAUSE; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-5-301, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
63-27-109, AS LAST AMENDED BY CHAPTER 130, LAWS OF UTAH 1992

ENACTS:
63-29-109.2, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-7-204.2)

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

Section 1. Section Amended.

Section 49-5-301, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-5-301. Contributions of members.

(1) The system shall be maintained on a financially and actuarially sound basis by means of contributions made by the state, the employing units, and the active members of the system. For purposes of determining contribution rates and benefits, the system is divided into two divisions according to social security coverage. Firefighters with on-the-job social security coverage are Division A, and firefighters without on-the-job social security coverage are Division B.

(2) Any city, town, special district, or county may elect to pay all or part of its members' required contributions, in addition to the required employer contributions. Any amount contributed by a city, town, or county under this subsection shall vest to the member's credit as though the member had made the contribution. The member's required contribution shall be reduced by the amount that is paid by the employer.

(3) All contributions are credited to the account of the individual and held in trust for the payment of benefits to the member or the member's beneficiaries. All member contributions are 100% vested and nonforfeitable.

(4) Each member is deemed to consent to monthly deductions. The payment of compensation less retirement payroll deductions is considered to be full payment of the salary of the employee.

(5) The board shall report to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.

(6) In addition, there shall be paid to the Firefighters' Retirement Trust Fund:

(a) 50% of the annual tax for each year [~~which~~] that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums, as defined by Subsection 31A-1-301(67), and as applied to fire and allied lines insurance collected by insurance companies within the state; and

(b) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon life insurance premiums within the state. Payments to the fund shall be made annually until the prior service liability is liquidated, after which the tax revenue provided in this subsection for the Firefighters' Retirement Trust Fund ceases.

Section 2. Section Amended.

Section 63-27-109, Utah Code Annotated 1953, as last amended by Chapter 130, Laws of Utah 1992, is amended to read:

63-27-109. Duties of Utah Fire Prevention Board — Local administrative duties.

(1) The board shall:

(a) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(i) adopting the Uniform Fire Code in accordance with Section 63-27-103.1;

(ii) establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the aged, a residential health care facility, a children's home or institution, or any similar institutional type occupancy of any capacity; and

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(iii) for deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies; [~~and~~]

(iv) to implement Sections 63-27-103.1 and 63-27-103.2;

(v) setting guidelines for use of funding; and

(vi) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification;

(b) recommend to the commissioner a state fire marshal;

(c) develop policies under which the state fire marshal and his authorized representatives will perform;

(d) provide for the employment of field assistants and other salaried personnel as required;

(e) prescribe the duties of the state fire marshal and his authorized representatives;

(f) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents; [~~and~~]

(g) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state; and

(h) establish a fire academy in accordance with Section 63-27-109.2.

(2) The board may incorporate in its rules by reference, in whole or in part, nationally recognized and readily available standards and codes pertaining to the protection of life and property from fire, explosion, or panic.

[~~(3) The board shall establish a fire services training school that shall:~~]

[~~(a) provide instruction and training for paid, volunteer, institutional, and industrial firefighters;~~]

[~~(b) develop new methods of practices for firefighting and fire prevention;~~]

[~~(c) provide training for fire and arson detection and investigation;~~]

[~~(d) provide public educational programs to promote fire safety;~~]

[~~(e) provide for certification of firefighters, pump operators, instructors, and officers; and~~]

[~~(f) provide facilities for teaching fire fighting skills.~~]

[~~(4) To establish the fire service training school, the board:~~]

[~~(a) shall establish a cost recovery fee to be deposited in the General Fund for training of commercially employed firefighters;~~]

[~~(b) may accept gifts, donations, and grants of property and services on behalf of the fire service training school;~~]

[~~(c) may enter into contractual agreements necessary to facilitate establishment of the school; and~~]

[~~(d) shall request funding for the school.~~]

[~~(5)~~] (3) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with Section 2.303 of the Uniform Fire Code; and

(c) establishing, modifying, or deleting fire flow and water supply requirements.

Section 3. Section Enacted.

Section 63-29-109.2, Utah Code Annotated 1953, is enacted to read:

63-29-109.2. Fire Academy — Establishment — Fire Academy Support Fund — Funding.

(1) In this section:

(a) "Account" means the Fire Academy Support Account created in Subsection (4).

(b) "Property insurance premium" has the same meaning as provided in Section 31A-1-301.

(2) The board shall:

(a) establish a fire academy that:

(i) provides instruction and training for paid, volunteer, institutional, and industrial firefighters;

(ii) develops new methods of firefighting and fire prevention;

(iii) provides training for fire and arson detection and investigation;

(iv) provides public education programs to promote fire safety;

(v) provides for certification of firefighters, pump operators, instructors, and officers; and

(vi) provides facilities for teaching fire-fighting skills;

(b) establish a cost recovery fee in accordance with Section 63-38-3 for training commercially employed firefighters; and

(c) request funding for the academy.

(3) The board may:

(a) accept gifts, donations, and grants of property and services on behalf of the fire academy; and

(b) enter into contractual agreements necessary to facilitate establishment of the school.

(4) (a) To provide a funding source for the academy, there is created in the General Fund a restricted account known as the Fire Academy Support Account.

(b) The following revenue shall be deposited in the account to implement this section:

(i) the percentage specified in Subsection (5) of the annual tax for each year that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums and as applied to fire and allied lines insurance collected by insurance companies within the state;

(ii) the percentage specified in Subsection (6) of all money assessed and collected upon life insurance premiums within the state;

(iii) the cost recovery fees established by the board;

(iv) gifts, donations, and grants of property on behalf of the fire academy; and

(v) appropriations made by the Legislature.

(5) The percentage of the tax specified in Subsection (4)(b)(i) to be deposited in the account in fiscal year:

(a) 1993-94 is 6.25%;

(b) 1994-95 is 12.5%;

(c) 1995-96 is 18.75%; and

(d) 1996-97 and subsequent fiscal years is 25%.

(6) The percentage of the money specified in Subsection (4)(b)(ii) to be deposited in the account in fiscal year:

(a) 1993-94 is 1.25%;

(b) 1994-95 is 2.5%;

(c) 1995-96 is 3.75%; and

(d) 1996-97 and subsequent fiscal years is 5%.

Section 4. Coordinating Clause.

If this bill and S.B. 19, Public Safety Reorganization, both pass in the 1993 General Session, it is the intent of the Legislature that:

(1) Section 63-29-109.2 be renumbered as Section 53-7-204.2; and

(2) the reference to "Section 63-29-109.2" in Section 63-27-109 be amended to read "Section 53-7-204.2".

Section 5. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 102
H. B. No. 180
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SCRAP METAL PROCESSORS

By Frank R. Pignanelli

AN ACT RELATING TO THE CRIMINAL CODE; MODIFYING THE JUNK DEALER STATUTE TO INCLUDE SCRAP METAL PROCESSORS; MAKING CHANGES TO THE PAWNBROKER STATUTE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-6-408, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1979
76-10-901, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-907, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

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

Section 1. Section Amended.

Section 76-6-408, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1979, is amended to read:

76-6-408. Receiving stolen property — Duties of pawnbrokers.

(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding [~~any such~~] the property from the owner, knowing the property to be stolen, [~~with a purpose~~] intending to deprive the owner [~~thereof~~] of it.

(2) The knowledge or belief required for [~~paragraph~~] Subsection (1) is presumed in the case of an actor who:

(a) is found in possession or control of other property stolen on a separate occasion; [~~or~~]

(b) has received other stolen property within the year preceding the receiving offense charged; [~~or~~]

(c) being a dealer in property of the sort received, retained, or disposed, acquires it for a consideration which he knows is far below its reasonable value[~~:~~]; or

(d) if the value given for the property exceeds $20, is a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or an agent, employee, or representative of [~~the~~] a pawnbroker or person who buys, receives, or obtains property and fails to require the seller or person delivering the property to:

(i) certify, in writing, that he has the legal rights to sell the property[~~. If the value given for the property exceeds $20 the pawnbroker or person shall also require the seller or person delivering the property to obtain~~];

(ii) provide a legible print, preferably the right thumb, at the bottom of the certificate next to his signature; and

(iii) provide at least one other positive form of picture identification.

[~~(i)~~] (3) Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee, or representative of [~~the~~] a pawnbroker or person who fails to comply with the requirements of Subsection (2)(d) shall be presumed to have bought, received, or obtained the property knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

[~~(ii)~~] (4) When, in a prosecution under this section, it appears from the evidence that the defendant was a pawnbroker or a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or was an agent, employee, or representative of a pawnbroker or person, that the defendant bought, received, concealed, or withheld the property without [~~requiring~~] obtaining the [~~person from whom he bought, received, or obtained the property to sign the certificate~~] information required in [~~paragraph (d) and in the event the transaction involves an amount exceeding $20 also place his legible print, preferably the right thumb, on the certificate;~~] Subsection (2)(d), then the burden shall be upon the defendant to show that the property bought, received, or obtained was not stolen.

(5) Subsections (2)(d), (3), and (4) do not apply to scrap metal processors as defined in Section 76-10-901.

[~~(3)~~] (7) As used in this section:

(a) "Receives" means acquiring possession, control, or title or lending on the security of the property;

(b) "Dealer" means a person in the business of buying or selling goods.

Section 2. Section Amended.

Section 76-10-901, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-901. "Junk dealer" and "scrap metal processor" defined.

For the purpose of this part: [~~"junk~~]

(1) "Junk dealer" means all persons, firms, or corporations engaged in the business of purchasing or selling secondhand, or castoff material of any kind, such as old iron, copper, brass, lead, zinc, tin, steel, aluminum, and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper, and other like materials.

(2) "Scrap metal processor" means any person who, from a fixed location, utilizes machinery and equipment for processing and manufacturing iron,

steel, or nonferrous scrap into prepared grades, and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap, not including precious metals, for sale for remelting purposes.

Section 3. Section Amended.

Section 76-10-907, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-907. Records of sales and purchases — Identification required.

(1) Every junk dealer and scrap metal processor shall keep a receipt book in which shall be [written,] recorded for each purchase and sale, in ink in the English language[, at the time of each and every purchase and sale a listing of the]:

(a) a complete description of the property, including weight and metallic description [of the sale or purchase, together with] if scrap metal;

(b) the full name and residence of the person or persons selling the junk[, together with] or scrap metal;

(c) the vehicle type and license plate number, if applicable;

(d) the price per pound and the amount paid for each type of metal or junk purchased;

(e) the date and place of the purchase [and] or sale; and

(f) the type and number of identification provided in Subsection (2)(a).

(2) In addition, the seller shall be required by the junk dealer or scrap metal processor to provide:

(a) at least one form of picture identification to consummate the transaction; and

(b) his signature on a certificate stating that he has the legal right to sell the scrap metal or junk.

(3) No entry in the receipt book [shall] may be erased, mutilated, or changed.

(4) The receipt book and entries shall at all times be open to inspection by the following officials in the area in which the junk dealer or scrap metal processor does business:

(a) the sheriff of the county or any of his deputies [and by];

(b) any member of the police force in the city or town[;]; and

(c) any constable or other state, municipal, or county [officials] official in the county[;] in which the junk dealer or scrap metal processor does business[; provided this act].

(5) This section shall not apply to any sale [of] or purchase if the value given is less than [twenty pounds] $20.

CHAPTER 103
H. B. No. 181
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

CORRECTIONAL OFFICER AUTHORITY

By John L. Valentine

AN ACT RELATING TO CORRECTIONS; CLARIFYING PEACE OFFICER POWERS OF CORRECTIONAL OFFICERS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
64-13-6, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987
64-13-17, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987
64-13-21, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987
77-1A-1, AS LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
77-1A-2, AS ENACTED BY CHAPTER 174, LAWS OF UTAH 1985

ENACTS:
64-13-21.5, UTAH CODE ANNOTATED 1953
77-1A-1.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 64-13-6, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-6. Purposes of department — Department duties.

(1) The [~~primary purposes of the~~] department [~~of Corrections include~~] shall:

[~~(1) protection of~~] (a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

[~~(2) implementation of~~] (b) implement court-ordered punishment of offenders;

[~~(3) provision of~~] (c) provide program opportunities for offenders;

[~~(4) management of~~] (d) manage programs [~~to~~] that take into account the needs and interests of victims, where reasonable; [~~and~~]

[~~(5) supervision of~~] (e) supervise probationers and parolees as directed by statute and implemented by the courts and Board of Pardons[~~.~~];

(f) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility; and

(g) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals.

(2) (a) By following the procedures in Subsection (b), the department may investigate the following occurrences at state correctional facilities:

(i) criminal conduct of departmental employees;

(ii) felony crimes resulting in serious bodily injury;

(iii) death of any person; or

(iv) aggravated kidnapping.

(b) Prior to investigating any occurrence specified in Subsection (a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (a).

(3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

Section 2. Section Amended.

Section 64-13-17, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-17. Visitors to correctional facilities — Correspondence.

(1) (a) The following persons may visit correctional facilities without the consent of the department: the governor; attorney general; judges of the circuit, district, and appellate courts; members of the Corrections Advisory Council; members of the Board of Pardons; members of the Legislature; the sheriff and county attorney for the county in which the correctional facility is located; and any other persons authorized under rules prescribed by the department or court order.

(b) Any person acting under a court order may visit or correspond with any inmate without the consent of the department.

(c) The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.

(2) (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.

(b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

(3) Offenders housed at any correctional facility may send and receive correspondence, subject to the rules of the department. All correspondence is subject to search, consistent with department rules.

Section 3. Section Amended.

Section 64-13-21, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-21. Supervision of sentenced offenders placed in community — POST certified parole or probation officers and peace officers — Duties.

(1)(a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) Standards for the supervision of offenders shall be established by the department, giving priority, based on available resources, to felony offenders.

(2) Employees of the department who are POST certified and who are designated as parole and probation officers by the executive director are peace officers and have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) providing investigative services for the courts, the department, or the Board of Pardons and Parole; or

(d) supervising any offender during transportation.

Section 4. Section Enacted.

Section 64-13-21.5, Utah Code Annotated 1953, is enacted to read:

64-13-21.5. Powers of correctional officers and POST certified correctional enforcement or investigation officers.

(1) Employees of the department who are designated by the executive director as correctional officers may exercise the powers and authority of a peace officer only when needed to properly carry out the following functions:

(a) performing the officer's duties within the boundaries of a correctional facility;

(b) supervising an offender during transportation;

(c) when in fresh pursuit of an offender who has escaped from the custody of the department; or

(d) when requested to assist a local, state, or federal law enforcement agency.

(2) Employees of the department who are POST certified and who are designated as correctional enforcement or investigation officers are peace officers and may have the following duties, as specified by the executive director:

(a) providing investigative services for the department;

(b) conducting criminal investigations and operations in cooperation with state, local, and federal law enforcement agencies; and

(c) providing security and enforcement for the department.

Section 5. Section Amended.

Section 77-1a-1, Utah Code Annotated 1953, as last amended by Chapter 234, Laws of Utah 1992, is amended to read:

77-1a-1. Peace officer.

(1)(a) "Peace officer" means any employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

[~~(a)~~](b) "Peace officer" specifically includes the following:

(i) any sheriff or deputy sheriff, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any sworn member of the Department of Public Safety;

(iii) all persons specified in Section 23-20-1.5;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators for the attorney general and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law; and

(viii) school district police officers as designated by the board of education for the school district[~~.~~];

[~~(b) Any police force established by a private college or university shall, prior to exercising its police power, apply to and be certified by the commissioner of public safety according to the rules of the Department of Public Safety.~~]

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the Peace Officers Standards and Training Division; and

(x) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety.

(2) Peace officers have statewide peace officer authority, but the authority extends to other counties, cities, or towns only when they are acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit. This limitation does not apply to any peace officer employed by the state. The authority of peace officers employed by the Department of Corrections is

regulated by Title 64, Chapter 13, Department of Corrections — State Prison.

(3)(a)[~~Peace officers~~] A peace officer shall, prior to exercising peace officer authority, satisfactorily complete the basic course at a certified peace officer training academy or pass a certification examination as provided in Section 67-15-8, and be certified.

(b) In addition, a peace [~~officers~~] officer shall satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the Division of Peace Officer Standards and Training, with the advice and consent of the Council on Peace Officer Standards and Training.

Section 6. Section Enacted.

Section 77-1a-1.5, Utah Code Annotated 1953, is enacted to read:

77-1a-1.5. Law enforcement officer.

The following officers may exercise peace officer authority only as specifically authorized by law:

(1) reserve and auxiliary officers;

(2) special function officers;

(3) federal police officers; and

(4) correctional officers.

Section 7. Section Amended.

Section 77-1a-2, Utah Code Annotated 1953, as enacted by Chapter 174, Laws of Utah 1985, is amended to read:

77-1a-2. Correctional officer.

(1) (a) "Correctional officer" means an officer or employee of the Department of Corrections or youth corrections or any political subdivision of the state [~~which~~] who is charged with the primary duty of providing community protection. [~~Specific assignments include~~]

(b) "Correctional officer" includes an individual assigned to carry out any of the following types of functions:

(i) controlling, transporting, supervising, and taking into custody of persons arrested or convicted of crimes[~~,~~];

(ii) supervising and preventing the escape of persons in state and local incarceration facilities[~~, providing supervision of parolees and probationers, and providing investigative services for offenders being considered for probation or parole.~~]; and

(iii) guarding and managing inmates and providing security and enforcement services at a correctional facility.

(2) (a) Correctional officers have peace officer authority only while engaged in the performance of their duties[~~. They do not have peace officer status while off duty except when engaged in the activities in Subsection (2)(a)~~]. The authority of correctional officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections — State Prison.

(b) Correctional officers may carry firearms only if authorized by and under conditions specified by the director of the Department of Corrections or the chief law enforcement officer of the employing agency.

(3)(a)[~~No correctional officer or parole and probation agent~~] An individual may not exercise the authority of a [~~peace~~] correctional officer until the [~~officer~~] individual has satisfactorily completed a basic training program for correctional officers and the director of the Department of Corrections or the chief administrator of the employing agency has certified the completion of training to the director of Peace Officer Standards and Training.

(b) The Department of Corrections of the state or the employing agency, shall establish and maintain a corrections officer basic course and in-service training programs as approved by the director of Peace Officer Standards and Training, with the advice and consent of the Council on Peace Officer Standards and Training. The in-service training shall consist of no fewer than 40 hours per year, and shall be conducted by the agency's own staff or other agencies.

CHAPTER 104
H. B. No. 206
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

LOCAL TAXATION OF UTILITIES LIMITATION

By John L. Valentine
James F. Yardley
Beverly Ann Evans
Brent H. Goodfellow
Kelly C. Atkinson
Frank R. Pignanelli
Grant D. Protzman
R. Mont Evans
Ray Short
Neal B. Hendrickson
Arlo D. James
Gene Davis
Kurt E. Oscarson
Steve Barth
Jeff Alexander
J. Brent Haymond
Melvin R. Brown
Nancy S. Lyon
Daniel H. Tuttle
Douglas S. Peterson
Michael G. Waddoups
Rob W. Bishop
Shirley V. Jensen
Martin R. Stephens
David Ure
Tom Matthews
Judy Ann Buffmire
Pete Suazo
Blake D. Chard
Patricia B. Larson
Paul Shepherd

AN ACT RELATING TO THE LOCAL TAXATION OF UTILITIES LIMITATION; SPECIFYING THE GROSS REVENUES OF TELEPHONE UTILITIES UPON WHICH A LOCAL UTILITY TAX MAY BE BASED.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
11-26-1, AS LAST AMENDED BY CHAPTER 96, LAWS OF UTAH 1992

ENACTS:
11-26-3, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 11-26-1, Utah Code Annotated 1953, as last amended by Chapter 96, Laws of Utah 1992, is amended to read:

11-26-1. Ceiling on taxes and charges based on gross revenues of public utility.

(1) (a) As used in this section, "exchange access services" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information.

(b) "Exchange access services" does not include:

(i) private line services;

(ii) long distance toll services;

(iii) carrier access services;

(iv) telephonic services that are not regulated by the Utah Public Service Commission; and

(v) services that emulate functions available in customer premises equipment.

[~~(1)~~] (2) Counties and municipalities may not impose upon, charge, or collect from a public utility or other person or entity engaged in the business of supplying telephone service, or gas or electric energy service, any tax, license, fee, license fee, license tax, or similar charge, or any combination of any of these, based upon the gross revenues of the utility, person, or entity derived from sales or use or both sales and use of the service within the county or municipality, which charges total more than 6% of gross revenues. [~~Sales of gas and electricity as special fuel for motor vehicles may not be included in the~~]

(3) The determination of gross revenues under this [~~subsection~~] section may not include:

(a) the sale of gas or electricity as special fuel for motor vehicles; or

(b) the sale of telephone service provided by a public utility regulated by the Utah Public Service Commission other than:

(i) exchange access services;

(ii) extended area service;

(iii) customer access line charges; and

(iv) any services for which a tax or other charge was being paid pursuant to this section as of January 1, 1992.

[~~(2)~~] (4) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under Title 59, Chapter 12, Part 2; or

(b) grant any county or municipality the power to impose a tax, license, fee, license fee, license tax, or similar charge not otherwise provided for by law.

[~~(3)~~] (5) This section takes precedent over any conflicting provision of law.

Section 2. Section Enacted.

Section 11-26-3, Utah Code Annotated 1953, is enacted to read:

11-26-3. Tax or charge on certain revenues of telephone service suppliers — Notice and hearing requirements.

If a municipality seeks to levy a new tax or other charge, or to change an existing tax or other charge, on gross revenues of public utilities or other entities

providing telephone service, which tax or charge would apply to extended area service or to customer access line charges, the municipality shall advertise its intention to do so and hold a public hearing on the proposed ordinance. The advertisement shall meet the same size, type, placement, and frequency requirements as provided for notices of property tax increases in Section 59-2-919.

CHAPTER 105
H. B. No. 239
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

COMMUNITY COLLEGE DEGREES

By Byron L. Harward

AN ACT RELATING TO HIGHER EDUCATION; PROVIDING THAT UTAH VALLEY COMMUNITY COLLEGE AND SALT LAKE COMMUNITY COLLEGE MAY CONFER DEGREES AS DETERMINED BY THE STATE BOARD OF REGENTS; AND ALLOWING THE BOARD TO MODIFY THE NAME OF A HIGHER EDUCATION INSTITUTION TO REFLECT CHANGES IN ITS ROLE AND GENERAL COURSES OF STUDY.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53B-1-103, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53B-16-201, AS LAST AMENDED BY CHAPTERS 7 AND 9, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 53B-1-103, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53B-1-103. Establishment of State Board of Regents — Powers and authority.

(1) There is established a State Board of Regents, hereafter referred to in this title as the "board."

(2) (a) The board is vested with the control, management, and supervision of the institutions of higher education designated in Section 53B-1-102 in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to it.

(b) The board may modify the name of an institution under its control and management, as designated in Section 53B-1-102, to reflect the role and general course of study of the institution.

(3) This section does not affect the power and authority vested in the State Board for Applied Technology Education to apply for, accept, and manage federal appropriations for the establishment and maintenance of applied technology education.

Section 2. Section Amended.

Section 53B-16-201, Utah Code Annotated 1953, as last amended by Chapters 7 and 9, Laws of Utah 1987, is amended to read:

53B-16-201. Degrees and certificates that may be conferred.

(1) Utah Valley Community College and Salt Lake Community College may confer certificates of completion and [~~associate~~] degrees as determined by the State Board of Regents.

(2) The board [~~is charged with the responsibility of developing~~] shall develop evaluative criteria as a means of carefully monitoring the impact of degree programs on the vocational mission of the colleges.

CHAPTER 106
H. B. No. 267
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

STATE GOVERNMENT - WORKERS' COMPENSATION AMENDMENT

By Christine R. Fox

AN ACT RELATING TO WORKERS' COMPENSATION AND CORRECTIONS; LIMITING THE STATE'S LIABILITY TO PROVIDE WORKERS' COMPENSATION FOR OFFENDERS EMPLOYED IN WORK PROGRAMS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-1-42, AS LAST AMENDED BY CHAPTER 178, LAWS OF UTAH 1992
35-1-43, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1988
64-13-16, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987
64-13-19, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 35-1-42, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1992, is amended to read:

35-1-42. Employers enumerated and defined — Regularly employed — Statutory employers.

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this title.

(b) For the purposes of the exculsive remedy in this title prescribed in Sections 35-1-60 and 35-2-3, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written is considered an employer under this title. As used in this subsection:

(a) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(b) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is independent of the employer in all that pertains to the execution of the work, is not subject to the rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

(3) The client company in an employee leasing arrangement, as defined in Subsection 16-14-2(2), is considered the employer of the employees leased and shall secure workers' compensation benefits for leased employees by complying with commission rules in securing workers' compensation insurance under Subsection 35-1-46(1)(a) or (b).

(4) (a) An agricultural employer is not considered an employer under this title if:

(i) his employees are all members of his immediate family and he has a proprietary interest in the farm where they work; or

(ii) he employed five or fewer persons other than immediate family members for 40 hours or more per week per employee for 13 consecutive weeks during any part of the preceding 12 months.

(b) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this title.

(5) An employer of agricultural laborers or domestic servants who is not under this title has the right and option to come under it by complying with its provisions and the rules of the commission.

(6) (a) If any person who is an employer procures any work to be done wholly or in part for him by a contractor over whose work he retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by him, all subcontractors under him, and all persons employed by any of these subcontractors, are considered employees of the original employer.

(b) A general contractor may not be considered to have retained supervision or control over the work of a subcontractor solely because of the customary trade relationship between general contractors and subcontractors.

(c) A portion of a construction project subcontracted to others may be considered to be a part or process in the trade or business of the general building contractor, only if the general building contractor, without regard to whether or not it would need additional employees, would perform the work in the normal course of its trade or business.

(d) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that he owns or is in the process of acquiring as his personal residence may not be considered an employee or employer solely by operation of Subsection (a).

(e) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (a) if:

(i) the person is not included as an employee under Subsection 35-1-43 (3) (a); or

(ii) the person is included as an employee under Subsection 35-1-43 (3) (a), but his employer fails to

insure or otherwise provide adequate payment of direct compensation, which failure is attributable to an act or omission over which the person had or shared control or responsibility.

(f) For purposes of Subsection (e) (ii):

(i) a partner of a partnership and an owner of a sole proprietorship are presumed to have had or shared control or responsibility for any failure to insure or otherwise provide adequate payment of direct compensation, the burden of proof being on any person seeking to establish the contrary; and

(ii) evidence affirmatively establishing that a partner of a partnership or an owner of a sole proprietorship had or shared control or responsibility for any failure to insure or otherwise provide adequate payment of direct compensation may only be overcome by clear and convincing evidence to the contrary.

(g) A director or officer of a corporation may not be considered an employee under Subsection (a) if the director or officer is excluded from coverage under Subsection 35-1-43 (3) (b).

Section 2. Section Amended.

Section 35-1-43, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1988, is amended to read:

35-1-43. "Employee," "worker" or "workmen," and "operative" defined — Mining lessees and sublessees — Partners and sole proprietors — Corporate officers and directors — Real estate agents and brokers.

(1) As used in this chapter, "employee," "worker" or "workmen," and "operative" mean:

(a) each elective and appointive officer and any other person, in the service of the state, or of any county, city, town, or school district within the state, serving the state, or any county, city, town, or school district under any election or appointment, or under any contract of hire, express or implied, written or oral, including each officer and employee of the state institutions of learning; and

(b) each person in the service of any employer, as defined in Section 35-1-42, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, including aliens and minors, whether legally or illegally working for hire, but not including any person whose employment is casual and not in the usual course of the trade, business, or occupation of his employer.

(2) Unless a lessee provides coverage as an employer under this chapter, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be covered for compensation by the lessor under this chapter, and shall be subject to this chapter and entitled to its benefits to the same extent as if they were employees of the lessor drawing such wages as are paid employees for substantially similar work. The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) A partnership or sole proprietorship may elect to include as an employee under this chapter any partner of the partnership or the owner of the sole proprietorship. If a partnership or sole proprietorship makes this election, it shall serve written notice upon its insurance carrier and upon the commission naming the persons to be covered. No partner of a partnership or owner of a sole proprietorship is considered an employee under this chapter until this notice has been given. For premium rate making, the insurance carrier shall assume the salary or wage of the employee to be 150% of the state's average weekly wage.

(b) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter. If a corporation makes this election, it shall serve written notice upon its insurance carrier and upon the commission naming the persons to be excluded from coverage. A director or officer of a corporation is considered an employee under this chapter until this notice has been given.

(4) As used in this chapter, "employee," "worker" or "workman," and "operative" do not include a real estate agent or real estate broker, as defined in Section 61-2-2, who performs services in that capacity for a real estate broker if:

(a) substantially all of the real estate agent's or associated broker's income for services is from real estate commissions;

(b) the services of the real estate agent or associated broker are performed under a written contract specifying that the real estate agent is an independent contractor; and

(c) the contract states that the real estate agent or associated broker is not to be treated as an employee for federal income tax purposes.

(5) As used in this chapter, "employee," "worker" or "workman," and "operative" do not include an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation.

Section 3. Section Amended.

Section 64-13-16, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-16. Inmate employment.

(1) Unless incapable of employment because of sickness or other infirmity or for security reasons, the department may employ inmates to the degree that funding and available resources allow. An offender may not be employed on work which benefits any employee or officer of the department.

(2) An offender employed under this section is not considered an employee, worker, workman, or operative for purposes of Title 35, Chapter 1, Workers' Compensation, except as required by federal statute or regulation.

Section 4. Section Amended.

Section 64-13-19, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-19. Labor at correctional facilities.

(1) The department shall determine the types of labor to be pursued, and what kind, quality, and quantity of goods, materials, and supplies shall be produced, manufactured, or repaired at correctional facilities. Contracts may be made for the labor of offenders, including contracts with any federal agency for a project affecting national defense. As many offenders as practicable may be employed to produce, manufacture, or repair any goods, materials, or supplies for sale to the state or its political subdivisions. Prices for all goods, materials, and supplies shall be fixed by the department.

(2) An offender performing labor under this section is not considered an employee, worker, workman, or operative for purposes of Title 35, Chapter 1, Workers' Compensation, except as required by federal statute or regulation.

CHAPTER 107
H. B. No. 315
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

UTAH TOMORROW STRATEGIC PLANNING COMMITTEE

By Kim R. Burningham
Kurt E. Oscarson
Norm Nielsen
Michael G. Waddoups
Shirley V. Jensen
M. Keele Johnson

AN ACT RELATING TO THE LEGISLATURE; AMENDING THE LEGISLATIVE STRATEGIC PLANNING COMMITTEE; DEFINING ITS MEMBERSHIP AND POWERS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
36-18-1, AS ENACTED BY CHAPTER 168, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 36-18-1, Utah Code Annotated 1953, as enacted by Chapter 168, Laws of Utah 1991, is amended to read:

36-18-1. UTAH TOMORROW Strategic Planning Committee — Membership — Powers.

(1) There is created the UTAH TOMORROW Strategic Planning Committee.

(2) The committee shall be composed of [~~ten legislators and two ex-officio~~] thirteen members appointed as follows:

(a) [~~five~~] three members from the House of Representatives, appointed by the speaker of the House [~~of Representatives as follows:~~], of whom no more than two shall be from the same party;

[~~(i) three members from the majority party; and~~]

[~~(ii) two members from the minority party;~~]

(b) [five] three members from the Senate, appointed by the president of the Senate [~~as follows:~~], of whom no more than two shall be from the same party;

[~~(i) three members from the majority party; and~~]

[~~(ii) two members from the minority party;~~]

(c) six members, including the state planning coordinator[~~,~~] or his designee, appointed by the governor after consultation with the president of the Senate and the speaker of the House;

(d) the state court administrator, or his designee; and

(e) additional, nonvoting members designated as needed by the committee.

(3)(a) Seven members of the committee are a quorum.

(b) One member from the Senate and one member from the House of Representatives shall serve as cochairmen of the committee.

[~~(b)~~] (c) In conducting all its business, the committee shall comply with the rules of legislative interim committees unless those rules conflict with the provisions of this section.

(d) Legislators on the committee shall receive compensation as provided by law and expenses as provided by rules of the Legislature. Nonlegislative members shall serve without compensation or expenses.

(4) The Office of Legislative Research and General Counsel shall provide staff services to the committee.

(5) The committee shall:

(a) recommend to the Legislature and to the governor an ongoing and comprehensive strategic planning process for Utah;

(b) to the greatest extent possible, involve all segments of Utah society including state and local government, private industry, minority and ethnic groups, and all geographic areas of the state in that process; and

(c) undertake other activities related to strategic planning that the committee considers necessary.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 108
H. B. No. 335
Passed March 3, 1993
Approved March 15, 1993
Effective March 15, 1993

RETIREMENT OFFICE COMPLIANCE WITH FEDERAL LAWS

By Rob W. Bishop

AN ACT RELATING TO PENSIONS; AMENDING THE PUBLIC EMPLOYEE RETIREMENT ACTS TO REMOVE AGE-BASED DEATH BENEFIT DISTINCTIONS; AMENDING THE FIREFIGHTERS RETIREMENT ACT TO ELIMINATE AGE-BASED DISABILITY PROVISIONS; AMENDING THE LONG TERM DISABILITY ACT TO ELIMINATE AGE-BASED DISTINCTIONS; INCLUDING A COORDINATING CLAUSE; SPECIFYING APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-2-701, AS LAST AMENDED BY CHAPTER 131, LAWS OF UTAH 1987
49-3-701, AS LAST AMENDED BY CHAPTER 131, LAWS OF UTAH 1987
49-5-502, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1987
49-9-403, AS LAST AMENDED BY CHAPTER 111, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 49-2-701, Utah Code Annotated 1953, as ~~last~~ amended by Chapter 131, Laws of Utah 1987, is amended to read:

49-2-701. Death benefit by means of group insurance policy — Proof of death requirements — Calculation of death benefit — Administration by board — Active and inactive member benefits — Payment of claim — State Tax Commission to provide information on dependents — Exclusions.

(1) The board shall provide a death benefit through the purchase of a group insurance policy for members of this system. The board shall [promulgate] make rules to implement and administer the death benefit provided by this section.

(2) Upon receipt of acceptable proof of death of a member of the system, either prior to the effective date of the member's retirement, except as provided in Section 49-2-406, or after the date of retirement but under circumstances [which] that Section 49-2-403 requires to be treated as the death of member before retirement, the following death benefits shall be paid to the beneficiary:

(a) the return of any accumulated contributions under this chapter; plus

(b) a percentage of the final average salary of the deceased member to be determined by the board. This percentage shall be the highest percentage of final average salary obtainable by the board through the purchase of a group insurance policy using the money contributed by the employer under Subsection (3).

(3) The cost of the death benefit shall be paid by the employer.

(4) The portion of the death benefit provided under Subsection (2) (b), based upon the member's past compensation, may not be paid to the beneficiary of an inactive member unless:

(a) that member has credit for ten or more years of service prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of service for which the person received compensation;

(ii) while the person is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of service for which compensation is received; or

(iii) while that person is on military leave and has elected to remain in active contributing membership status as provided in Section 49-1-402.

[~~In no case may the~~] The death benefit may not be paid to any person except a beneficiary.

(5) The death benefit for an inactive member, except as otherwise provided under Subsection (4), is a return of the deceased member's accumulated contributions.

(6) Payment of the death benefit by the retirement office constitutes a full settlement of any beneficiary's claim against the system, and the system is not liable for any further or additional claims or assessments on behalf of the deceased member.

(7) Unless otherwise specified in a written document filed in the retirement office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, [the] Uniform Probate Code.

(8) In the implementation of this section and for administrative purposes only, the State Tax Commission shall provide pertinent information to the retirement administrator, upon request, concerning dependents claimed by a deceased member on the income tax return covering the year prior to the member's death.

(9) [~~A death benefit under this section may be paid to any active member who dies after reaching the age of 65, but in that event the benefit is reduced to 25% of the member's final average salary. No~~] A death benefit may not be paid to a member who has retired under this system.

Section 2. Section Amended.

Section 49-3-701, Utah Code Annotated 1953, as last amended by Chapter 131, Laws of Utah 1987, is amended to read:

49-3-701. Death benefit by means of group insurance policy — Proof of death

requirements — Calculation of death benefit — Administration by board — Active and inactive member benefits — Payment of claim — State Tax Commission to provide information on dependents — Exclusions.

(1) The board shall provide a death benefit through the purchase of a group insurance policy for members of this system. The board shall [promulgate] make rules to implement and administer the death benefit provided by this section.

(2) Upon receipt of acceptable proof of death of a member of the system, either prior to the effective date of the member's retirement, except as provided in Section 49-3-406, or after the date of retirement but under circumstances [which] that Section 49-3-403 requires to be treated as the death of member before retirement, the following death benefits shall be paid to the beneficiary:

(a) the return of any accumulated contributions under this chapter; plus

(b) a percentage of the final average salary of the deceased member to be determined by the board. This percentage shall be the highest percentage of final average salary obtainable by the board through the purchase of a group insurance policy using the money contributed by the employer under Subsection (3).

(3) The cost of the death benefit shall be paid by the employer.

(4) The portion of the death benefit provided under Subsection (2) (b), based upon the member's past compensation, may not be paid to the beneficiary of an inactive member unless:

(a) that member has credit for ten or more years of service prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of service for which the person received compensation;

(ii) while the person is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of service for which compensation is received; or

(iii) that person is on military leave and has elected to remain in active contributing membership status as provided in Section 49-1-402.

[In no case may the] The death benefit may not be paid to any person except a beneficiary.

(5) The death benefit for an inactive member, except as otherwise provided under Subsection (4), is a return of the deceased member's accumulated contributions.

(6) Payment of the death benefit by the retirement office constitutes a full settlement of any beneficiary's claim against the system, and the system is not liable for any further or additional claims or assessments on behalf of the deceased member.

(7) Unless otherwise specified in a written document filed in the retirement office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, [the] Uniform Probate Code.

(8) In the implementation of this section and for administrative purposes only, the State Tax Commission shall provide pertinent information to the retirement administrator, upon request, concerning dependents claimed by a deceased member on the income tax return covering the year prior to the member's death.

(9) [A death benefit under this section may be paid to any active member who dies after reaching the age of 65, but in that event the benefit is reduced to 25% of the member's final average salary. No] A death benefit may not be paid to a member who has retired under this system.

Section 3. Section Amended.

Section 49-5-502, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1987, is amended to read:

49-5-502. Disability program for already disabled persons — Service retirement eligibility requirements — Examinations — Reemployment.

The following rules apply to all members [granted or] applying for disability retirement under this part [or who are already receiving disability retirement payments]:

(1) Any member who applies and is qualified for disability retirement [and who is found to be eligible for a service retirement shall be granted a service retirement.] shall receive a disability allowance until the earlier of:

(a) the date the member has accumulated 20 years of service credit, including years earned while disabled; or

(b) the member has received disability benefits for the following time periods:

(i) if the member is under age 60, the disability allowance is payable until age 65;

(ii) if the member is 60-61, the disability allowance is payable for five years;

(iii) if the member is 62-63, the disability allowance is payable for four years;

(iv) if the member is 64-65, the disability allowance is payable for three years;

(v) if the member is 66-68, the disability allowance is payable for two years; and

(vi) if the member is age 69 or older, the disability benefit is payable for one year.

(2) (a) The member shall receive service credit during the period of disability.

(b) The disability retirement shall be converted to a service retirement at the time the disability benefits terminate.

[~~(2)~~] (3) The board shall approve or disapprove applications for disability retirement based upon the evaluation and recommendations of one or more physicians to the effect that the member is mentally or physically totally disabled.

[~~(3)~~] (4) Any disability retirant who regains health and is regularly employed shall have the disability allowance reduced or suspended as the retirant's earnings justify.

[~~(4)~~] (5) (a) Members receiving benefits under this section shall, upon request of the administrator, submit to a medical examination by one or more physicians as directed by the board.

(b) If the member resides outside the state and is requested to submit to an examination, the member shall be examined under the same rules in the area in which the member resides.

(c) If, after an examination, the examiners report that the retirant is physically able and capable of resuming employment, the retirant shall be reinstated at the retirant's former classification and rank, and disability benefits terminate.

(d) Examinations may not be required more than once every year.

(e) A retirant who returns to employment of a participating employer shall immediately commence accruing service credit [~~which~~] that shall be added to that credit [~~which~~] that has been accrued by virtue of previous service, including service credited while disabled.

[~~(5) Any retirant who receives disability benefits under this part is considered finally retired at age 55.~~]

(6) Retired members are not subject to medical examinations after reaching age 55.

[~~(6)~~] (7) Refusal or neglect to submit to an examination is sufficient cause for suspension or discontinuance of benefits and if the refusal or neglect continues for one year, the member's rights to all benefits may be revoked by the board.

[~~(7) Any retirement benefits payable under Section 49-5-501 are in lieu of normal retirement benefits.~~]

(8) Retirants who receive benefits under this part [~~and have not attained the age of 60~~] shall file a sworn statement with the retirement office on or before January 15 of each year for the first five years a retirant receives benefits. The sworn statement shall indicate whether or not [~~they~~] the retirant engaged in any gainful employment during the preceding year and, if so, the amount of earnings received during the calendar year.

(a) If the retirant has been gainfully employed, the retirant's benefit payments shall be reduced in the year following employment so that the total payments, when added to the compensation received for employment, do not exceed 125% of the retirant's final average salary. This reduction does not apply beginning with the sixth year after disability retirement.

(b) If any retirant refuses or neglects to file a sworn statement as required, the administrator may suspend payment of any and all benefits pending receipt of the statement. Upon filing the statement, the retirant's payments shall be resumed.

Section 4. Section Amended.

Section 49-9-403, Utah Code Annotated 1953, as last amended by Chapter 111, Laws of Utah 1987, is amended to read:

49-9-403. Disability benefit termination upon qualification for service retirement — Calculation of benefit.

(1) [~~All disability benefits paid out from the Public Employees' Long-Term Disability Program under this chapter terminate when the disabled member qualifies for a retirement without actuarial reduction from the system which covered the employee at the time of disability.~~] Any member who applies and is qualified for disability benefits shall receive a disability allowance until the earlier of:

(a) the date the member has accumulated:

(i) 20 years of service credit if the member is covered by Chapters 4 or 4a, Public Safety Retirement and Noncontributory Retirement Acts;

(ii) 25 years if the member is covered by Chapter 6, Judges' Retirement Act; or

(iii) 30 years if the member is covered by Chapters 2 or 3, Public Employees' Retirement and Noncontributory Retirement Acts; or

(b) the member has received disability benefits for the following applicable time periods:

(i) if the member is under age 60, the disability allowance is payable until age 65;

(ii) if the member is 60-61, the disability allowance is payable for five years;

(iii) if the member is 62-63, the disability allowance is payable for four years;

(iv) if the member is 64-65, the disability allowance is payable for three years;

(v) if the member is 66-68, the disability allowance is payable for two years; and

(vi) if the member is age 69 or older, the disability benefit is payable for one year.

(2) Upon termination of disability benefits, the disabled employee shall retire under the retirement system which covered the employee at the time of disability. The final average salary used in the calculation of the retirement benefit shall be based on the annual rate of pay at the time of disability, improved by the annual cost-of-living increase factor applied to retired participants in the system which covered the employee at the time of disability. Retirement credit shall accrue during the period of disability unless the disabled employee is exempted from the system.

Section 5. Coordinating Clause.

If this bill and H.B. 209, Retirement – Technical Correction, both pass in the 1993 General Session, it is the intent of the Legislature that wherever "retirant" is inserted in this bill that it be amended to read "retiree".

Section 6. Applicability.

This act applies to persons who die or become disabled after the effective date of this act.

Section 7. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 109
H. B. No. 358
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

JOB TRAINING FOR DISPLACED DEFENSE WORKERS

By Grant D. Protzman
Eli H. Anderson
Kevin S. Garn
Gerry A. Adair
James Gowans
Patricia B. Larson
Blake D. Chard
Haynes R. Fuller
Marda Dillree
John B. Arrington
Nora B. Stephens
Fred R. Hunsaker
Don E. Bush
Arlo D. James
Daniel H. Tuttle
Kim R. Burningham
Nancy S. Lyon
Douglas S. Peterson
Allan C. Rushton
Karen B. Smith
Rob W. Bishop
Pete Suazo
Brent H. Goodfellow
Neal B. Hendrickson
Frank R. Pignanelli
Kelly C. Atkinson
David M. Jones
Paul Shepherd
Gene Davis
Tim Moran
Darrell L. Jorgensen
Mary Carlson
Steve Barth
Ronald J. Greensides
Judy Ann Buffmire
Sara Eubank
Tom Matthews

AN ACT RELATING TO THE GOVERNOR'S OFFICE; APPROPRIATING $1,000,000 TO THE GOVERNOR'S OFFICE TO ASSIST DISPLACED DEFENSE WORKERS; PROVIDING GUIDELINES FOR USE OF THE FUNDS; AND ENCOURAGING APPLICATION FOR FEDERAL FUNDS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
9-2-1109, UTAH CODE ANNOTATED 1953
67-1-12, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-2-1109, Utah Code Annotated 1953, is enacted to read:

9-2-1109. Federal grants for retraining.

The state, through its Office of Occupational Education or other appropriate office, may and is encouraged to apply for retraining, community assistance, or technology transfer funds available through the United States Department of Defense, Department of Labor, or other appropriate offices or departments. In applying for federal funds, the state through its Office of Occupational Education or other appropriate office may inform the federal government of state matching or enhancement funds if those funds are available under Section 67-1-12.

Section 2. Section Enacted.

Section 67-1-12, Utah Code Annotated 1953, is enacted to read:

67-1-12. Displaced defense workers.

(1) The governor may use funds specifically appropriated by the Legislature to benefit in a manner prescribed by Subsection (2):

(a) Department of Defense employees within the state who lose their employment because of reductions in defense spending by the federal government;

(b) persons dismissed by a defense-related industry employer because of reductions in federal government defense contracts received by the employer; and

(c) defense-related businesses in the state that have been severely and adversely impacted because of reductions in defense spending.

(2) Any amount appropriated under this section may be used to:

(a) provide matching or enhancement funds for grants, loans, or other assistance received by the state from the United States Department of Labor, Department of Defense, or other federal agency to assist in retraining, community assistance, or technology transfer activities;

(b) fund or match available private or public funds to be used for retraining, community assistance, technology transfer, or educational projects coordinated by private industry councils or other state or federal agencies;

(c) provide for retraining, upgraded services, and programs at applied technology centers, public schools, higher education institutions, or any other appropriate public or private entity that are designed to teach specific job skills requested by a private employer in the state or required for occupations that are in demand in the state;

(d) aid public or private entities that provide assistance in locating new employment;

(e) inform the public of assistance programs available for persons who have lost their employment;

(f) increase funding for assistance and retraining programs;

(g) provide assistance for small start-up companies owned or operated by persons who have lost their employment; and

(h) enhance the implementation of dual-use technologies programs, community adjustment assistance programs, or other relevant programs under Pub. L. No. 102-484.

(3) The governor may coordinate and administer the expenditure of monies under this section through private industry councils, which in turn shall collaborate with applied technology centers, public institutions of higher learning, or other appropriate public or private entities to provide retraining and other services described in Subsection (2).

Section 3. Appropriation.

There is appropriated for fiscal year 1993-94 $1,000,000 from the General Fund to the governor's office for distribution under the conditions and for the purposes set forth in Section 67-1-12. This money is nonlapsing.

CHAPTER 110
H. B. No. 381
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

UTAH CODE OF MILITARY JUSTICE - REPEAL OF PROVISION

By John B. Arrington

AN ACT RELATING TO MILITIA AND ARMORIES; REPEALING THE REQUIREMENT FOR A FULL INVESTIGATION BEFORE REFERRAL TO COURT-MARTIAL.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
39-1-12.5, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1989
39-6-31, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1989
39-6-61, AS ENACTED BY CHAPTER 210, LAWS OF UTAH 1988
39-6-107, AS ENACTED BY CHAPTER 210, LAWS OF UTAH 1988

REPEALS:
39-6-25, AS ENACTED BY CHAPTER 210, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 39-1-12.5, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1989, is amended to read:

39-1-12.5. Convening authority for military court.

(1) The governor or the adjutant general of the state is the convening authority for any military court in the state, and upon receipt of charges, as outlined in the Utah Manual for Military Courts, may:

(a) dismiss any charges;

(b) forward charges to a subordinate commander for disposition; or

(c) refer charges to a military court for trial[~~, after first directing a pretrial investigation under Section 39-6-25~~].

(2) The military court shall be convened under the Utah Manual for Military Courts.

Section 2. Section Amended.

Section 39-6-31, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1989, is amended to read:

39-6-31. Military court — Prosecutions in state name — Right to defense trial counsel.

(1) The trial counsel of a military court prosecutes in the name of the state, and shall prepare the record of the proceedings under the direction of the court.

(2) (a) The accused has the right to be represented in his defense before a military court by civilian counsel if provided by him at no expense to the state, or by military counsel of his own selection if reasonably available[~~, or by the defense counsel detailed under Section 39-6-25~~].

(b) If the accused has counsel of his own choosing, the defense counsel and any assistant defense counsel who were detailed shall act as the associate counsel to the counsel for the accused if the accused desires. Otherwise, detailed counsel shall be excused by the military judge.

(3) In a court proceeding resulting in a conviction, the defense counsel may forward for attachment to the record of proceedings a brief of matters that should be considered on behalf of the accused on review, including any objection to the contents of the record.

(4) An assistant trial counsel of a military court may, under the direction of the trial counsel, or as trial counsel when he is so qualified [~~under Section 39-6-25~~], perform any duty imposed by law, regulation, or the custom of the service on the trial counsel of the court. An assistant trial counsel of a military court may perform any duty of the trial counsel.

(5) An assistant defense counsel of a military court may, under the direction of the defense counsel or when he is qualified to be the defense counsel [~~under Section 39-6-25~~], perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Section 3. Section Amended.

Section 39-6-61, Utah Code Annotated 1953, as enacted by Chapter 210, Laws of Utah 1988, is amended to read:

39-6-61. Probation violation — Hearing — Counsel — Execution of suspended sentence.

(1) (a) Before the vacation of the suspension of a military court sentence, the officer holding convening authority of jurisdiction over the probationer shall hold a hearing on the alleged violation of probation.

(b) The probationer [~~may~~] shall be represented by counsel at the hearing. [~~Counsel shall be made available under Section 39-6-25.~~]

(2) (a) The record of the hearing and the recommendation of the officer having jurisdiction shall be sent for action to the governor in cases involving a military court sentence of confinement, and to the commanding officer of the unit of the National Guard of which the probationer is a member, in all other cases.

(b) If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court that imposed the sentence.

Section 4. Section Amended.

Section 39-6-107, Utah Code Annotated 1953, as enacted by Chapter 210, Laws of Utah 1988, is amended to read:

39-6-107. Courts of inquiry.

(1) Courts of inquiry to investigate any matter may be convened by the governor or his designee, whether or not the persons involved have requested the inquiry.

(2) A court of inquiry consists of three or more commissioned officers. For each court, the convening authority shall also appoint counsel for the court.

(3) (a) A person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. A person subject to this chapter or employed by the National Guard, who has a direct interest in the subject of inquiry, has the right to be designated as a party upon request to the court.

(b) A person designated as a party shall be given due notice and has the right to be present, represented by counsel, to have counsel appointed [~~as under Section 39-6-25~~], to cross examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of a court of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before a court of inquiry, under the same provisions as for a military court.

(7) A court of inquiry shall make findings of fact but may not express opinions or make recommendations, unless required to do so by the convening authority.

(8) (a) A court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority.

(b) If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be authenticated by a member in lieu of the counsel.

Section 5. Repealer.

Section 39-6-25, Investigation — Required prior to charges or specifications — Representation of accused, Utah Code Annotated 1953, as enacted by Chapter 210, Laws of Utah 1988, is repealed.

CHAPTER 111
H. B. No. 397
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

USE OF MOTOR POOL BY CERTAIN LOCAL GOVERNMENT ENTITIES

By Martin R. Stephens

AN ACT RELATING TO THE MOTOR POOL; AUTHORIZING LOCAL AREAS ON AGING TO SUBSCRIBE TO THE STATE'S CENTRAL MOTOR POOL; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-1-25, AS LAST AMENDED BY CHAPTER 271, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 63-1-25, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1991, is amended to read:

63-1-25. Central services provided — Subscription by state departments and agencies and certain local governmental entities — Fee schedule.

(1) (a) The director of the Division of Central Services shall operate and maintain:

(i) a central mailing service;

(ii) a central motor pool; and

(iii) a central store for all state departments and agencies.

(b) The director may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) All state departments and agencies shall subscribe to these services unless the director delegates his authority to a department or agency under Section 63-1-26.

(b) An institution of higher education may subscribe to one or more of these services if, and to the extent that, the president of the institution recommends and the State Board of Regents determines that the performance of the services by the director of the Division of Central Services will result in substantial cost savings or increased efficiency to the institution.

(c) Local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act, local substance abuse authorities as defined in Section 17A-3-701, local area agencies on aging, as authorized by Section 62A-3-104, and local mental health authorities as defined in Section 17A-3-602 may subscribe to the central motor pool service provided by the Division of Central Services if the director of the local health department, local substance abuse authority, local area agencies on aging, or local mental health authority determines it will result in substantial cost savings or increased efficiency to the local health department, local substance abuse authority, local area agency on aging, or the local mental health authority.

(3) (a) The director shall prescribe a schedule of fees to be charged for all services rendered by the division to any department or agency after receiving prior approval of the fee schedule from the director of the Division of Finance.

(b) Where practicable, fees prescribed by the director of the Division of Central Services shall be commensurate with the cost of providing the services.

CHAPTER 112
H. B. No. 404
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

COUNTY OPTION FUNDING FOR RURAL COUNTY HOSPITALS

By James F. Yardley

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A RURAL COUNTY HOSPITAL SALES TAX ON A COUNTY-OPTION BASIS; AND PROVIDING HOW MONIES RECEIVED SHALL BE DISTRIBUTED.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
59-12-701, UTAH CODE ANNOTATED 1953 (CODIFIED AS 59-12-801)
59-12-702, UTAH CODE ANNOTATED 1953 (CODIFIED AS 59-12-802)
59-12-703, UTAH CODE ANNOTATED 1953 (CODIFIED AS 59-12-803)

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

Section 1. Section Enacted.

Section 59-12-701, Utah Code Annotated 1953, is enacted to read:

59-12-701. Definitions.

As used in this part, "Rural county hospital" means a hospital owned by a third, fourth, fifth, or sixth class county, as defined in Section 17-16-15, which is located outside of a standard metropolitan statistical area, as designated by the United States Bureau of the Census.

Section 2. Section Enacted.

Section 59-12-702, Utah Code Annotated 1953, is enacted to read:

59-12-702. Imposition of Tax — Bases — Rates.

(1) (a) Any county legislative body may, by a majority vote of all members submit an opinion question to the residents of that county so that each resident has an opportunity to express his opinion on the imposition of a local sales and use tax of 1% to fund rural county hospitals in that county.

(b) the election shall follow the procedures outlined in Title 11, Chapter 14, Utah Municipal Bond Act.

(2) If the legislative governing body determines that a majority of the qualified electors voting on the opinion question has assented to the imposition of a local sales and use tax as prescribed in Subsection (1)(a), the county legislative body may, by majority vote of all members, impose such a tax.

(3) The monies generated from a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural county hospital; and

(b) the acquisition of land for, and the design, construction, equipping, and furnishing of a rural county hospital.

(4) Taxes imposed under this part shall be:

(a) levied at the same time and collected in the same manner as provided in Title 59, Chapter 12, Part 2, The Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the county legislative body as provided in Section (1).

(5) The tax commission may retain an amount not to exceed 2 1/2% of the county option funding collected under this part for the cost of administering this tax.

Section 3. Section Enacted.

Section 59-12-703, Utah Code Annotated 1953, is enacted to read:

59-12-703. Distribution of revenues.

All revenues collected by a county under this part shall be distributed quarterly by the county legislative body to rural county hospitals. If there is more than one rural county hospital in a county the revenues shall be distributed as determined by the county legislative body.

CHAPTER 113
H. B. No. 415
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

PROFESSIONAL CERTIFICATION AUTHORITY AMENDMENTS

By Gerry A. Adair

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING THAT THE STATE BOARD OF EDUCATION MAY HOLD A HEARING REGARDING ANY OFFENSE WHICH ALLEGEDLY OCCURRED WHILE AN INDIVIDUAL HELD A CERTIFICATE ISSUED BY THE BOARD, REGARDLESS OF WHETHER THE CERTIFICATE IS STILL IN EFFECT AT THE TIME OF THE HEARING; ALLOWING THE BOARD TO RESTRICT OR PROHIBIT RECERTIFICATION; AND ALLOWING THE BOARD TO PERMANENTLY REVOKE THE CERTIFICATE OF A PERSON WHOSE BEHAVIOR IS FOUND TO BE IRREMEDIABLE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-6-301, AS ENACTED BY CHAPTER 246, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 53A-6-301, Utah Code Annotated 1953, as enacted by Chapter 246, Laws of Utah 1992, is amended to read:

53A-6-301. Disciplinary action against educator.

(1)(a) The State Board of Education shall take appropriate action against any person who is, or at the time of an alleged offense was, the holder of a certificate issued by the board, and who is:

(i) found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty through immoral, unprofessional, or incompetent conduct, or to have committed any other violation of standards of ethical conduct, performance, or professional competence; or

(ii) alleged to have exhibited such behavior or committed such a violation.

(b) Prior to taking action based upon an allegation or the decision of an administrative body, the board shall direct the Professional Practices Advisory Commission to review the allegations and [the] any related administrative action and provide findings and a recommendation to the board.

(c) No adverse recommendation may be made without the opportunity for a hearing.

(d) The board's action may include:

(i) revocation or suspension of a certificate;

(ii) restriction or prohibition of recertification;

(iii) a warning or reprimand; or

[(iii)] (iv) required participation in and satisfactory completion of a rehabilitation or remediation program.

(e) The certificate holder is responsible for the costs of rehabilitation or remediation required under this section.

(2)(a) Upon receipt of findings and recommendations from the Professional Practices Advisory Commission, the board may permanently revoke the certification of any person who has committed a sexual offense against a minor child or has exhibited other behavior which the board finds to be irremediable.

(b) The commission is entitled to a rebuttable presumption that a person has committed a sexual offense against a minor child if the person has:

(i) been found pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor child;

(ii) failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(iii) voluntarily surrendered a certificate in the face of a charge of having committed a sexual offense against a minor.

CHAPTER 114
H. B. No. 422
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

FAIR HOUSING AMENDMENTS

By Kelly C. Atkinson

AN ACT RELATING TO REAL ESTATE; AMENDING THE UTAH FAIR HOUSING ACT; AMENDING DEFINITIONS; PROVIDING REQUIREMENTS FOR BUILDING ENTRANCES; EXTENDING CERTAIN PROTECTIONS TO ASSOCIATES OF MEMBERS OF PROTECTED CATEGORIES; PROVIDING ADMINISTRATIVE AND JURISDICTIONAL POWERS; PROVIDING FOR HEARINGS; PROVIDING PENALTIES AND ENFORCEMENT POWERS; CLARIFYING EFFECT OF FEDERAL ACTION; MAKING TECHNICAL CORRECTIONS; AND PROVIDING LEGISLATIVE INTENT CONCERNING FUNDING THE ACT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
57-21-2, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-3, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-4, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-5, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-6, AS REPEALED AND REENACTED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-7, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992

ENACTS:
57-21-11, UTAH CODE ANNOTATED 1953
57-21-12, UTAH CODE ANNOTATED 1953
57-21-13, UTAH CODE ANNOTATED 1953
57-21-14, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
57-21-8, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-9, AS LAST AMENDED BY CHAPTER 274, LAWS OF UTAH 1992
57-21-10, AS ENACTED BY CHAPTER 233, LAWS OF UTAH 1989

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

Section 1. Section Amended.

Section 57-21-2, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-2. Definitions.

As used in this chapter:

(1) "Aggrieved person" includes any person who:

(a) claims to have been injured by a discriminatory housing practice; or

(b) believes that he will be injured by a discriminatory housing practice that is about to occur.

[~~(1)~~] (2) "Commission" means the Industrial Commission of Utah.

(3) "Complainant" means an aggrieved person, including the director, who has commenced a complaint with the division.

(4) "Conciliation" means the attempted resolution of issues raised by a complaint of discriminatory housing practices by the investigation of the complaint through informal negotiations involving the complainant, the respondent, and the division.

(5) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

[~~(2)~~] (6) "Conciliation conference" means the attempted resolution of issues raised by a [charge] complaint or by the investigation of a [charge] complaint through informal negotiations involving the complainant, the respondent, and the [director] division. The conciliation conference is not subject to Title 63, Chapter 46b, Administrative Procedures Act.

(7) "Covered multifamily dwellings" means:

(a) buildings consisting of four or more dwelling units if the buildings have one or more elevators; and

(b) ground floor units in other buildings consisting of four or more dwelling units.

[~~(3)~~] (8) "Director" means the director of the Utah Antidiscrimination Division [~~of Antidiscrimination~~] or a designee.

[~~(4)~~] (9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a [~~person's~~] person having a record of such an impairment or being regarded as having such an impairment.

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

[~~(5)~~] (10) "Discriminate" includes segregate or separate.

(11) "Discriminatory housing practice" means an act that is unlawful under this chapter.

[~~(6)~~] (12) "Division" means the [~~Division of~~] Utah Antidiscrimination Division established under the commission.

[~~(7)~~] (13) (a) "Dwelling" means any building or structure, or a portion of a building or structure, occupied as, or designed or intended for occupancy as, a residence of one or more families.

(b) The term also includes vacant land [which] that is offered for sale or lease for the construction or location of a dwelling as described in Subsection (a).

[~~(8)~~] (14) (a) "Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with:

(i) a parent or another person having legal custody of the individual or individuals; or

(ii) the designee of the parent or other person having custody, with the written permission of the parent or other person.

(b) The protections afforded against discrimination on the basis of familial status shall apply to any person who:

(i) is pregnant [~~or~~];

(ii) is in the process of securing legal custody of any individual who has not attained the age of 18 years; or

(iii) is a single individual.

[~~(9)~~] (15) "National origin" means the place of birth of an individual or of any lineal ancestors.

(16) "Person" includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.

[~~(10)~~] (17) "Presiding officer" has the same meaning as provided in Section 63-46b-2.

[~~(11)~~] (18) "Real estate broker" or "salesperson" means a principal real estate broker, an associate real estate broker, or a real estate sales agent as those terms are defined in Section 61-2-2.

[~~(12) "Real property" or "property" includes mobile homes.~~]

(19) "Respondent" means a person against whom a complaint of housing discrimination has been initiated.

[~~(13)~~] (20) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

[~~(14)~~] (21) "Source of income" means the verifiable condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

[~~(15) "Unfair discriminatory practice" means any act described in Sections 57-21-5 through 57-21-7.~~]

Section 2. Section Amended.

Section 57-21-3, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-3. Exemptions — Sale by private individuals — Nonprofit organizations — Noncommercial transactions.

(1) This chapter does not apply to any single-family dwelling unit sold or rented by its owner if:

(a) the owner is not a partnership, association, corporation, or other business entity;

(b) the owner does not own any interest in four or more single-family dwelling units held for sale or lease at the same time;

(c) during a 24-month period, the owner does not sell two or more single-family dwelling units in which the owner was not residing or was not the most recent resident at the time of sale;

(d) the owner does not retain or use the facilities or services of any real estate broker or salesperson; and

(e) the owner does not use any [~~unfair~~] discriminatory housing practice under Subsection 57-21-5 (2) in the sale or rental of the dwelling.

(2) This chapter does not apply to a temporary or permanent residence facility operated by a nonprofit or charitable organization, including any dormitory operated by a public or private educational institution, if the discrimination is by sex or familial status for reasons of personal modesty or privacy or in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution.

(3) This chapter, except for Subsection 57-21-5(2), does not apply to the rental of a room in the dwelling by an owner-occupant of a single-family dwelling to another person if the dwelling is designed for occupancy by four or fewer families, and the owner-occupant resides in one of the units.

(4) This chapter does not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings it owns or operates for primarily noncommercial purposes to persons of the same religion, or from giving preference to such persons, unless membership in the religion is restricted by race, color, sex, or national origin.

(5) This chapter does not prohibit a private club not open to the public, including fraternities and sororities associated with institutions of higher education, from limiting the rental or occupancy of lodgings to members or from giving preference to its members, but only if it owns or operates the lodgings as an incident to its primary purpose and not for a commercial purpose.

(6) This chapter does not prohibit distinctions based on inability to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

(7) This chapter does not prohibit any nonprofit educational institution from:

(a) requiring its single students to live in housing approved, operated, or owned by the institution:

(b) segregating housing that the institution approves, operates, or owns on the basis of sex or familial status or both for reasons of personal modesty or privacy, or in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution; or

(c) otherwise assisting others in making sex-segregated housing available to students as may be permitted by regulations implementing the federal Fair Housing Amendments Act of 1988 and Title IX of the Education Amendments of 1972.

(8) This chapter does not prohibit any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

[~~(8)~~] (9) [~~This chapter does not prohibit~~] The provisions pertaining to familial status do not apply to the existence, development, sale, rental, advertisement, or financing of any [~~adult-only~~] apartment complex, condominium, or other housing development [~~that does not violate federal fair housing law,~~] designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of 1968, [~~Public Law 90-284,~~] as amended.

Section 3. Section Amended.

Section 57-21-4, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-4. Conduct and requirements excluded — Defenses.

(1) Except as provided in Subsection 57-21-5 (4), this chapter does not:

(a) require any person to exercise a higher degree of care toward a person who has a disability than toward a person who does not have a disability;

(b) relieve any person of obligations generally imposed on all persons regardless of disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement; or

(c) prohibit any program, service, facility, or privilege intended to habilitate, rehabilitate, or accommodate a person with a disability.

(2) It is a defense to a [~~charge,~~] complaint[~~;~~] or action brought under this chapter that the complainant has a disability that, in the circumstances and even with reasonable accommodation, poses a serious threat to the health or safety of the complainant or others. The burden of proving this defense is upon the respondent.

Section 4. Section Amended.

Section 57-21-5, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-5. Discriminatory practices enumerated — Protected persons, classes enumerated.

(1) It is [an unfair] a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, or disability:

(a) [~~after receiving a good faith offer,~~] refuse to sell or rent after the making of a bona fide offer, refuse to negotiate [~~to sell or rent~~] for the sale or rental, or otherwise deny or [~~withhold~~] make unavailable any [~~real property~~] dwelling from any person;

(b) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any [~~real property~~] dwelling or in [~~the furnishing of~~] providing facilities or services in connection with the [~~real property~~] dwelling; or

(c) [~~intentionally~~] represent to any person that [~~real property~~] any dwelling is not available for inspection, sale, or rental when in fact [it] the dwelling is available.

(2) It is [~~an unfair~~] a discriminatory housing practice to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the [~~purchase~~] sale or rental of [~~real property~~] a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, or disability, or expresses any intent to make any such preference, limitation, or discrimination.

(3) It is [~~an unfair~~] a discriminatory housing practice to induce or attempt to induce, for profit, any person to buy, sell, or rent any [~~real property~~] dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular race, color, religion, sex, national origin, familial status, source of income, or disability.

(4) [~~An unfair~~] A discriminatory housing practice includes:

(a) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises, when reasonable, to the condition that existed before the modification, reasonable wear and tear excepted;

(b) a refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; and

(c) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

(i) the dwellings have at least one building entrance on an accessible route, unless it is impracticable to have one because of the terrain or unusual characteristics of the site; and

(ii) with respect to dwellings with a building entrance on an accessible route:

[~~(i)~~] (A) the public use and common use portions of the dwelling are readily accessible to and usable by disabled persons;

[~~(ii)~~] (B) all the doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

[~~(iii)~~] (C) all premises within these dwellings contain the following features of adaptive design:

[~~(A)~~] (I) an accessible route into and through the dwelling;

[~~(B)~~] (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

[~~(C)~~] (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

[~~(D)~~] (IV) [~~usable~~] kitchens and bathrooms such that an individual in a wheelchair can maneuver about and use the space.

(5) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, or disability based upon a person's association with another person.

Section 5. Section Amended.

Section 57-21-6, Utah Code Annotated 1953, as repealed and reenacted by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-6. Discriminatory housing practices regarding residential real estate-related transactions — Discriminatory housing practices regarding the provisions of brokerage services.

(1) It is [~~an unfair~~] a discriminatory housing practice for any person whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of the transaction, because of race, color, religion, sex, disability, familial status, source of income, or national origin. Residential real estate-related transactions include:

[~~(2) As used in this section, "residential real estate-related transaction" means any of the following:~~]

(a) making or purchasing loans or providing other financial assistance:

(i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) secured by residential real estate; or

(b) selling, brokering, or appraising residential real property.

[~~(3)~~] (2) It is [an unfair] a discriminatory housing practice to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against [~~him~~] any person in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex, disability, familial status, source of income, or national origin.

(3) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, or disability based upon a person's association with another person.

Section 6. Section Amended.

Section 57-21-7, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is amended to read:

57-21-7. Prohibited conduct — Aiding or abetting in discriminatory actions — Obstruction of division investigation — Reprisals.

(1) It is [~~an unfair~~] a discriminatory housing practice to do any of the following:

[~~(1) to~~] (a) coerce, intimidate, threaten, or interfere with any person:

[~~(a)~~] (i) in the exercise or enjoyment of any right granted or protected under this chapter;

[~~(b)~~] (ii) because that person [~~has~~] exercised any right granted or protected under this chapter; or

[~~(c)~~] (iii) because that person [~~has~~] aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this chapter[~~.~~];

[~~(2)~~] (b) aid, abet, incite, compel, or coerce a person to engage in any of the practices [~~forbidden~~] prohibited by this chapter;

[~~(3)~~] (c) attempt to aid, abet, incite, compel, or coerce a person to engage in any of the practices [~~forbidden~~] prohibited by this chapter;

[~~(4)~~] (d) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter;

[~~(5)~~] (e) resist, prevent, impede, or interfere with the director or any division employees or representatives in the performance of duty under this chapter; or

[~~(6)~~] (f) engage in any reprisal against any person because that person:

[~~(a)~~] (i) opposed a practice [~~forbidden~~] prohibited under this chapter; or

[~~(b)~~] (ii) filed a [charge] complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter[~~; or~~].

[~~(c) associated with anyone who is of a different race, color, religion, sex, or national origin, or with anyone who is disabled.~~]

(2) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, or disability based upon a person's association with another person.

Section 7. Section Repealed and Reenacted.

Section 57-21-8, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is repealed and reenacted to read:

57-21-8. Jurisdiction — Division.

(1) The commission has jurisdiction over the subject of housing discrimination under this chapter and may delegate the responsibility of receiving, processing, and investigating allegations of discriminatory housing practices and enforcing this chapter to the division.

(2) The division may:

(a) adopt rules necessary to administer this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) receive, reject, investigate, and determine complaints alleging discriminatory housing practices prohibited by this chapter;

(c) appoint and prescribe the duties of investigators, legal counsel, and other employees and agents that it considers necessary for the enforcement of this chapter;

(d) issue subpoenas to compel the attendance of witnesses or the production of evidence for use in any investigation, conference, or hearing conducted by the division, and if a person fails to comply with such a subpoena, petition a court of competent jurisdiction for an order to show cause why that person should not be held in contempt;

(e) attempt conciliation between the parties through informal efforts, conference, persuasion, or other reasonable methods for the purposes of resolving the complaint;

(f) seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the division concludes that such an action is necessary to carry out the purposes of this chapter;

(g) initiate a civil action in a court of competent jurisdiction to:

(i) enforce the rights granted or protected under this chapter;

(ii) seek injunctive or other equitable relief, including temporary restraining orders, preliminary injunctions, or permanent injunctions;

(iii) seek damages; and

(iv) enforce final commission orders on the division's own behalf or on behalf of another person in order to carry out the purposes of this chapter;

(h) initiate formal agency action under Title 63, Chapter 46b, Administrative Procedures Act; and

(i) promote public awareness of the rights and remedies under this chapter.

Section 8. Section Repealed and Reenacted.

Section 57-21-9, Utah Code Annotated 1953, as last amended by Chapter 274, Laws of Utah 1992, is repealed and reenacted to read:

57-21-9. Procedure for an aggrieved person to file a complaint — Conciliation — Investigation — Determination.

(1) Any person aggrieved by a discriminatory housing practice may file a written verified complaint with the division within 180 days after the alleged discriminatory housing practice occurs.

(2) (a) The division shall adopt rules consistent with the provisions of 24 C.F.R. Sec. 115.3 (1990), relating to procedures under related federal law, to govern:

(i) the form of the complaint;

(ii) the form of any answer to the complaint;

(iii) procedures for filing or amending a complaint or answer; and

(iv) the form of notice to parties accused of the acts or omissions giving rise to the complaint.

(b) The division may, by rule, prescribe any other procedure pertaining to the division's processing of the complaint.

(3) During the period beginning with the filing of the complaint and ending with the director's determination and order, the division shall, to the extent feasible, engage in conciliation with respect to the complaint.

(4) The division shall commence proceedings to investigate and conciliate a complaint alleging a discriminatory housing practice within 30 days after the filing of the complaint.

(5) The division shall complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so. If the division is unable to complete the investigation within 100 days after the filing of the complaint, the division shall notify the complainant and respondent in writing of the reasons for the delay.

(6) If the division determines that there is no reasonable cause to support the allegations in the complaint:

(a) the director shall issue a written determination and order for the dismissal of the complainant and respondent; and

(b) the complainant, respondent, or an aggrieved party may submit a written request for a reconsideration of the director's determination and order within 20 days after the date of issuance of the director's determination and order pursuant to Section 63-46b-13.

(7) If the director fails to receive a timely request for review under Subsection (6)(b), the determination and order become the final order of the commission.

(8) If the division determines that there is reasonable cause to support the allegations in the complaint, all of the following apply:

(a) The division shall informally endeavor to eliminate or correct the discriminatory housing practice through a conciliation conference between the parties, presided over by the division. Nothing said or done in the course of the conciliation conference may be made public or admitted as evidence in a subsequent proceeding under this chapter without the written consent of the parties concerned.

(b) If the conciliation conference results in voluntary compliance with this chapter, a conciliation agreement setting forth the resolution of the issues shall be executed by the parties and approved by the division. The parties may enforce the conciliation agreement in an action filed in a court of competent jurisdiction.

(c) If the division is unable to obtain a conciliation agreement, the director shall issue a written determination and order to the complainant and respondent stating the findings of the division that the allegations of the complaint are supported by reasonable cause and ordering any appropriate relief under Section 57-21-11.

Section 9. Section Repealed and Reenacted.

Section 57-21-10, Utah Code Annotated 1953, as enacted by Chapter 233, Laws of Utah 1989, is repealed and reenacted to read:

57-21-10. Judicial election or formal adjudicative hearing.

(1) If the director's determination and order finds that there is reasonable cause to believe that a discriminatory housing practice has occurred, or is about to occur, the complainant, respondent, or an aggrieved person on whose behalf a complaint has been filed may elect to have the findings of the division asserted in either a formal adjudicative hearing or in a civil action.

(2) The election shall be submitted in writing to the director within 20 days from the date of issuance of the director's determination and order. If the director fails to receive a timely election, the director's determination and order become the final order of the commission.

(3) If the complainant, respondent, or an aggrieved person elects to have the claims asserted in a formal adjudicative hearing or in a civil action, the division shall give written notice to the complainant and respondent of that election.

(4) If an election is made, the director shall determine whether the allegations of the complaint are supported by substantial evidence.

(5) If the director determines that the allegations of the complaint are supported by substantial evidence, the director shall, pursuant to the election, refer the matter to the presiding officer to set a formal adjudicative hearing or commence a civil action in an appropriate district court within 30 days from the date the election is made. The division shall provide legal representation on behalf of the aggrieved person.

(6) If the director determines that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a private civil action under Subsection 57-21-12(1).

(7) Upon timely application, an aggrieved person may intervene with respect to the issues to be determined in a formal adjudicative hearing or in a civil action brought under this section.

(8) If a formal adjudicative hearing is elected, all of the following apply:

(a) The presiding officer shall commence the formal adjudicative hearing within 120 days after the complainant, respondent, or aggrieved person makes the election, unless it is impracticable to do so.

(b) The investigator who investigated the matter may not participate in the formal adjudicative hearing, except as a witness, nor may the investigator participate in the deliberations of the presiding officer.

(c) Any party to the complaint may file a written request to the commission for review of the presiding officer's order in accordance with Section 63-46b-12.

(d) A final order of the commission under this section is subject to judicial review as provided in Section 63-46b-16.

(9) If a civil action is elected, the division is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter.

(10) The commission shall make final administrative disposition of the complaint alleging a discriminatory housing practice within one year after the filing of the complaint, unless it is impracticable to do so. If the commission is unable to make final administrative disposition within one year, the commission shall notify the complainant, respondent, and any other interested party in writing of the reasons for the delay.

Section 10. Section Enacted.

Section 57-21-11, Utah Code Annotated 1953, is enacted to read:

57-21-11. Relief granted — Civil penalties — Enforcement of final commission order.

(1) Under Sections 57-21-9 and 57-21-10, if the director, presiding officer, or court finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, the director, presiding officer, or court may order, as considered appropriate:

(a) the respondent to cease any discriminatory housing practice;

(b) actual damages, reasonable attorneys' fees and costs to the aggrieved person; and

(c) any permanent or temporary injunction, temporary restraining order, or other appropriate order.

(2) In addition to the relief granted to an aggrieved person under Subsection (1), in order to vindicate the public interest, the director, presiding officer, or court may also assess civil penalties against the respondent in an amount not exceeding:

(a) $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(b) $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

(c) $50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this complaint.

(3) The time periods in Subsections (2)(b) and (c) may be disregarded if the acts constituting the discriminatory housing practice are committed by the same natural person who has previously been adjudged to have committed a discriminatory housing practice.

(4) The division may file a petition in a district court of competent jurisdiction for:

(a) the enforcement of a final commission order; and

(b) for any appropriate temporary relief or restraining order necessary for the enforcement of a final commission order.

Section 11. Section Enacted.

Section 57-21-12, Utah Code Annotated 1953, is enacted to read:

57-21-12. Other rights of action.

(1) In addition to the procedure outlined in Subsection 57-21-9(1), a person aggrieved by a discriminatory housing practice may commence a private civil action in a court of competent jurisdiction within two years after an alleged discriminatory housing practice occurred, within two years after the termination of an alleged discriminatory housing practice, or within two years after a breach of a conciliation agreement. The division shall inform the aggrieved person in writing about this option within 30 days after the aggrieved person files a complaint under Section 57-21-9.

(2) (a) Except as provided in Subsection (b), the computation of this two-year time period does not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint filed under this chapter.

(b) The tolling of the two-year time period does not apply to actions arising from a breach of a conciliation agreement.

(3) An aggrieved person may commence a private civil action even though a complaint has been filed with the division, in which case the division is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter after:

(a) the beginning of a civil action brought by a complainant or aggrieved person; or

(b) the parties have reached an agreement in settlement of claims arising from the complaint.

(4) An aggrieved person may not file a private civil action under this section if:

(a) the division has obtained a conciliation agreement, except for the purpose of enforcing the terms of the conciliation agreement; or

(b) the division has commenced a formal adjudicative hearing under Section 57-21-10 regarding the same complaint.

(5) Upon written application by a person alleging a discriminatory housing practice prohibited under this chapter in a private civil action, or by a person against whom the violations are alleged, the court may:

(a) appoint an attorney for the applicant; and

(b) authorize the commencement or continuation of a private civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(6) Upon timely application, the division may intervene in a private civil action brought under this subsection if the division certifies that the case is of general importance.

(7) In a private civil action, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may:

(a) order the respondent to cease any discriminatory housing practice;

(b) award to the plaintiff actual damages, punitive damages and reasonable attorneys' fees and costs; and

(c) grant, as the court considers appropriate, any permanent or temporary injunction, temporary restraining order, or other order as may be appropriate, including civil penalties under Section 57-21-11.

(8) This chapter does not preclude any private right of action by an aggrieved person based on otherwise applicable law not included in this chapter.

Section 12. Section Enacted.

Section 57-21-13, Utah Code Annotated 1953, is enacted to read:

57-21-13. Disclosure of information.

(1) Conciliation agreements and the director's determination and order are public records.

(2) Subject to Subsection (3), neither the members of the commission nor its staff may divulge or make public information gained from any investigation,

settlement negotiation, conciliation, hearing, or administrative proceeding before the commission, except as follows:

(a) Information used by the director in making any determination may be provided to all interested parties for the purpose of preparation for and participation in the investigation and any proceedings before the commission or court.

(b) General statistical information may be disclosed provided identities of individuals or parties are not disclosed.

(c) Information may be disclosed for inspection upon proper request by the attorney general or other legal representatives of the state or commission.

(d) Information may be disclosed for information and reporting requirements of the federal government.

(3) Neither the commission nor its staff may divulge or make public any information gained from any investigation, settlement negotiation, conciliation, hearing, or administrative proceeding before the commission if a privacy interest entitled to protection by law exists or the commission determines that disclosure will not further the purposes of this chapter.

Section 13. Section Enacted.

Section 57-21-14, Utah Code Annotated 1953, is enacted to read:

57-21-14. Effect of federal action.

The commencement of an action in a federal court of competent jurisdiction for relief under federal law based upon any act prohibited by this chapter bars the commencement or continuation of any adjudicative proceeding before the division or state court proceeding in connection with the same claims under this chapter.

Section 14. Funding.

Any funding needed to implement this act shall be withheld from distribution from the General Fund until approved by the Legislature.

CHAPTER 115
H. B. No. 435
Passed March 3, 1993
Approved March 15, 1993
Effective March 15, 1993

TASK FORCE ON STRATEGIC PLANNING FOR PUBLIC AND HIGHER EDUCATION

By Rob W. Bishop

AN ACT RELATING TO PUBLIC EDUCATION; MODIFYING THE COMPOSITION OF THE TASK FORCE ON STRATEGIC PLANNING FOR PUBLIC AND HIGHER EDUCATION TO INCLUDE GREATER REPRESENTATION FROM HIGHER EDUCATION; PERMITTING THE ESTABLISHMENT OF K-12 AND HIGHER EDUCATION SUBCOMMITTEES WITHIN THE TASK FORCE; EXPANDING THE DUTIES AND RESPONSIBILITIES OF THE TASK FORCE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-1A-201, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1992
53A-1A-202, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 53A-1a-201, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1992, is amended to read:

53A-1a-201. Task Force on Strategic Planning for Public and Higher Education — Membership — Quorum.

(1) [~~The~~] There is created a Task Force on Strategic Planning for Public and Higher Education [~~created in uncodified Section 1, Chapter 79, Laws of Utah 1991, is reauthorized through December 31, 1997~~].

(2) The task force shall consist of the following members[~~, with preference given to those individuals who served on the task force created in uncodified Section 1, Chapter 79, Laws of Utah 1991~~]:

(a) three members shall be state senators appointed by the president of the Senate, no more than two of whom may be from the same political party;

(b) three members shall be state representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(c) one member shall be the governor or the governor's designee;

(d) one member shall be the state superintendent of public instruction or the superintendent's designee;

(e) one member shall be the commissioner of higher education or the commissioner's designee;

(f) one member shall be a member of the State Board of Education appointed by the governor in consultation with the board;

(g) one member shall be a member of the State Board of Regents appointed by the governor in consultation with the board;

[~~(e)~~] (h) one member shall be a local school board member appointed by the governor in consultation with the Utah School Boards Association;

[~~(f)~~] (i) one member shall be a school district superintendent appointed by the governor in consultation with the Utah School Superintendents Association;

[~~(g)~~] (j) one member shall be a public school principal appointed by the governor in consultation with the Utah Associations of Elementary and Secondary School Principals;

[~~(h)~~] (k) two members shall be public school teachers[~~, one~~] appointed by [~~the state's largest teacher association and one appointed by~~] the governor in consultation with the state's teacher organizations;

[~~(i)~~] (l) one member shall be a member of the business community with an interest in education/business partnerships appointed by the governor;

[~~(j) two~~] (m) four members shall represent [~~school communities~~] the state at large appointed by the governor; [~~at least one member will be the state PTA president or the president's designee; and~~]

[~~(k)~~] (n) one member shall be a classified employee[~~.~~] or a professional staff member appointed by the governor;

(o) one member shall be a university president and one member shall be a community college president from within the state's system of higher education appointed by the governor in consultation with the council of presidents;

(p) one member shall be a member of a board of trustees from a state university or college appointed by the governor in consultation with the boards of trustees of the state's universities and colleges;

(q) two members shall be faculty members from two different universities or colleges within the state's higher education system appointed by the governor;

(r) one member shall be a representative from the state's applied technology centers appointed by the governor in consultation with the applied technology center superintendents; and

(s) one member shall be a member of the Job Training Coordinating Council appointed by the governor.

(3) (a) The president of the Senate shall designate a Senate cochair for the task force.

(b) The speaker of the House of Representatives shall designate a House cochair for the task force.

(4) If a member cannot continue to serve on the task force for any reason, a replacement shall be chosen by the authority that made the original appointment.

(5) A majority of the task force is a quorum for the transaction of business.

(6) (a) The task force may create public education and higher education subcommittees to focus on specific issues within their respective systems as well as on issues that overlap both systems.

(b) The task force members who serve on a subcommittee may, by majority vote, expand the membership of the subcommittee but not the membership of the task force.

(c) Those invited to serve on a subcommittee who are not members of the task force shall serve without compensation.

Section 2. Section Amended.

Section 53A-1a-202, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1992, is amended to read:

53A-1a-202. Task force duties and powers.

(1) (a) The task force shall engage in strategic planning for the state's system of higher education in order to:

(i) develop a unified vision and mission for the system; and

(ii) identify the appropriate objectives and strategies required to realize the vision and accomplish the mission.

(b) The strategic planning process for higher education shall address critical issues facing the system, including:

(i) system governance and structure;

(ii) physical facilities;

(iii) student access;

(iv) articulation;

(v) applied technology education;

(vi) innovative restructuring;

(vii) technology;

(viii) the balance between faculty teaching and research;

(ix) funding;

(x) faculty workloads as related to productivity;

(xi) employee compensation;

(xii) student support services;

(xiii) business partnerships;

(xiv) accountability; and

(xv) other issues identified during the planning process.

(c) (i) The task force shall submit a written report to the Legislature during the 1994 General Session on its progress under Subsections (1)(a) and (b).

(ii) It shall submit a final report to the Legislature on the proposed strategic plan for higher education prior to the 1995 General Session, including a copy of the plan.

[~~(1)~~] (2) (a) The task force shall monitor and evaluate the progress of public and higher education in achieving the objectives outlined in this chapter.

(b) The task force shall study and review funding mechanisms and available resources required to accomplish the mission and objectives of the state's strategic plan for public and higher education.

(c) The task force may recommend new mechanisms or programs or suggest modifications in existing programs in order to provide additional revenues or resources to either or both education systems.

(2) The task force shall make an annual report to the Legislature, the governor, [~~and~~] the State Board of Education, and the State Board of Regents on its evaluation of strategic planning in public and higher education and the programs authorized in this chapter.

(3) As part of its report, the task force may make recommendations for any necessary changes or modifications in this chapter and in the state's strategic plan for higher education.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 116
H. B. No. 436
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

EDUCATIONAL PROFESSIONAL PRACTICES AMENDMENTS

By Douglas S. Peterson

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING THAT THE PROFESSIONAL PRACTICES COMMISSION MAY RECEIVE AND USE EXPUNGED EVIDENCE RELATED TO AN ALLEGATION OF SEXUAL ABUSE BY AN EDUCATOR ON A STUDENT OR A MINOR; AND ALLOWING THE COMMISSION TO RECOMMEND THAT THE STATE BOARD OF EDUCATION RESTRICT OR PROHIBIT AN INDIVIDUAL'S RECERTIFICATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-7-110, AS LAST AMENDED BY CHAPTER 247, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 53A-7-110, Utah Code Annotated 1953, as last amended by Chapter 247, Laws of Utah 1992, is amended to read:

53A-7-110. Powers and duties.

(1) The commission:

(a) shall make recommendations to the State Board of Education and professional organizations of educators:

(i) concerning standards of professional performance, competence, and ethical conduct for persons holding certificates issued by the board; and

(ii) for the improvement of the education profession;

(b) shall adopt rules to carry out the purposes of this chapter;

(c) shall establish procedures for receiving and acting upon charges and recommendations regarding immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of standards of ethical conduct, performance, and professional competence;

(d) shall establish the manner in which hearings are conducted and reported, and recommendations are submitted to the State Board of Education for its action;

(e) may:

(i) warn or reprimand a certificate holder;

(ii) recommend that the State Board of Education revoke or suspend a certificate, or restrict or prohibit recertification;

(iii) enter into a written agreement requiring a current or former educator who has been the subject of a commission action to demonstrate to the satisfaction of the commission that the individual is rehabilitated and will conform to standards of professional performance, competence, and ethical conduct; or

(iv) take other appropriate action; and

(f) may administer oaths, issue subpoenas, and make investigations relating to any matter before the commission.

(2) (a) In fulfilling its duty under Subsection (1)(c), the commission shall investigate any allegation of sexual abuse of a student or a minor by an educator whether or not the educator has surrendered his certificate without a hearing.

(b) The investigation shall be independent of and separate from any criminal investigation.

(c) The commission may receive any evidence related to the allegation of sexual abuse, [~~except records~~] including sealed [~~and~~] or expunged [~~pursuant to a court order~~] records released to the board under Section 77-18-2.

CHAPTER 117
H. B. No. 462
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

CONSOLIDATION IN DEPARTMENT OF HUMAN SERVICES

By Martin R. Stephens

AN ACT RELATING TO THE DEPARTMENT OF HUMAN SERVICES; ELIMINATING THE OFFICE OF SOCIAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-1-105, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1991
62A-4-603, AS ENACTED BY CHAPTER 248, LAWS OF UTAH 1991
63-55-262, AS LAST AMENDED BY CHAPTER 40, LAWS OF UTAH 1992
63-75-5, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990

REPEALS:
62A-1-116, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 62A-1-105, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-1-105. Creation of boards, divisions, and offices.

(1) The following policymaking boards are created within the Department of Human Services:

(a) the Board of Aging and Adult Services;

(b) the Board of Family Services;

(c) the Board of Mental Health;

(d) the Board of Services for People with Disabilities;

(e) the Board of Substance Abuse; and

(f) the Board of Youth Corrections.

(2) The following divisions are created within the Department of Human Services:

(a) the Division of Aging and Adult Services;

(b) the Division of Family Services;

(c) the Division of Mental Health;

(d) the Division of Services for People with Disabilities;

(e) the Division of Substance Abuse; and

(f) the Division of Youth Corrections.

(3) The following offices are created within the Department of Human Services:

(a) the Office of Family Support;

[~~(b) the Office of Social Services;~~]

[~~(c)~~] (b) the Office of Licensing; and

[~~(d)~~] (c) the Office of Recovery Services.

Section 2. Section Amended.

Section 62A-4-603, Utah Code Annotated 1953, as enacted by Chapter 248, Laws of Utah 1991, is amended to read:

62A-4-603. Appropriation and funding — Requirements.

(1) Funding for centers under this section is intended to be broad-based, provided by a line item appropriation by the Legislature to the division, and is intended to include federal grant monies, local government monies, and private donations.

(2) The money appropriated shall be used to contract with intergovernmental bodies that qualify under Subsection (3) to provide a comprehensive, multidisciplinary, nonprofit, intergovernmental response to abused children.

(3) To qualify for contracting as a Children's Justice Center, a comprehensive, multidisciplinary, nonprofit, intergovernmental body consisting of two or more public agencies and other persons shall enter into written agreements with one another for joint or cooperative action pursuant to this part. The cooperating public agencies and other persons shall make up the center's advisory board, which shall comprise the following people from the county or area:

(a) the [~~Office of Social Services regional~~] director or his designee;

(b) a county attorney or his designee;

(c) a county sheriff or a chief of police or his designee;

(d) a chairman of a county commission or his designee;

(e) a physician licensed to practice medicine and surgery under Sections 58-12-26 through 58-12-43, Utah Medical Practice Act;

(f) a licensed mental health professional;

(g) a criminal defense attorney; and

(h) at least four members of the community at large.

(4) The advisory board shall not supersede the authority of the contracting public agency as designated in Subsection 62A-4-604 (1)(e).

(5) Appointees and designees shall serve at the request and upon written agreement of the creating public agencies and persons.

Section 3. Section Amended.

Section 63-55-262, Utah Code Annotated 1953, as last amended by Chapter 40, Laws of Utah 1992, is amended to read:

63-55-262. Repeal dates, Title 62A.

The following provisions of Title 62A, [~~Social~~] Human Services Code, are repealed on the following dates:

(1) (a) The Board of Aging and Adult Services, created in Section 62A-1-105, is repealed July 1, 1995.

(b) The Division of Aging and Adult Services, created in Section 62A-1-105, is repealed July 1, 1995.

(2) (a) The Board of Family Services, created in Section 62A-1-105, is repealed July 1, 2000.

(b) The Division of Family Services, created in Sections 62A-1-105 and 62A-4-104, is repealed July 1, 2000.

(3) (a) The Board of Mental Health, created in Section 62A-1-105, is repealed July 1, 1997.

(b) The Division of Mental Health, created in Sections 62A-1-105 and 62A-12-102, is repealed July 1, 1997.

(4) (a) The Board of Services for People with Disabilities, created in Section 62A-1-105, is repealed July 1, 1996.

(b) The Division of Services for People with Disabilities within the department, created in Sections 62A-1-105 and 62A-5-102, is repealed July 1, 1996.

(c) Title 62A, Chapter 5, Part 2, Utah State Developmental Center, is repealed July 1, 1996.

(5) (a) The Board of Substance Abuse, created in Section 62A-1-105, is repealed July 1, 1997.

(b) The Division of Substance Abuse, created in Sections 62A-1-105 and 62A-8-103, is repealed July 1, 1999.

(6) (a) The Board of Youth Corrections, created in Section 62A-1-105, is repealed July 1, 1999.

(b) The Division of Youth Corrections, created in Sections 62A-1-105 and 62A-7-102, is repealed July 1, 1999.

[~~(7) The Office of Social Services, created in Section 62A-1-105, is repealed July 1, 1999.~~]

[~~(8)~~] (7) (a) Administrative Hearings within the department, authorized under Section 62A-1-110, is repealed July 1, 1995.

(b) Administrative Services within the department, authorized under Section 62A-1-110, is repealed July 1, 1995.

[~~(9)~~] (8) The Office of Recovery Services within the department, created in Sections 62A-1-105 and 62A-11-102, is repealed July 1, 1995.

[~~(10)~~] (9) The Office of Family Support within the department, created in Sections 62A-1-105 and 62A-9-104, is repealed July 1, 1999.

[~~(11)~~] (10) The Coordinating Council for Persons with Disabilities, created in Section 62A-5a-103, is repealed July 1, 1996.

Section 4. Section Amended.

Section 63-75-5, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is amended to read:

63-75-5. Local at risk committees — Composition — Duties.

(1) In order to accomplish the purpose of this chapter, communities may establish local committees initiated through elementary school principals.

(2) The local committee shall include the following:

(a) a principal of a public elementary school or the principal's designee;

(b) a representative from the [~~Office of Social Services~~] Division of Family Services within the Department of Human Services selected by the [~~local office~~] director of that division;

(c) a representative from the local health department selected by the department;

(d) a representative from the local mental health authority selected by the authority;

(e) a representative from the local substance abuse authority selected by that authority;

(f) a parent of an at risk child selected by the school's P.T.A.; and

(g) a teacher at the elementary school selected by the principal.
Other members may be appointed if approved by a majority of the committee.

(3) The committee shall annually elect a chairman from its membership. A majority of the committee constitutes a quorum for the purpose of conducting committee business and taking committee action.

(4) A local committee has the following duties:

(a) to advise the council that a committee has been established;

(b) to prepare an application and apply for participation in the pilot prevention and early intervention program authorized under this chapter;

(c) to develop and implement a plan for specific systems to coordinate prevention and early intervention services for at risk children and youth and their parents;

(d) to identify and distribute information on the most effective services available at the school and community level and to monitor progress towards identified outcomes; and

(e) to request assistance from the appropriate state agencies to meet the identified prevention and early intervention needs of at risk students and their families.

Section 5. Repealer.

Section 62A-1-116, Office of Social Services — Responsibilities — Director, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is repealed.

Section 6. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 118
H. B. No. 465
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

REORGANIZATION WITHIN DEPARTMENT OF ADMINISTRATIVE SERVICES

By Christine R. Fox

AN ACT RELATING TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES; ELIMINATING THE DIVISION OF SURPLUS PROPERTY AND THE DIVISION OF FUEL DISPENSING SERVICES; TRANSFERRING THOSE DIVISIONS' RESPONSIBILITIES TO THE DIVISION OF CENTRAL SERVICES; RENAMING THE DIVISION OF CENTRAL SERVICES; MAKING CONFORMING CHANGES; MAKING TECHNICAL CORRECTIONS; AUTHORIZING LEGISLATIVE STAFF TO MAKE CHANGES TO COORDINATE WITH OTHER PENDING LEGISLATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-1-5, AS LAST AMENDED BY CHAPTER 57, LAWS OF UTAH 1990
63-1-24, AS ENACTED BY CHAPTER 257, LAWS OF UTAH 1981
63-1-25, AS LAST AMENDED BY CHAPTER 271, LAWS OF UTAH 1991
63-1-26, AS LAST AMENDED BY CHAPTER 153, LAWS OF UTAH 1986

RENUMBERS AND AMENDS:
63-1-26.1, (RENUMBERED FROM 63-1-59, AS ENACTED BY CHAPTER 93, LAWS OF UTAH 1991)
63-1-26.2, (RENUMBERED FROM 63-17-1.1, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.3, (RENUMBERED FROM 63-17-1.2, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.4, (RENUMBERED FROM 63-17-1.3, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.6, (RENUMBERED FROM 63-17-2, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.7, (RENUMBERED FROM 63-17-3, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.8, (RENUMBERED FROM 63-17-4, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-26.9, (RENUMBERED FROM 63-17-6, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63-1-27.1, (RENUMBERED FROM 63-17-8, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)

REPEALS:
63-1-57, AS ENACTED BY CHAPTER 93, LAWS OF UTAH 1991
63-17-1, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984
63-17-5, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1953
63-17-7, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1953

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

Section 1. Section Amended.

Section 63-1-5, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

63-1-5. Divisions of department — Control by division directors.

(1) The department shall be composed of the following divisions:

[~~(a) finance;~~]

[~~(b) central services;~~]

[~~(c) information technology services;~~]

[~~(d) facilities construction and management;~~]

[~~(e) archives and records;~~]

[~~(f) purchasing;~~]

[~~(g) surplus property;~~]

[~~(h) risk management; and~~]

[~~(i) administrative rules.~~]

(a) administrative rules;

(b) archives and records;

(c) facilities construction and management;

(d) finance;

(e) general services;

(f) information technology services;

(g) purchasing; and

(h) risk management.

(2) Each division shall be [~~under the immediate direction and control of~~] administered and managed by a division director.

Section 2. Section Amended.

Section 63-1-24, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

63-1-24. Creation — Administration — Appointment of director.

(1) There is created the Division of General Services within the Department of Administrative Services [~~the division of central services, to be administered by a director~~].

(2) The director of [~~central~~] general services shall be appointed by the executive director of the department with the approval of the governor.

Section 3. Section Amended.

Section 63-1-25, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1991, is amended to read:

63-1-25. General services provided — Subscription by state departments and agencies and certain local governmental entities — Fee schedule.

(1) (a) The director of the Division of [~~Central~~] General Services shall operate and maintain:

(i) a central mailing service;

(ii) a central motor pool; [~~and~~]

(iii) a fuel dispensing services program that meets the requirements of Subsection (3);

(iv) a surplus property program that meets the requirements of this part and is qualified to receive federal surplus property under the provisions of Section 203j of the Federal Property and Administrative Services Act of 1949; and

[~~(iii)~~] (v) a central store for all state departments and agencies.

(b) The director may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) [~~All~~] Except as provided in Subsection (3)(a), all state departments and agencies shall subscribe to [~~these~~] all of the services described in Subsection (1), unless the director delegates his authority to a department or agency under Section 63-1-26.

(b) [~~An~~] Except as provided in Subsection (3)(a), an institution of higher education may subscribe to one or more of [~~these~~] the services described in Subsection (1), if, and to the extent that, the president of the institution recommends and the State Board of Regents determines that the performance of the services by the director of the Division of [~~Central~~] General Services will result in substantial cost savings or increased efficiency to the institution.

(c) Local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act, local substance abuse authorities as defined in Section 17A-3-701, and local mental health authorities as defined in Section 17A-3-602 may subscribe to the central motor pool service provided by the Division of [~~Central~~] General Services if the director of the local health department, local substance abuse authority, or local mental health authority determines it will result in substantial cost savings or increased efficiency to the local health department, local substance abuse authority, or the local mental health authority.

(3) (a) (i) Each state agency and each higher education institution shall subscribe to the fuel dispensing services provided by the division.

(ii) A state agency may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by the division.

(b) Counties, municipalities, school districts, special districts, and federal agencies may subscribe to the fuel dispensing services provided by the division if:

(i) the county or municipal legislative body, or the school district, or the special district board recommends that the county, municipality, school district, or special district subscribe to the fuel dispensing services of the division; and

(ii) the division approves participation in the program by that government unit.

[~~(3)~~] (4) (a) The director shall prescribe a schedule of fees to be charged for all services rendered by the division to any department or agency after receiving prior approval of the fee schedule from the director of the Division of Finance.

(b) Where practicable, fees prescribed by the director of the Division of [~~Central~~] General Services shall be commensurate with the cost of providing the services.

Section 4. Section Amended.

Section 63-1-26, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

63-1-26. Delegation of general services to departments or agencies — Writing required — Contents — Termination.

(1) (a) The director of the Division of [~~Central~~] General Services, with the approval of the executive director, may delegate, in writing, his authority to perform or control [~~central~~] any general services [~~functions~~] function except fuel dispensing and surplus property to other state agencies and institutions by contract or other means authorized by law, if:

[~~(a)~~] (i) in the judgment of the executive director, the state department or agency has requested the authority; and

[~~(b)~~] (ii) the state department or agency has the necessary resources and skills to perform or control the functions.

(b) The director may not delegate fuel dispensing and surplus property functions to another state agency or institution.

(2) The director may delegate his authority only when the delegation would result in net cost savings or improved service delivery to the state as a whole.

(3) The written delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated;

(c) a provision for periodic administrative audits by the department; and

(d) a date on which the agreement shall terminate if not previously terminated or renewed.

(4) An agreement to delegate functions to a state agency or institution may be terminated by the department if the results of administrative audits conducted by the department reveal lack of compliance with the terms of the agreement.

Section 5. Section Renumbered and Amended.

Section 63-1-26.1, Utah Code Annotated 1953, which is renumbered from Section 63-1-59, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991, is amended to read:

[~~63-1-59~~] 63-1-26.1. Duties of the division — Fuel dispensing.

The division shall:

(1) establish and administer a fuel dispensing program that:

(a) reduces the risk of environmental damage and subsequent liability for leaks involving state-owned underground storage tanks;

(b) eliminates fuel site duplication and reduces overall costs associated with fuel dispensing;

(c) provides efficient fuel management and efficient and accurate accounting of fuel-related expenses;

(d) where practicable, privatizes portions of the state's fuel dispensing system;

(e) provides central planning for fuel contingencies;

(f) establishes fuel dispensing sites that meet geographical distribution needs and that reflect usage patterns;

(g) where practicable, uses alternative sources of energy; and

(h) provides safe, accessible fuel supplies in an emergency;

(2) ensure that the state and each of its agencies comply with state and federal law and state and federal rules and regulations governing underground storage tanks;

(3) coordinate the installation of new state-owned underground storage tanks and the upgrading or retrofitting of existing underground storage tanks; and

(4) ensure that counties, municipalities, school districts, and special districts subscribing to services provided by the division sign a contract that:

(a) establishes the duties and responsibilities of the parties;

(b) establishes the cost for the services; and

(c) defines the liability of the parties.

(5) The executive director of the Department of Administrative Services may make rules governing fuel dispensing on behalf of the division according to the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 6. Section Renumbered and Amended.

Section 63-1-26.2, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.1, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-1.1~~] 63-1-26.2. Price for sale of surplus — Disposition of proceeds.

The division shall establish, after consultation with the state agency requesting the sale of surplus property, the price at which the surplus property shall be sold. The proceeds arising from the sale of state surplus property shall be retained by the state agency requesting the sale in accordance with the Budgetary Procedures Act, less an amount established by the division by rule which shall be retained by the division in order to pay the costs of administering the surplus property program.

Section 7. Section Renumbered and Amended.

Section 63-1-26.3, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.2, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-1.2~~] 63-1-26.3. Methods of disposition of surplus authorized.

The division may dispose of state surplus property by public auction, sealed bids, or by other means established by rule.

Section 8. Section Renumbered and Amended.

Section 63-1-26.4, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.3, Utah Code Annotated 1953, as enacted by Chapter 64, Laws of Utah 1984, is amended to read:

[~~63-17-1.3~~] 63-1-26.4. Annual report to Legislature.

The division shall report to the Legislature annually the costs of administering the surplus property program and the amount retained by each state agency requesting the sale of any surplus property.

Section 9. Section Renumbered and Amended.

Section 63-1-26.6, Utah Code Annotated 1953, which is renumbered from Section 63-17-2, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-2~~] 63-1-26.6. Acquisition of federal surplus property — Powers and duties — Rules and regulations — Advisory boards and committees — Personnel — Expenditures and contracts — Clearinghouse of information — Reports.

(1) The division [~~of Surplus Property is hereby authorized and empowered~~] may:

(a) [~~to~~] acquire from the United States of America under and in conformance with the provisions of Section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes, public health pur-

poses, or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law;

(b) [to] warehouse such property; and

(c) [to] distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which have been held exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may now be or thereafter become eligible under federal law to acquire such property.

(2) The division [~~of Surplus Property is hereby authorized to~~] may receive applications from eligible health and educational institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations as to the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under Section 203(k) of the act.

(3) For the purpose of executing its authority under this act, the division [~~of Surplus Property is authorized and empowered to~~] may adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other actions as are deemed necessary and suitable in the administration of this act, to assure maximum utilization by and benefit to health, educational, and civil defense institutions and organizations within the state from property distributed under this act.

(4) The division [~~of Surplus Property is authorized and empowered to~~] may appoint advisory boards or committees, and to employ such personnel and to fix their compensation with the approval of the Department of Finance, and prescribe their duties, as are deemed necessary and suitable for the administration of this act. The positions of all personnel so employed shall be filled by persons selected and appointed on a nonpartisan merit basis.

(5) The division [~~of Surplus Property is authorized and empowered to~~] may make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other, require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(6) The division [~~of Surplus Property is authorized and empowered to~~] may act as clearing house of information for the public and private nonprofit institutions, organizations, and agencies referred to in Subsection (1) and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions, organizations, and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations, and agencies in every way possible in the consummation or acquisitions or transactions hereunder.

(7) The division [~~of Surplus Property~~], in the administration of this act, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation equivalent to the plan adopted by the Legislature, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the state.

Section 10. Section Renumbered and Amended.

Section 63-1-26.7, Utah Code Annotated 1953, which is renumbered from Section 63-17-3, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-3~~] 63-1-26.7. Employees — Delegation of powers — Bonds.

[~~The executive director of the Department of Administrative Services may delegate to any employee of the Division of Surplus Property such power and authority as he deems reasonable and proper for the effective administration of this act.~~] The executive director of the department may [~~in his discretion~~] bond any person [~~in the employ of~~] employed by the division [~~of Surplus Property, handling moneys, signing~~] who handles money, signs checks, or [~~receiving~~] receives or [~~distributing~~] distributes surplus property [~~from the United States or receiving or distributing property from the United States under authority of this act~~].

Section 11. Section Renumbered and Amended.

Section 63-1-26.8, Utah Code Annotated 1953, which is renumbered from Section 63-17-4, Utah

Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-4~~] 63-1-26.8. Charges and fees assessed for surplus property.

Any charges made or fees assessed by the division [~~of Surplus Property~~] for the acquisition, warehousing, distribution, or transfer of any property of the United States of America for educational, public health, or civil defense purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution, or transfer by the division [~~of Surplus Property~~]. The division may reduce or eliminate charges on property found not to be usable for the purpose for which procured. And, in the case of real property, such charges and fees shall be limited to the reasonable administrative costs of the division [~~of Surplus Property~~] incurred in effecting transfer.

Section 12. Section Renumbered and Amended.

Section 63-1-26.9, Utah Code Annotated 1953, which is renumbered from Section 63-17-6, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-6~~] 63-1-26.9. Moneys exceeding costs retained by requesting agency — Priority to state and local agencies in purchasing surplus property.

Any moneys found by the division to be in excess of the costs incurred in procuring, storing, handling, and disposing of such property shall be retained by the state agency requesting the sale in accordance with the Budgetary Procedures Act. The Department of Administrative Services shall promulgate rules giving priority to state and local agencies in purchasing surplus property for a 30-day period.

Section 13. Section Renumbered and Amended.

Section 63-1-27.1, Utah Code Annotated 1953, which is renumbered from Section 63-17-8, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-8~~] 63-1-27.1. Authority of state or local subdivision to receive property — Revocation of authority of officer.

Any provision of law to the contrary notwithstanding, the governing board, or in case there be none the executive head of any state department, instrumentality, or agency or of any city, county, school district, or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property through the division [~~of Surplus Property~~] under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by the division [~~of Surplus Property~~].

Section 14. Repealer.

Section 63-1-57, Creation of division, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991;

Section 63-17-1, Creation — Administration of state and federal programs, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984;

Section 63-17-5, Authority of legislature to make appropriations, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1953; and

Section 63-17-7, Revolving fund, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1953, are repealed.

Section 15. Coordinating Clause.

If H.B. 88, Recodification of Department of Administrative Services, and H.B. 465, Reorganization within Department of Administrative Services, or H.B. 183, Sales of Surplus Property pass the Legislature and are signed by the governor, the Office of Legislative Research and General Counsel may make conforming changes necessary to merge those bills, including changing section numbers, modifying definitions as required to conform the bills, rearranging sections, and correcting cross references.

Section 16. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 119
S. B. No. 24
Passed February 18, 1993
Approved March 15, 1993
Effective May 3, 1993

CHOICE IN PUBLIC EDUCATION AMENDMENTS

By Haven J. Barlow

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING SCHOOL DISTRICTS WITH A FLEXIBLE ENROLLMENT OPTIONS PROGRAM; REQUIRING THE STATE BOARD OF EDUCATION TO ESTABLISH BUILDING CAPACITIES FOR PARTICIPATION IN THE PROGRAM; PROVIDING FOR APPLICATION AND WITHDRAWAL PROCEDURES; PROVIDING FOR THE TRANSFER OF LOCAL MONIES TO NONRESIDENT SCHOOL DISTRICTS IN THOSE INSTANCES WHERE A STUDENT ENROLLS IN A SCHOOL DISTRICT OTHER THAN THE DISTRICT OF RESIDENCY; MODIFYING TRANSPORTATION PROVISIONS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-2-210, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1992
53A-2-211, AS ENACTED BY CHAPTER 52, LAWS OF UTAH 1990
53A-2-212, AS LAST AMENDED BY CHAPTER 72, LAWS OF UTAH 1991
53A-2-213, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1992

REPEALS AND REENACTS:
53A-2-207, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1992
53A-2-208, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1992
53A-2-209, AS LAST AMENDED BY CHAPTER 285, LAWS OF UTAH 1991

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

Section 1. Section Repealed and Reenacted.

Section 53A-2-207, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1992, is repealed and reenacted to read:

53A-2-207. Enrollment of nonresident students — Procedures — Processing fee — Continuing enrollment.

(1) Each local school board is responsible for providing educational services consistent with Utah state law and rules of the State Board of Education for each student who resides in the district and, as provided in Sections 53A-2-207 through 53A-2-212 and to the extent reasonably feasible, for any student who resides in another district in the state and desires to attend a school in the district.

(2) (a) The State Board of Education shall adopt rules defining school capacities and average daily membership thresholds for use in determining whether a school must be open for enrollment of nonresident students.

(b) If a school's average daily membership falls below the threshold designated by the State Board of Education, the local school board shall allow students who do not reside within the district to also enroll in the school.

(3) A local board of education may also allow enrollment of nonresident students in a school which is operating above the average daily membership threshold for mandatory enrollment of nonresident students.

(4) (a) A local school board shall adopt policies describing procedures for nonresident students to follow in applying for entry into the district's schools.

(b) Those procedures shall provide, as a minimum, for:

(i) distribution to interested parties of information about the school or school district and how to apply for admission;

(ii) use of standard application forms prescribed by the State Board of Education;

(iii) submission of applications during the month of January by those seeking admission for the following year;

(iv) written notification to the student's parent or legal guardian of acceptance or rejection of an application within six weeks after receipt of the application by the district or by March 1, whichever is later;

(v) written notification to the resident district upon acceptance of a nonresident student for enrollment; and

(vi) admission of students at times other than that permitted under standard policies if the board determines that there are conditions of special need which warrant consideration.

(5) A school district may charge a one-time $5 processing fee, to be paid at the time of application.

(6) An enrolled nonresident student shall be permitted to remain enrolled in the nonresident district's schools, subject to the same rules and standards as resident students, without renewed applications in subsequent years unless one of the following occurs:

(a) the student graduates;

(b) the student is no longer a Utah resident;

(c) the student is suspended or expelled from school;

(d) the district determines that enrollment within the school in question will exceed 90% of maximum capacity during the coming school year.

(7) (a) Determination of which nonresident students will be excluded from continued enrollment in a nonresident district during a subsequent year under Subsection (6)(b) is based upon time in the dis-

trict, with those most recently enrolled being excluded first.

(b) Nonresident students who will not be permitted to continue their enrollment shall be notified no later than March 15 of the current school year.

(8) The parent of a student enrolled in a nonresident district may withdraw the student from that district for enrollment in another district by:

(a) submitting notice of intent to enroll the student in the district of residence for the subsequent year to the district of attendance no later than March 15 of the current school year;

(b) submitting notice of intent to enroll the student in another nonresident district for the subsequent school year to the current district of attendance, together with a letter of acceptance from the proposed district of attendance, no later than March 15 of the current school year; or

(c) if the parent desires to change the student's enrollment during the school year or after March 15, by obtaining approval from both the district of attendance and the district in which enrollment is sought.

(9) Unless provisions have previously been made for enrollment in another school, a nonresident district releasing a student from enrollment shall immediately notify the district of residence, which shall enroll the student in the resident district and take such additional steps as may be necessary to ensure compliance with laws governing school attendance.

(10) Subsection (6)(d) does not apply to a student who was attending a nonresident school or district prior to January 1, 1993.

Section 2. Section Repealed and Reenacted.

Section 53A-2-208, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1992, is repealed and reenacted to read:

53A-2-208. Rules for acceptance and rejection of applications.

(1) A local school board shall adopt rules governing acceptance and rejection of applications required under Section 53A-2-207.

(2) Standards may include:

(a) the capacity of the program, class, grade level, or school building;

(b) maintenance of heterogeneous student populations if necessary to avoid violation of constitutional or statutory rights of students;

(c) not offering a program the student requires; and

(d) willingness of prospective students to comply with district policies.

(3) (a) Standards may not include previous academic achievement, athletic or other extracurricular ability, the fact that the student requires special education services for which space is available, proficiency in the English language, or previous disciplinary proceedings, except as provided in Subsection (b).

(b) A board may provide for the denial of applications from students who have committed serious infractions of the law or school rules, including rules of the district in which enrollment is sought, or have been guilty of chronic misbehavior which would, if it were to continue after the student was admitted, endanger persons, or property, cause serious disruptions in the school, or place unreasonable burdens on school staff.

(c) A board may also provide for provisional enrollment of students with prior behavior problems, establishing conditions under which enrollment of a nonresident student would be permitted or continued.

(4) The State Board of Education, in consultation with the Utah High School Activities Association, shall establish policies regarding nonresident student participation in interscholastic competition.

Section 3. Section Repealed and Reenacted.

Section 53A-2-209, Utah Code Annotated 1953, as last amended by Chapter 285, Laws of Utah 1991, is repealed and reenacted to read:

53A-2-209. Denial of enrollment — Appeal.

(1) Denial of initial or continuing enrollment in a nonresident school may be appealed to the board of education of the the nonresident district.

(2) The decision of the board shall be upheld in any subsequent proceedings unless the board's decision is found, by clear and convincing evidence, to be in violation of applicable law or regulation, or to be arbitrary and capricious.

Section 4. Section Amended.

Section 53A-2-210, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1992, is amended to read:

53A-2-210. Funding.

(1) A student who enrolls in a nonresident district is considered a resident of that district for purposes of state funding.

(2) The State Board of Education shall adopt rules providing that the resident district pay the nonresident district, for each of the resident district's students who enroll in the nonresident district, 1/2 of the amount by which the resident district's per student expenditure exceeds the value of the state's contribution.

[~~(2)~~] (3) (a) [~~The~~] Except as provided in Subsection (3), the parent or guardian of a nonresident student shall arrange for the student's own transportation to and from school.

(b) The State Board of Education may adopt rules under which nonresident students may be transported to their schools of attendance if:

(i) the transportation of students to schools in other districts would relieve overcrowding or other serious problems in the district of residence and the costs of transportation are not excessive; or

(ii) the Legislature has granted an adequate specific appropriation for that purpose.

[~~(b) The~~] (c) A receiving district shall provide transportation for a nonresident student on the basis of available space on an approved route within the district to the school of attendance [~~so long as~~] if district students would be eligible for transportation to the same school from that point on the bus route and the student's presence does not increase the cost of the bus route.

(d) Nothing in this section shall be construed as prohibiting the resident district or the receiving district from providing bus transportation on any approved route.

[~~(c) The~~] (e) Except as provided in Subsection (3)(b), the district of residence may not claim any state transportation costs for students enrolled in other school districts.

Section 5. Section Amended.

Section 53A-2-211, Utah Code Annotated 1953, as enacted by Chapter 52, Laws of Utah 1990, is amended to read:

53A-2-211. Graduation credits.

(1) A nonresident district shall accept credits toward graduation that were awarded by [~~another district~~] a school accredited or approved by the State Board of Education or a regional accrediting body recognized by the U.S. Department of Education.

(2) [~~The~~] A nonresident district shall award a diploma to a nonresident student attending school within the district during the semester immediately preceding graduation if the student meets [~~its~~] graduation requirements generally applicable to students in the school.

(3) A district may not require that a student attend school within the district for more than one semester prior to graduation in order to receive a diploma.

Section 6. Section Amended.

Section 53A-2-212, Utah Code Annotated 1953, as last amended by Chapter 72, Laws of Utah 1991, is amended to read:

53A-2-212. Building capacity exemption.

A district may not be penalized under Section 53A-17a-142 [~~during the first two years of the options program~~] if a school is operating at less than 70% of maximum student capacity due to [~~the program~~] transfers under Section 53A-2-207, unless it continues for more than two successive years.

Section 7. Section Amended.

Section 53A-2-213, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1992, is amended to read:

53A-2-213. Intradistrict options.

(1) (a) A local school board shall allow students who reside within the district to attend any school within the district, subject to the same requirements established in Sections 53A-2-207 through 209, except that a district may [~~extend the~~] adopt a later date for accepting intradistrict transfer applications.

(b) If [~~the~~] a board extends the date for acceptance of applications, then the notification dates shall be adjusted accordingly.

(c)(i) In adjusting school boundaries, a local school board shall strive to avoid requiring current students to change schools and shall, to the extent reasonably feasible, accommodate parents who wish to avoid having their children attend different schools of the same level because of boundary changes which occur after one or more children in the family begin attending one of the affected schools.

(ii) In granting interdistrict and intradistrict transfers to a particular school, the local school board shall take into consideration the fact that an applicant's brother or sister is attending the school or another school within the district.

(2)(a) [~~Under the intradistrict options program, a~~] A district shall receive transportation monies under Sections 53A-17a-126 and 53A-17a-127 for resident students who enroll in schools other than the regularly assigned school on the basis of the distance from the student's residence to the school the student would have attended had the intradistrict attendance option not been used.

(b) The parent or guardian of the student shall arrange for the student's [~~own~~] transportation to and from school, except that the district shall provide transportation on the basis of available space on an approved route within the district to the school of the student's attendance [~~so long as the~~] if the student would be otherwise eligible for transportation to the same school from that point on the bus route and the student's presence does not increase the cost of the bus route.

CHAPTER 120
S. B. No. 25
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

DUAL ENROLLMENT IN THE PUBLIC SCHOOLS

By Haven J. Barlow
Stephen J. Rees
David H. Steele
Millie M. Peterson
Scott N. Howell
LeRay McAllister

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING FOR A DUAL ENROLLMENT PROGRAM BETWEEN PRIVATE AND HOME SCHOOLS AND PUBLIC SCHOOLS; PROVIDING THAT THE STATE BOARD OF EDUCATION SHALL MAKE RULES TO GOVERN THE TRANSFERABILITY OF CREDIT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-11-102.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-11-102.5, Utah Code Annotated 1953, is enacted to read:

53A-11-102.5. Dual enrollment.

(1) A person having control of a minor under this part who is enrolled in a regularly established private school or a home school may also enroll the minor in a public school for dual enrollment purposes.

(2) The minor may participate in any academic activity in the public school available to students in the minor's grade or age group, subject to compliance with the same rules and requirements that apply to a full-time student's participation in the activity.

(3) Except as otherwise provided in Sections 53A-11-101 and 53A-11-102, a student enrolled in a public school may also be enrolled in a private school or a home school for dual enrollment purposes.

(4) A student enrolled in a dual enrollment program is considered a student of the district in which the public school of attendance is located for purposes of state funding to the extent of the student's participation in the public school programs.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Board of Education shall make rules for purposes of dual enrollment to govern and regulate the transferability of credits toward graduation that are earned in a private or home school.

(6) (a) The State Board of Education shall determine the policies and procedures necessary to permit students enrolled under Subsection (1) to participate in public school extracurricular activities.

(b) The board shall report its findings to the Legislature prior to the 1994 General Session, together with recommendations for proposed legislation, if required for participation in those activities by those students.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 121
S. B. No. 41
Passed March 3, 1993
Approved March 15, 1993
Effective July 1, 1993

UNIQUE ARTS FOR SPECIAL NEEDS PILOT PROGRAM

By Craig A. Peterson

AN ACT RELATING TO PUBLIC EDUCATION; AUTHORIZING A PILOT PROGRAM DESIGNED TO INCREASE THE SELF-ESTEEM AND THE PHYSICAL, INTELLECTUAL, AND LIFE SKILLS OF STUDENTS WITH DISABILITIES THROUGH A HOLISTIC INTEGRATED ARTS PROGRAM; PROVIDING A $60,000 APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-15-303.7, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-15-303.7, Utah Code Annotated 1953, is enacted to read:

53A-15-303.7. Unique arts for students with disabilities pilot program.

(1) There is appropriated for fiscal year 1993-94 $60,000 to be used for a pilot program designed to increase the self-esteem and the physical, intellectual, and life skills of students with disabilities through a holistic integrated arts program.

(2) (a) The board shall distribute the appropriation upon application on a voluntary basis to a school district that offers a unique arts for special needs program to increase the self-esteem and the physical, intellectual, and life skills of students with disabilities through a holistic integrated arts program.

(b) The district may provide the services to the students through its own personnel or contract with a private, nonprofit entity.

(3) (a) The board shall monitor and report on the success of the pilot program prior to the 1994 General Session focusing on specific outcomes, optional funding sources, and whether the pilot program shall be reauthorized.

(b) The board shall make the report to the Legislature's Education Interim Committee.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 122
S. B. No. 43
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

KINDERGARTEN IN THE PUBLIC SCHOOLS

By Scott N. Howell
Millie M. Peterson

AN ACT RELATING TO PUBLIC EDUCATION; RECOGNIZING THAT KINDERGARTENS ARE AN INTEGRAL PART OF THE STATE'S PUBLIC EDUCATION SYSTEM; REQUIRING LOCAL SCHOOL BOARDS TO PROVIDE FREE KINDERGARTEN CLASSES; AND PROVIDING A FUNDING SOURCE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-3-402.7, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-3-402.7, Utah Code Annotated 1953, is enacted to read:

53A-3-402.7. Kindergartens — Establishment — Funding.

(1) Kindergartens are an integral part of the state's public education system.

(2) By July 1, 1994, each local board of education shall provide kindergarten classes free of charge for kindergarten children residing within the district.

(3) Kindergartens established under Subsection (2) shall receive state monies under Title 53A, Chapter 17a, The Minimum School Program Act.

CHAPTER 123
S. B. No. 44
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

STUDENT DISCIPLINE IN THE PUBLIC SCHOOLS

By Howard A. Stephenson+b

AN ACT RELATING TO PUBLIC SCHOOLS; PROVIDING FOR THE ADOPTION OF RULES AND PROCEDURES ON SCHOOL DISCIPLINE BY EACH PUBLIC SCHOOL THROUGH A SCHOOL COMMUNITY COUNCIL OR SCHOOL DIRECTORS; AND PROVIDING FOR NOTICE, FILING, AND BOARD REVIEW OF DISCIPLINE RULES AND PROCEDURES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-11-901, UTAH CODE ANNOTATED 1953
53A-11-902, UTAH CODE ANNOTATED 1953
53A-11-903, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-11-901, Utah Code Annotated 1953, is enacted to read:

Part 9. School Discipline Plans

53A-11-901. School discipline plan.

(1)(a) Each public school may adopt rules and procedures on school discipline through its school community council or school directors.

(b) The rules and procedures shall be reviewed by the council or directors at least every four years after their initial adoption.

(c) The council or directors may revise rules and procedures during the review process.

(2) The rules and procedures shall be in accordance with the requirements of this part and Title 53A, Chapter 11, Part 8, and consistent with applicable policies adopted by the local school board of the district in which the school is located, state statutes governing school discipline, and federal laws including Section 504 of the Rehabilitation Act of 1974.

(3) As used in this part:

(a) "School community council" or "council" means the council authorized under Title 53A, Chapter 1a, Part 1, Utah Strategic Planning Act for Educational Excellence, or the school community groups authorized under the site-based decision making pilot programs in Title 53A, Chapter 15, Part 5.

(b) "School directors" or "directors" means the group of individuals referred to as school directors of centennial schools.

Section 2. Section Enacted.

Section 53A-11-902, Utah Code Annotated 1953, is enacted to read:

53A-11-902. Adoption of rules.

(1) Members of the council or the directors shall solicit input from various interest groups at the school and in the community in developing the rules and procedures.

(2) Adoption of any discipline procedure or rule under this part requires a majority vote of the full council or a majority of the directors.

Section 3. Section Enacted.

Section 53A-11-903, Utah Code Annotated 1953, is enacted to read:

53A-11-903. Written notice of rules — Filing — Review.

(1) The school board of each school district in consultation with its councils and directors shall establish procedures to provide for written notice of a school's discipline rules and procedures adopted under this part to:

(a) new and continuing students at the beginning of each school year;

(b) transfer students at the time of their enrollment in the school; and

(c) the students' parents or guardians.

(2)(a) Each school shall file a copy of its school discipline rules and procedures with the local school board.

(b) The filing shall occur within 30 days after the school council or directors have adopted the rules and procedures.

(3) The school board may review the rules and procedures and require the school to modify any rule or procedure that is not consistent with board policy or state statutes on discipline in the public schools.

CHAPTER 124
S. B. No. 52
Passed February 4, 1993
Approved March 15, 1993
Effective May 3, 1993

VICTIM RESTITUTION

By Lyle W. Hillyard

AN ACT RELATING TO CRIMINAL PROCEDURE; PROVIDING AUTHORITY TO BOARD OF PARDONS TO ORDER RESTITUTION SUBJECT TO CIVIL PENALTIES FOR NONPAYMENT; AND PROVIDING FOR USE OF STATE RESOURCES TO COLLECT THE DEBT ON BEHALF OF THE VICTIM.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-27-6, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1986

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

Section 1. Section Amended.

Section 77-27-6, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1986, is amended to read:

77-27-6. Payment of restitution.

(1) When the Board of Pardons orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Section 76-3-201 or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule by which payment of the restitution shall be made, or order community service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the factors specified in Subsection 76-3-201 (3).

(2) The board may impose any court order for restitution and order that a defendant make restitution in an amount not to exceed the pecuniary damages to the victim or victims of the offense of which the defendant has been convicted, or the victim of any other criminal conduct admitted to by the defendant to the sentencing court, unless the board applying the criteria as set forth in Subsection 76-3-201 (3) (b) determines that restitution is inappropriate.

(3) The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's needs or conduct.

(4) If parole is terminated or the sentence expires while restitution is still owed, the Board of Pardons shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

CHAPTER 125
S. B. No. 66
Passed February 4, 1993
Approved March 15, 1993
Effective May 3, 1993

COMMISSIONERS ON UNIFORM STATE LAWS

By Lyle W. Hillyard

AN ACT RELATING TO THE COMMISSION ON UNIFORM STATE LAWS; REVISING THE TERMS OF THE COMMISSIONERS AND THEIR MEETING SCHEDULE AND DUTIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
68-4-5, AS LAST AMENDED BY CHAPTER 193, LAWS OF UTAH 1987
68-4-6, AS ENACTED BY CHAPTER 155, LAWS OF UTAH 1957
68-4-7, AS ENACTED BY CHAPTER 155, LAWS OF UTAH 1957
68-4-8, AS LAST AMENDED BY CHAPTER 193, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 68-4-5, Utah Code Annotated 1953, as last amended by Chapter 193, Laws of Utah 1987, is amended to read:

68-4-5. Creation — Members — Terms — General counsel.

(1) [~~A commission is hereby created, to be known as the~~] The "Utah Commission on Uniform State Laws," [~~which shall consist~~] consists of four members of the Utah bar in good standing, one of whom shall be a member of the Legislature at the time of the appointment and during his service on the commission.

(2) Three commissioners shall be appointed by the governor by and with the consent of the Senate. [~~The first commissioner appointed shall serve a two-year term. The second commissioner appointed shall serve a four-year term. The third commissioner appointed shall serve a six-year term. Thereafter, these three~~] The commissioners shall serve six-year terms commencing on July 1 of the year of appointment, and may be reappointed for subsequent six-year terms by the governor. Each commissioner shall serve until his successor is appointed.

(3) The [~~other~~] fourth commissioner shall be the Legislature's general counsel [~~or the designee of the legislative general counsel~~] who shall serve during the appointment as general counsel. The Legislature's general counsel may appoint a designee from the Office of Legislative Research and General Counsel to serve in his stead. The designee shall serve at the will of the Legislature's general counsel.

Section 2. Section Amended.

Section 68-4-6, Utah Code Annotated 1953, as enacted by Chapter 155, Laws of Utah 1957, is amended to read:

68-4-6. Vacancies.

[~~The terms of the first commissioners appointed shall be as follows: one for two years, one for four years, and one for six years; thereafter the term of each commissioner appointed shall be for six years. The terms shall commence on July 1 of the year of appointment. Each commissioner shall serve until his successor is appointed.~~] (1) Upon the death, resignation, failure, or refusal to serve of [~~any commissioner,~~] the commissioners appointed under Subsection 68-4-6-(2), or if the legislative member ceases to be a member of the Legislature, his office becomes vacant; and the governor shall, by and with the consent of the Senate, make an appointment to fill the vacancy, such appointment to be for the unexpired term of the commissioner creating the vacancy.

(2) The commissioner who is the Legislature's general counsel or designee shall serve only during that appointment as the Legislature's general counsel.

Section 3. Section Amended.

Section 68-4-7, Utah Code Annotated 1953, as enacted by Chapter 155, Laws of Utah 1957, is amended to read:

68-4-7. Meetings — Officers.

The commissioners shall meet at least once [~~in two years~~] each year and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected. The chairman and secretary may be reelected for additional terms.

Section 4. Section Amended.

Section 68-4-8, Utah Code Annotated 1953, as last amended by Chapter 193, Laws of Utah 1987, is amended to read:

68-4-8. Duties of commissioners.

(1) The members of the commission shall:

(a) examine the subjects upon which uniformity of legislation in the various states of the union is desirable but that are outside the jurisdiction of the Congress of the United States;

(b) confer upon these matters with the commissioners appointed by other states for the same purpose;

(c) at the direction of the National Conference of Commissioners on Uniform State Laws, serve on national committees that draft uniform and model laws; and

(d) devise and recommend other means to accomplish the purposes of this chapter.

(2) The commission [~~shall~~] may request a legislator to sponsor, as an item on the interim study resolution, or as a bill for introduction, any uniform legislation that the commission determines would be in the best interests of the state to adopt.

CHAPTER 126
S. B. No. 87
Passed March 3, 1993
Approved March 15, 1993
Effective May 3, 1993

SALES TAX - EXEMPTION REVIEW

By Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR TAX COMMISSION REVIEW OF CERTAIN SALES AND USE TAX EXEMPTIONS AND REQUIRING A REPORT TO THE LEGISLATURE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
59-12-104.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 59-12-104.5, Utah Code Annotated 1953, is enacted to read:

59-12-104.5. Review of sales tax exemptions.

(1) The commission shall conduct a review of the following sales tax exemptions created in Section 59-12-104 within the following period of time:

(a) Subsections 59-12-104(4), (5), and (6) before October 1, 1993, and every eight years thereafter;

(b) Subsections 59-12-104(11), (16), (18), and (20) before October 1, 1995, and every eight years thereafter;

(c) Subsections 59-12-104(21), (22), (24), and (35) before October 1, 1997, and every eight years thereafter; and

(d) Subsections 59-12-104(31), (33), and (34) before October 1, 1999, and every eight years thereafter.

(2) (a) The commission shall make recommendations to the Revenue and Taxation Interim Committee, on or before the committee's October meeting in the year the study is required to be completed under this section, concerning whether the exemption listed in Subsection (1) should be continued, modified, or repealed.

(b) In its report to the Revenue and Taxation Interim Committee, the commission review shall include at least:

(i) the cost of the exemption;

(ii) the purpose and effectiveness of the exemption; and

(iii) the benefits of the exemption to the state.

CHAPTER 127
S. B. No. 97
Passed March 1, 1993
Approved March 15, 1993
Effective May 3, 1993

STATE FUNDS AMENDMENT

By LeRay McAllister

AN ACT RELATING TO STATE FUNDS; EXEMPTING REVOLVING LOAN FUNDS FROM CERTAIN INTERNAL SERVICE FUND REQUIREMENTS; REQUIRING CERTAIN INTERNAL SERVICE FUND AGENCIES TO OBTAIN LEGISLATIVE APPROVAL OF THEIR RATE, FEES, AND OTHER CHANGES; MAKING REVOLVING LOAN FUNDS SUBJECT TO THE STATE FINANCING CONSOLIDATIONS ACT; DEFINING ALL REVOLVING LOAN FUNDS AS INTERNAL SERVICE FUNDS FOR ACCOUNTING PURPOSES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-4-302, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
9-4-303, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
51-5-4, AS LAST AMENDED BY CHAPTERS 88 AND 241, LAWS OF UTAH 1992
59-21-1, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
59-21-2, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-38-3.5, AS ENACTED BY CHAPTER 252, LAWS OF UTAH 1988
63-65-2, AS LAST AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
63-65-4, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

ENACTS:
63-1-21.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 9-4-302, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 30, Laws of Utah 1992, is amended to read:

9-4-302. Definitions.

As used in this part:

(1) "Bonus payments" mean that portion of the bonus payments received by the United States government under the Leasing Act paid to the state under Section 35 of the Leasing Act, together with any interest that had accrued on those payments.

(2) "Impact board" means the Permanent Community Impact Fund Board created under Section 9-4-304.

(3) "Impact fund" means the Permanent Community Impact Fund established [under ~~Subsection 51-5-4(8)(b)~~] by this chapter.

(4) "Leasing Act" means the Mineral Leasing Act of 1920 (30 U.S.C. Sec. 181 et seq.), as amended.

(5) "Subdivision" means any county, city, town, special service district, special improvement district, water conservancy district, water or sewer improvement district, housing authority, building authority, or school district organized under the laws of this state.

Section 2. Section Amended.

Section 9-4-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-303. Impact fund — Deposits and contents.

(1) There [~~shall be deposited into the impact fund, and it shall consist of~~] is created an internal service fund entitled the "Permanent Community Impact Fund."

(2) The fund consists of:

(a) all amounts appropriated to the impact fund under Section 59-21-2;

(b) 70% of the bonus payments in respect of the Department of the Interior oil shale prototype leases known as U-A and U-B;

(c) 70% of all other bonus payments;

(d) all amounts received [~~by way of~~] for the repayment of loans made by the impact board under this chapter or from the Community Impact Account; and

(e) all other monies appropriated or otherwise made available to the impact fund by the Legislature.

[~~(2)~~] (3) The state treasurer shall:

(a) invest the monies in the impact fund [~~shall be invested by the state treasurer in accordance with the~~] by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act of 1974[~~, except that~~]; and

(b) deposit all interest or other earnings derived from [~~the fund shall be returned to~~] those investments into the impact fund [~~rather than the General Fund~~].

[~~(3)~~] (4) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.

Section 3. Section Amended.

Section 51-5-4, Utah Code Annotated 1953, as last amended by Chapters 88 and 241, Laws of Utah 1992, is amended to read:

51-5-4. Funds established — Titles of funds — Fund functions.

(1)(a)(i) The funds enumerated in this section are established as major fund types.

(ii) All resources and financial transactions of Utah state government shall be accounted for within one of these major fund types.

(b) (i) All funds or subfunds shall be consolidated into one of the state's major fund types.

(ii) Where a specific statute requires that a restricted fund be established, that fund shall be accounted for as an individual fund or subfund within the major fund type to meet generally accepted accounting principles.

(iii) Existing and new activities of state government authorized by the Legislature shall be accounted for within the framework of the major fund types established in this section.

(c) The Division of Finance shall determine the accounting classification that complies with generally accepted accounting principles for all funds or subfunds created by the Legislature.

(d) (i) Major fund types shall be added by amending this chapter.

(ii) Whenever a new act creates or establishes a fund without amending this chapter, the reference to a fund in the new act means a subfund.

(2) Major Fund Type Titles:

(a) General Fund;

(b) Special Revenue Funds;

(c) Capital Projects Funds;

(d) Debt Service Funds;

(e) Enterprise Funds;

(f) Internal Service Funds;

(g) Trust and Agency Funds;

(h) General Fixed Assets Account Group;

(i) General Long-Term Obligation Account Group; and

(j) College and University Funds.

(3) The General Fund shall receive all revenues and account for all expenditures not otherwise provided for by law in any other fund.

(4) Special Revenue Funds shall account for proceeds of specific revenue sources[;] (other than expendable trusts, or major capital projects[;]) that are legally restricted to expenditures for a specific purpose.

(a) The Uniform School Fund is a Special Revenue Fund that shall account for all revenues that are required by law to be expended for the public school programs of the state.

(b) The Transportation Fund is a Special Revenue Fund that shall account for all revenues that are required by Article XIII, Sec. 13, Utah Constitution, to be expended for highway purposes.

(5) Capital Projects Funds shall account for financial resources to be expended for the acquisition or construction of major capital facilities, except that when financing for the acquisition or construction of a major capital facility is obtained from a trust fund or a proprietary type fund within one of the major fund types, the monies shall be accounted for in those accounts.

(6) Debt Service Funds shall account for the accumulation of resources for, and the payment of, the principal and interest on general long-term obligations.

(7) (a) Enterprise Funds are designated to account for the following:

(i) operations, financed and operated in a manner similar to private business enterprises, where the Legislature intends that the costs of providing goods or services to the public are financed or recovered primarily through user charges; or

(ii) operations where the Legislature requires periodic determination of revenues earned, expenses incurred, and net income.

(b) The Alcoholic Beverage Control Fund is an Enterprise Fund that shall account for the state-controlled liquor merchandising operations.

(c) The Utah Housing Finance Agency Fund, the Utah Correctional Industries Fund, and the Workers' Compensation Fund of Utah are Enterprise Funds.

[~~(d) The Agriculture Resource Development Loan Fund and the Rural Rehabilitation Fund are Enterprise Funds.~~]

(8) Internal Service Funds shall account for the financing of goods or services provided by one department, division, or agency to other departments, divisions, or agencies of the state, or to other governmental units, on a cost-reimbursement basis.

[~~(a) (i) The Water Resources Conservation and Development Fund and the Water Resources Construction Fund are Internal Service Funds from which loans are made for the construction of approved projects to conserve and develop water and power.~~]

[~~(ii) Upon repayment to the funds, the monies may be loaned again.~~]

[~~(b) The Permanent Community Impact Fund is an Internal Service Fund designated to receive all monies and revenues as provided for in Section 9-4-303.~~]

(9) (a) Trust and Agency Funds shall account for assets held by the state as trustee or agent for individuals, private organizations, or governmental units, or other funds.

(b) Expendable Trust Funds, Nonexpendable Trust Funds, and Agency Funds are Trust and Agency Funds.

(i) The Retirement Systems Fund is a Trust Fund that shall account for resources received and held by the state as trustee for the state retirement systems established by the Utah School Employees' Retirement Act, the Utah Public Employees' Retirement Act, and the Firemen's Pension Act. Additional retirement systems that are established by the Legis-

lature shall be included in the Retirement Systems Fund.

(ii) The State Land Principal Fund is a Nonexpendable Trust Fund that shall account for resources received by the state as trustee for land grants made in the Enabling Act of the state of Utah.

(10) The General Fixed Assets Account Group shall account for all fixed assets acquired or constructed for use by the state, except for the fixed assets accounted for in the Internal Service, Enterprise, Trust and Agency, and College and University Funds.

(11) The General Long-Term Obligation Account Group shall account for general obligation bonds, revenue bonds, capital lease obligations, accrued annual and compensatory leave, and other long-term obligations not otherwise recorded in Internal Service, Enterprise, Trust and Agency, and College and University Funds.

(12) [~~(a)~~] College and University Funds shall account for the financial resources used to operate the state's colleges and universities. [~~(b)~~] They shall include the Current Funds, Fiduciary Funds, and Plant Funds for each college and university.

Section 4. Section Amended.

Section 59-21-1, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

59-21-1. Mineral Lease Account — Legislature to appropriate — Priority to political subdivisions impacted by mineral development — Disposition of mineral bonus payments.

(1) (a) All money received from the United States under the provisions of the Act of Congress of February 25, 1920, known as the "Mineral Lands Leasing Act," 30 U.S.C. Sec. 191, except as otherwise provided in Subsections (2) and (3), shall:

(i) be deposited in the Mineral Lease Account of the General Fund; and

(ii) appropriated by the Legislature giving priority to those subdivisions of the state socially or economically impacted by development of minerals leased under the Mineral Lands Leasing Act, for:

[~~(i)~~] (A) planning;

[~~(ii)~~] (B) construction and maintenance of public facilities;

[~~(iii)~~] (C) provision for public services; and

[~~(iv)~~] (D) housing.

(b) (i) To the extent determined necessary by the Legislature to provide for the purposes specified in Subsection (1)(a), the Legislature shall appropriate the money [~~so~~] received from the United States either totally or partially to:

(A) the Permanent Community Impact Fund established [~~under Subsection 51-5-4 (8)(b), to~~] by Section 9-4-303;

(B) the Board of Water Resources for loans under Section 73-10-23[~~;~~]; or [~~to~~]

(C) counties, cities, towns, or other political subdivisions of this state socially or economically impacted by development of minerals leased under the Mineral Land Leasing Act.

(ii) Any balance of the money may be appropriated by the Legislature.

(2) Seventy percent of money received from the United States attributable to the bonus payments on the Department of the Interior oil shale prototype leases known as U-A and U-B and 70% of all other federal mineral lease bonus payments, shall be deposited into the Permanent Community Impact Fund and shall be used as provided in Title 63, Chapter 52, Federal Mineral Lease Payments - Permanent Community Impact [~~Community~~] Fund.

(3) Thirty percent of the money received from the United States attributable to bonus payments on its oil shale prototype leases described in Subsection (2) and 30% of all other federal mineral lease bonus payments shall be deposited in the Mineral Bonus Account created by Subsection 59-21-2 [~~(2)~~] (1) and appropriated as provided in that subsection.

Section 5. Section Amended.

Section 59-21-2, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

59-21-2. Mineral Bonus Account — Allocation of monies from Mineral Lease Account.

(1) (a) The Mineral Bonus Account is created within the General Fund.

(b) All bonus money received by the state under Subsection 59-21-1 (3) shall be deposited in this account.

(c) The Legislature shall make appropriations from the Mineral Bonus Account in accordance with Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Sec. 191.

(d) The state treasurer shall:

(i) invest the money in the Mineral Bonus Account [~~shall be invested by the state treasurer in accordance with the~~] by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act of 1974[~~, except that~~]; and

(ii) deposit all interest or other earnings derived from the account [~~shall be returned to~~] into the Mineral Bonus Account [~~rather than the General Fund~~].

(2) The [~~following appropriations shall be made~~] Legislature shall appropriate, from the Mineral Lease Account:

(a) 32-1/2% of all deposits made to the Mineral Lease Account to the Permanent Community Impact Fund established by [~~Subsection 51-5-4 (8)(b), 32-1/2% of all deposits made to the Mineral Lease Account~~] Section 9-4-303;

(b) [~~to the Board of Regents for allocation to the institutions of higher learning;~~] 33-1/2% of all depos-

its made to the Mineral Lease Account, subject to the limitations described in Subsection (3), to the Board of Regents for allocation to the institutions of higher learning;

(c) [~~to the Utah State Board of Education,~~] 2-1/4% of all deposits made to the Mineral Lease Account to the State Board of Education, to be used for education research and experimentation in the [~~utilization~~] use of staff and facilities designed to improve the quality of education in Utah;

(d) [~~to the Utah Geological Survey,~~] 2-1/4% of all deposits made to the Mineral Lease Account to the Utah Geological Survey, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state of Utah;

(e) [~~to the Water Research Laboratory at Utah State University,~~] 2-1/4% of all deposits made to the Mineral Lease Account to the Water Research Laboratory at Utah State University, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state of Utah;

(f) 25% of all deposits made to the Mineral Lease Account to the Department of Transportation, to be distributed by the Transportation Commission to special service districts established by counties for the purpose of constructing, repairing, and maintaining roads or other single purpose special service districts established by counties[~~: (i) in fiscal year 1988-89, $2,000,000; (ii) in fiscal year 1989-90, $4,000,000; (iii) in fiscal year 1990-91, $6,000,000; and (iv) in fiscal year 1991-92 and each year thereafter, 25% of all deposits made to the Mineral Lease Account~~]; and

(g) to the extent available from the remaining unallocated portion of the Mineral Lease Account, [~~to each county in which are located~~] an amount equal to 52 cents multiplied by the number of acres of school or institutional trust lands, lands owned by the Division of Parks and Recreation, or lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, [~~an amount equal to the number of acres of those lands in the county multiplied by: (i) $.06, in fiscal year 1988-89; (ii) $.15, in fiscal year 1989-90; (iii) $.30, in fiscal year 1990-91; (iv) $.40, in fiscal year 1991-92; and (v) $.52, in fiscal year 1992-93 and each year thereafter~~] to each county in which those lands are located.

(3) (a) The Board of Regents may not:

(i) increase the total amount of federal mineral lease funds allocated [~~by the Board of Regents~~] during any fiscal year [~~may not be increased~~] above the amount allocated during the [~~immediately preceding~~] last fiscal year [~~in excess of~~] more than the percentage increase in the Consumer Price Index published by the United States Department of Labor for the [~~immediately preceding~~] last calendar year[~~, but in any event not more than 10%~~]; and

(ii) increase the total amount allocated more than 10% above the amount allocated during the last fiscal year.

(b) If the total amount of mineral lease funds allocated to a recipient agency or institution in any fiscal year is less than the total amount [~~so~~] allocated for the [~~immediately preceding~~] last fiscal year, the allocation to that agency or institution [~~during the immediately following~~] for the next fiscal year shall be increased by the amount of the reduction before calculating and applying the percent limitation.

(c) [~~The~~] (i) Higher Education institutions shall expend the federal mineral lease funds apportioned to [~~higher educational institutions shall be expended pursuant to~~] them via institutional work programs. [~~Those~~]

(ii) The Board of Regents may approve those programs [~~shall be approved by the Board of Regents~~] only when [~~they are~~] it is satisfied that a majority of the funds will be expended for research, educational, or public service programs of benefit to [~~the~~] subdivisions of the state that are socially or economically impacted by the development of minerals leased under the Mineral Lands Leasing Act in the planning, construction, and maintenance of public facilities, and the provision of public services.

(d) [~~The amount to which~~] (i) Except as provided in Subsection (2)(ii), each institution of higher learning is entitled [~~is that~~] to an amount of mineral lease funds equal to the proportion of the total amount available [~~which~~] that the average number of full-time students enrolled during the preceding year [~~in those institutions~~] at that institution bears to the total enrollment of all institutions.

(ii) Enrollment at the University of Utah and the Utah State University shall first be multiplied by 1.25 and [~~the~~] that product shall constitute the enrollment of the University of Utah and the Utah State University for the purposes of [~~this~~] determining their proportionate allocation.

(4) The federal mineral lease funds allocated to the Water Research Laboratory at Utah State University are in addition to any other money to which Utah State University is entitled under this section.

(5) Federal mineral lease funds distributed by the Transportation Commission under Subsection [~~(2)~~] (3)(f) shall be allocated to county special service districts in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(6) Each county receiving money under Subsection (2)(g) shall give the money to a school district or other special purpose governmental entity within the county.

Section 6. Section Enacted.

Section 63-1-21.5, Utah Code Annotated 1953, is enacted to read:

63-1-21.5. Revolving loan funds — Standards and procedures — Annual report.

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Water Resources Bear River Development Account, created in Section 73-26-507;

(e) the Clean Fuel Conversion Funds, created in Sections 63-53-9.5 and 63-53-10;

(f) the Water Development Security Account and its subaccounts created in Section 73-10c-5;

(g) the Agriculture Resource Development Fund, created in Section 4-18-6;

(h) the Utah Rural Rehabilitation Fund, created in Section 4-19-4; and

(i) the Permanent Community Impact Fund, created in Section 9-4-303.

(2) The division shall for each revolving loan fund:

(a) make rules establishing standards and procedures governing:

(i) payment schedules and due dates;

(ii) interest rate effective dates;

(iii) loan documentation requirements; and

(iv) interest rate calculation requirements;

(b) make an annual report to the legislature containing:

(i) the total dollars loaned by that fund during the last fiscal year;

(ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;

(iii) a description of each project that received money from that revolving loan fund;

(iv) the amount of each loan made to that project;

(v) the specific purpose for which the proceeds of the loan were to be used, if any;

(vi) any restrictions on the use of the loan proceeds;

(vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and

(viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Section 7. Section Amended.

Section 63-38-3.5, Utah Code Annotated 1953, as enacted by Chapter 252, Laws of Utah 1988, is amended to read:

63-38-3.5. Internal service funds — Governance and review.

(1) For purposes of this section:

(a) "Agency" means a department, division, office, bureau, or other unit of state government, and includes any subdivision of an agency.

(b) (i) "Internal service fund agency" means an agency that provides goods or services to other agencies of state government or to other governmental units on a capital maintenance and cost reimbursement basis, and which recovers costs through interagency billings.

(ii) "Internal service fund agency" does not mean a revolving loan fund.

(c) "Revolving loan fund" means:

(i) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(ii) the Water Resources Construction Fund, created in Section 73-10-8;

(iii) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(iv) the Water Resources Bear River Development Account, created in Section 73-26-507;

(v) the Clean Fuel Conversion Funds, created in Sections 63-53-9.5 and 63-53-10;

(vi) the Water Development Security Account and its subaccounts created in Section 73-10c-5;

(vii) the Agriculture Resource Development Fund, created in Section 4-18-6;

(viii) the Utah Rural Rehabilitation Fund, created in Section 4-19-4; and

(ix) the Permanent Community Impact Fund, created in Section 9-4-303.

(2) An internal service fund agency may not bill another agency for services that it provides, unless the Legislature has:

(a) reviewed and approved the internal service fund agency's budget request;

(b) reviewed and approved the internal service fund agency's rates, fees, and other amounts that it charges those who use its services and included those rates, fees, and amounts in an appropriation act;

[~~(b)~~] (c) approved the number of persons employed by the internal service fund agency as part of the annual appropriation process; and

[~~(c)~~] (d) appropriated to the internal service fund agency the internal service fund's estimated revenue based upon the rates and fee structure that are the basis for the estimate.

(3) An internal service fund agency may not charge rates, fees, and other amounts that exceed

the rates, fees, and amounts established by the Legislature in the appropriations act.

[~~(3)~~] (4) The internal service fund agency budget request shall separately identify the capital needs and the related capital budget.

[~~(4)~~] (5) An internal service fund agency may not incur additional long-term debt from the General Fund or Special Revenue Funds to meet its working capital needs.

[~~(5)~~] (6) No new internal service fund agency may be established unless reviewed and approved by the Legislature.

[~~(6)~~] (7) (a) An internal service fund agency may not acquire capital assets unless it has received an appropriation from the Legislature for their purchase.

(b) An internal service fund agency may not incur additional long-term debt from the General Fund or Special Revenue Funds to acquire capital assets.

(c) Capital assets acquired through agency appropriation may not be transferred to any internal service fund agency without legislative approval.

[~~(7)~~] (8) The Division of Finance shall adopt policies and procedures related to the accounting for assets, liabilities, equity, revenues, expenditures, and transfers of internal service funds agencies.

Section 8. Section Amended.

Section 63-65-2, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

63-65-2. Definitions.

As used in this chapter:

(1) "Agency bonds" means all bonds, notes, contracts, and other evidences of indebtedness [~~of political subdivisions, not including nonprofit agricultural organizations,~~] representing loans or grants made by authorizing agencies.

(2) "Authorizing agency" means the [~~Board of Water Resources, the Water Quality Board, the Drinking Water Board, and the Community Impact Board~~] board, person, or unit with legal responsibility for administering and managing revolving loan funds.

(3) "Revenue bonds" means any special fund revenue bonds issued by the state treasurer on behalf of the state pursuant to Section 63-65-8.

(4) "Revolving Loan Funds" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Water Resources Bear River Development Account, created in Section 73-26-507;

(e) the Clean Fuel Conversion Funds, created in Sections 63-53-9.5 and 63-53-10;

(f) the Water Development Security Account and its subaccounts created in Section 73-10c-5;

(g) the Agriculture Resource Development Fund, created in Section 4-18-6;

(h) the Utah Rural Rehabilitation Fund, created in Section 4-19-4; and

(i) the Permanent Community Impact Fund, created in Section 9-4-303.

Section 9. Section Amended.

Section 63-65-4, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-65-4. Custodial officer — Powers and duties.

(1) There is created within the Division of Finance an officer responsible for the care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness [~~of political subdivisions and other local governmental entities~~] owned by:

(a) the state or any of its agencies; and

(b) revolving loan funds except the Agriculture Resource Development Fund and the Utah Rural Rehabilitation Fund.

(2) (a) Each authorizing agency shall deliver to this officer for his care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness [~~of political subdivisions and other local governmental entities~~] owned by:

(i) the state or any of its agencies; and

(ii) revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to him under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section [~~63-63-3~~] 63-65-3 shall deliver to this officer for his care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63-65-3 (2)(b).

CHAPTER 128
S. B. No. 117
Passed March 1, 1993
Approved March 15, 1993
Effective May 3, 1993

INTERNAL SERVICE FUND AMENDMENTS

By LeRay McAllister

AN ACT RELATING TO INTERNAL SERVICE FUNDS; ESTABLISHING A MECHANISM FOR ELIMINATING INTERNAL SERVICE FUND AGENCY DEBT AND DEFICIT WORKING CAPITAL; ESTABLISHING PROCEDURES FOR THE ACQUISITION OF AND ACCOUNTING FOR CAPITAL ASSETS BY INTERNAL SERVICE FUND AGENCIES; ESTABLISHING REQUIREMENTS GOVERNING INTERNAL SERVICE FUND AGENCY WORKING CAPITAL AND LONG-TERM DEBT; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
51-5-6, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1991
63-38-3.5, AS ENACTED BY CHAPTER 252, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 51-5-6, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1991, is amended to read:

51-5-6. Accounting principles and specific accounting and financial reporting procedures.

(1) The Division of Finance shall use generally accepted accounting principles applicable to governmental units in its accounting procedures and in its reports of the state's financial position and results of operations in each fiscal period.

(2) Unless otherwise required by generally accepted accounting principles, the following specific procedures shall be implemented:

(a) The Division of Finance shall use the basis of accounting established by GASB to account for each fund type.

(b) The Division of Finance shall:

(i) calculate the liabilities associated with post-employment benefits by applying GASB standards;

(ii) recognize all liabilities associated with post-employment benefits in the General Fund or other funds as required by GASB;

(iii) recognize the initial post-employment liabilities in the year new GASB standards for revenue recognition become effective;

(iv) provide for an ongoing labor additive to charge all federal, state, or other programs at a rate sufficient to cover the annual change in the post-employment benefits liabilities; and

(v) provide for ongoing payments against the post-employment liabilities as employees qualify for receiving the post-employment benefits after post-employment liabilities are recognized.

(c) The Division of Finance shall post receipts of revenues and other resources of each fund when collected directly to the fund designated to receive them.

(d) The Division of Finance shall use budgetary accounts to:

(i) account for budgetary funds to the extent necessary to reflect the budget position and budget operations; and

(ii) account for the remaining funds when administrative expenses of the remaining funds are subject to appropriations, in order to fully reflect the various budgetary commitments as provided by law.

(e) The Division of Finance shall prepare statements of revenues and expenditures in a form that accurately reflects the results of operations for a particular fiscal period.

(f) The Division of Finance shall determine:

(i) all costs associated with all internal service funds that are eligible for federal reimbursement; and

(ii) all costs that are required to be included in the funds to comply with generally accepted accounting principles.

(g) (i) All costs currently borne by a fund or an account that is not an internal service fund that should be allocated to an internal service fund may be charged as an expense to the internal service fund, paid to the fund bearing the costs, and recorded as interfund revenue in that fund.

(ii) The Division of Finance may transfer the interfund revenue recorded in funds or accounts that are not internal service funds to the internal service fund as contributed working capital.

(h) The Division of Finance shall record revenue in the various funds and accounts in accordance with GASB standards.

(i) (i) The Division of Finance and each administrative unit of state government shall record accrued revenue net of any liabilities for revenue refunds occurring at the time of a change in accounting standards by recording accrual of net revenue to the specific revenue account and designating it as an accrual equity account of the fund.

(ii) Before changing the accrual equity account of the General Fund, any increases in accrued equity may be used to offset actuarial deficits of the State Risk Management Fund, created in Section 63-1-47, any transfers to Internal Service Funds as authorized by Section 63-38-3.5, and the State Post-Employment Benefit Account.

Section 2. Section Amended.

Section 63-38-3.5, Utah Code Annotated 1953, as enacted by Chapter 252, Laws of Utah 1988, is amended to read:

63-38-3.5. Internal service funds — Governance and review.

(1) For purposes of this section:

(a) "Agency" means a department, division, office, bureau, or other unit of state government, and includes any subdivision of an agency.

(b) "Internal service fund agency" means an agency that provides goods or services to other agencies of state government or to other governmental units on a capital maintenance and cost reimbursement basis, and which recovers costs through interagency billings.

(2) An internal service fund agency may not bill another agency for services that it provides, unless the Legislature has:

(a) reviewed and approved the internal service fund agency's budget request;

(b) approved the number of persons employed by the internal service fund agency as part of the annual appropriation process; and

(c) appropriated to the internal service fund agency the internal service fund's estimated revenue based upon the rates and fee structure that are the basis for the estimate.

(3) The internal service fund agency budget request shall separately identify the capital needs and the related capital budget.

(4) [~~An internal service fund agency may not incur additional long-term debt from the General Fund or Special Revenue Funds to meet its working capital needs.~~] In the fiscal year that the accounting change referred to in Subsection 51-5-6(2) is implemented by the Division of Finance, the Division of Finance shall transfer equity created by that accounting change to any internal service fund agency up to the amount needed to eliminate any long-term debt and deficit working capital in the fund.

(5) No new internal service fund agency may be established unless reviewed and approved by the Legislature.

(6) (a) An internal service fund agency may not acquire capital assets unless legislative approval for acquisition of the assets has been included in an appropriations act for the internal service fund agency.

(b) An internal service fund agency may not acquire capital assets [~~unless it has received an appropriation from the Legislature for their purchase~~] after the transfer mandated by Subsection (4) has occurred unless the internal service fund agency has adequate working capital.

(c) The internal service fund agency shall provide working capital from the following sources in the following order:

(i) first, from operating revenues to the extent allowed by state rules and federal regulations;

(ii) second, from long-term debt, subject to the restrictions of this section; and

(iii) last, from an appropriation.

[~~(b) An~~] (d) (i) To eliminate negative working capital, an internal service fund agency may [~~not~~] incur [~~additional~~] long-term debt from the General Fund or Special Revenue Funds to acquire capital assets.

(ii) The internal service fund agency shall repay all long-term debt borrowed from the General Fund or Special Revenue Funds by making regular payments over the useful life of the asset according to the asset's depreciation schedule.

(e) (i) The Division of Finance may not allow an internal service fund agency's borrowing to exceed 60% of the net book value of the agency's capital assets as of the end of the fiscal year.

(ii) If an internal service fund agency wishes to purchase authorized assets that would increase its borrowing beyond 60% of the net book value of the agency's capital assets, the agency may purchase those assets only with monies appropriated from another fund, such as the general fund or a special revenue fund.

[~~(c)~~] (f) Capital assets acquired through agency appropriation may not be transferred to any internal service fund agency without legislative approval.

(7) The Division of Finance shall adopt policies and procedures related to the accounting for assets, liabilities, equity, revenues, expenditures, and transfers of internal service funds agencies.

CHAPTER 129
S. B. No. 133
Passed March 1, 1993
Approved March 15, 1993
Effective May 3, 1993

LIVING WILL ACT AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO THE PROBATE CODE; AMENDING THE "PERSONAL CHOICE AND LIVING WILL ACT"; PROVIDING DEFINITIONS OF LIFE-SUSTAINING PROCEDURE, ARTIFICIAL NUTRITION AND HYDRATION, AND PERSISTENT VEGETATIVE STATE; REVERSING PRESUMPTION ON LIFE-SUSTAINING PROCEDURES; PROVIDING FOR RECIPROCITY; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
75-2-1102, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1985
75-2-1103, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1985
75-2-1104, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1985
75-2-1105, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1985
75-2-1106, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1985
75-2-1107, AS LAST AMENDED BY CHAPTER 105, LAWS OF UTAH 1988

ENACTS:
75-2-1119, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 75-2-1102, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1985, is amended to read:

75-2-1102. Intent statement.

(1) The Legislature finds:

(a) developments in medical technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of death;

(b) [~~terminally ill~~] persons should have the clear legal choice to be spared unwanted life-sustaining procedures, and be permitted to die with a maximum of dignity and a minimum of pain; and

(c) considerable uncertainty exists in the medical and legal professions as to the legality of terminating the use or application of life-sustaining procedures, even when a person [~~in a terminal condition~~] has evidenced a desire that the procedures be withheld or withdrawn.

(2) In recognition of the dignity and privacy which all persons are entitled to expect, and to protect the right of individuals to refuse to be touched or treated in any manner without their willing consent, the Legislature declares that this state recognizes the right to make binding written directives instructing physicians and other providers of medical services to withhold or withdraw, or to provide only to the extent set forth in a directive, life-sustaining and other medical procedures.

Section 2. Section Amended.

Section 75-2-1103, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1985, is amended to read:

75-2-1103. Definitions.

As used in this part:

(1) "Agent" means any director, officer, employee, or other person authorized to act on behalf of a provider of medical services.

(2) "Artificial nutrition and hydration" means supplying food and water through a conduit such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, including nasogastric tubes, gastrostomies, jejunostomies, and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

[~~(2)~~] (3) "Attending physician" means the physician selected by or assigned to a person, who has primary responsibility for the treatment and care of the person.

[~~(3)~~] (4) "Declarant" means a person 18 years of age or older who has signed or directed the signing of any directive, or for whom a directive has been signed under this part.

[~~(4)~~] (5) "Directive" means a written document voluntarily executed by or on behalf of a person in accordance with the requirements of this part.

[~~(8)~~] (6) "In writing" means any printed or handwritten directive.

[~~(6)~~] (7) (a) "Life-sustaining procedure" means:

(i) any medical procedure or intervention which[~~, when applied to a person who has been found under this part to have a terminal condition, or persistent vegetative state~~] would in the judgment of the attending physician serve only to prolong the dying process[~~.~~]; and

(ii) artificial nutrition and hydration unless the declarant elects in the declaration to exclude artificially administered nutrition and hydration.

(b) Life-sustaining procedure does not include the administration of medication [~~or sustenance,~~] or the performance of any medical procedure [~~deemed necessary~~] which is intended to provide comfort care[~~.~~] or to alleviate pain.

(8) "Persistent vegetative state" means a state of severe mental impairment, in which only involuntary bodily functions are present and the person totally lacks higher cortical and cognitive function but maintains vegetative brain stem processes for which there exists no reasonable expectation of regaining significant cognitive function as diagnosed by two physicians, one of whom shall be the attend-

ing physician, in accordance with reasonable medical judgment.

[~~(5)~~] (9) "Provider of medical services" includes all persons licensed to provide medical services and all health care facilities, including hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, residential health care facilities, and facilities owned or operated by health maintenance organizations.

[~~(7)~~] (10) "Terminal condition" means a condition caused by injury, disease, or illness, which regardless of the application of life-sustaining procedures, would within reasonable medical judgment produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the person.

Section 3. Section Amended.

Section 75-2-1104, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1985, is amended to read:

75-2-1104. Directive for medical services.

(1) A person 18 years of age or older may execute a directive under this part. The directive is binding upon attending physicians and all other providers of medical services.

(2) The directive shall be:

(a) in writing;

(b) signed by the declarant or by another person in the declarant's presence and by the declarant's expressed direction;

(c) dated; and

(d) signed in the presence of two or more witnesses 18 years of age or older.

(3) Neither of the witnesses may be:

(a) the person who signed the directive on behalf of the declarant;

(b) related to the declarant by blood or marriage;

(c) entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will or codicil of the declarant;

(d) directly financially responsible for the declarant's medical care; or

(e) any agent of any health care facility in which the declarant is a patient at the time the directive is executed.

(4) The directive shall be in substantially the following form or in a form substantially similar to the form approved by prior Utah law:

DIRECTIVE TO PHYSICIANS AND
PROVIDERS OF MEDICAL SERVICES
(Pursuant to Section 75-2-1104, UCA)

This directive is made this ____ day of _____, _____.

1. I, _____, being of sound mind, willfully and voluntarily make known my desire that my life not be artificially prolonged by life-sustaining procedures except as I may otherwise provide in this directive.

2. I declare that if at any time I should have an injury, disease, or illness, which is certified in writing to be a terminal condition or persistent vegetative state by two physicians who have personally examined me, and in the opinion of those physicians the application of life-sustaining procedures would serve only to unnaturally prolong the moment of my death and to unnaturally postpone or prolong the dying process, I direct that these procedures be withheld or withdrawn and my death be permitted to occur naturally.

3. I expressly intend this directive to be a final expression of my legal right to refuse medical or surgical treatment and to accept the consequences from this refusal which shall remain in effect notwithstanding my future inability to give current medical directions to treating physicians and other providers of medical services.

4. I understand that the term "life-sustaining procedure" includes artificial nutrition and hydration and any other procedures that I specify below to be considered life-sustaining but does not include the administration of medication [~~or sustenance,~~] or the performance of any medical procedure [~~deemed necessary~~] which is intended to provide comfort care[,] or to alleviate pain[~~, except to the extent I specify below that any of these procedures be considered life-sustaining~~]:

_____

5. I reserve the right to give current medical directions to physicians and other providers of medical services so long as I am able, even though these directions may conflict with the above written directive that life-sustaining procedures be withheld or withdrawn.

6. I understand the full import of this directive and declare that I am emotionally and mentally competent to make this directive.

_____
Declarant's signature

_____
City, County, and State of Residence

We witnesses certify that each of us is 18 years of age or older and each personally witnessed the declarant sign or direct the signing of this directive; that we are acquainted with the declarant and believe him to be of sound mind; that the declarant's desires are as expressed above; that neither of us is a person who signed the above directive on behalf of the declarant; that we are not related to the declarant by blood or marriage nor are we entitled to any portion of declarant's estate according to the laws of intestate succession of this state or under any will or codicil of declarant; that we are not directly financially responsible for declarant's medical care; and that we are not agents of any health care facility in which the declarant may be a patient at the time of signing this directive.

Signature of Witness	Signature of Witness
Address of Witness	Address of Witness

Section 4. Section Amended.

Section 75-2-1105, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1985, is amended to read:

75-2-1105. Directive for medical services after injury or illness is incurred.

(1)(a) A person 18 years of age or older may, after incurring an injury, disease, or illness, direct his care by means of a directive made under this section, which is binding upon attending physicians and other providers of medical services.

(b) When a declarant has executed a directive under Section 75-2-1104 and is in a terminal condition or a persistent vegetative state, that directive takes precedence over a nonconflicting directive executed under this section. A directive executed by an attorney-in-fact appointed under Section 75-2-1106 takes precedence over all earlier signed directives.

(2) A directive made under this section shall be:

(a) in writing;

(b) signed by the declarant or by another person in the declarant's presence and by the declarant's expressed direction, or if the declarant does not have the ability to give current directions concerning his care and treatment, by the following persons, as proxy, in the following order of priority if no person in a prior class is available, willing, and competent to act:

(i) an attorney-in-fact appointed under Section 75-2-1106;

(ii) any previously appointed legal guardian of the declarant;

(iii) the person's spouse if not legally separated;

(iv) the parents or surviving parent;

(v) the person's child 18 years of age or older, or if the person has more than one child, by a majority of the children 18 years of age or older who are reasonably available for consultation upon good faith efforts to secure participation of all those children;

(vi) by the declarant's nearest reasonably available living relative 18 years of age or older if the declarant has no parent or child living;

(vii) by a legal guardian appointed for the purposes of this section;

(c) dated;

(d) signed, completed, and certified by the declarant's attending physician; and

(e) signed pursuant to Subsection (b) above in the presence of two or more witnesses 18 years of age or older.

(3) Neither of the witnesses may be:

(a) the person who signed the directive on behalf of the declarant;

(b) related to the declarant by blood or marriage;

(c) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;

(d) directly financially responsible for declarant's medical care; or

(e) an agent of any health care facility in which the declarant is a patient or resident at the time of executing the directive.

(4) A directive executed under this section shall be in substantially the following form or in a form substantially similar to the form approved by prior Utah law and shall contain a description by the attending physician of the declarant's injury, disease, or illness. It shall include specific directions for care and treatment or withholding of treatment.

DIRECTIVE TO PHYSICIANS AND PROVIDERS OF MEDICAL SERVICES
(Pursuant to Section 75-2-1105, UCA)

I, _____, certify that I am serving as the attending physician for _____ of _____, who has been under my care since the ____ day of _____, _____.

1. This declarant _____, is currently suffering from the following injury, disease, or illness:

_____

_____

_____

2. I certify that I have explained to the declarant to the extent he is able to understand, and to the available persons acting as proxy, the reasonable available alternatives for his care and treatment.

3. I certify that the care and treatment alternatives directed below are:

_____ (a) directed by the declarant; or

_____ (b) that the declarant has a physical or mental condition which renders him unable to give personal directions for care and treatment and that the care and treatment alternatives directed below are in my opinion, and in the opinion of the declarant's proxy, what the declarant would probably decide if able to give current directions concerning his care and treatment.

Date: _____ _____
Signature of attending physician

The following care and treatment or withholding of treatment is directed with respect to the declarant:

_____

_____

_____

Relationship to declarant of person signing on declarant's behalf, if applicable.

Signature of declarant or person authorized by law to sign directive as a proxy on behalf of declarant

_____
Address of Signer

_____
City, County, and State of residence of Signer

We witnesses certify that each of us is 18 years of age or older; that we personally witnessed the declarant or a proxy sign this directive; that we are acquainted with the declarant and[~~, if the foregoing was signed by a proxy, also the proxy; that we~~] believe that care and treatment alternatives directed above are [~~in the interest of declarant and~~] what the declarant has decided [~~or would probably decide~~] for himself concerning his care and treatment, or, if the foregoing was signed by a proxy, that we are acquainted with the proxy and believe that the proxy sincerely believes that the care and treatment alternatives directed above are what the declarant would probably decide for himself if he were able to give current directions concerning his care and treatment; that neither of us signed the above directive for or on behalf of declarant; that we are not related to the declarant by blood or marriage nor are we entitled to any portion of declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant; that we are not directly financially responsible for declarant's medical care; and that we are not agents of any health care facility in which declarant may be a patient at the time of signing this directive.

Signature of Witness | Signature of Witness

Address of Witness | Address of Witness

Section 5. Section Amended.

Section 75-2-1106, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1985, is amended to read:

75-2-1106. Special power of attorney.

(1) A person 18 years of age or older, the "principal," may designate any other person 18 years of age or older to execute a directive under Section 75-2-1105 on behalf of the principal after the principal incurs an injury, disease, or illness which renders him unable to make a directive, by executing a special power of attorney before a notary public, which shall be in substantially the following form or in a form substantially similar to the form approved by prior Utah law:

SPECIAL POWER OF ATTORNEY

I, _____, of _____, this _____ day of _____, _____, being of sound mind, willfully and voluntarily appoint _____ of _____ as my agent and attorney-in-fact, without substitution, with lawful authority to execute a directive on my behalf under Section 75-2-1105, governing the care and treatment to be administered to or withheld from me at any time after I incur an injury, disease, or illness which renders me unable to give current directions to attending physicians and other providers of medical services.

[~~I understand that "life-sustaining procedures" do not include the administration of medication or sustenance, or the performance of any medical procedure deemed necessary to provide comfort care, or to alleviate pain, unless my attorney-in-fact specifies these procedures be considered life-sustaining.~~]

I have carefully selected my above-named agent with confidence in the belief that this person's familiarity with my desires, beliefs, and attitudes will result in directions to attending physicians and providers of medical services which would probably be the same as I would give if able to do so.

This power of attorney shall be and remain in effect from the time my attending physician certifies that I have incurred a physical or mental condition rendering me unable to give current directions to attending physicians and other providers of medical services as to my care and treatment.

_____
Signature of Principal

STATE OF _____)
:ss.
County of _____)

On the _____ day of _____, _____, personally appeared before me _____, who duly acknowledged to me that he has read and fully understands the foregoing power of attorney, executed the same of his own volition and for the purposes set forth, and that he was acting under no constraint or undue influence whatsoever.

_____
Notary Public
My commission expires:
Residing at: _____

_____

(2) A directive executed by an attorney-in-fact appointed under this section takes precedence over all previously signed directives.

Section 6. Section Amended.

Section 75-2-1107, Utah Code Annotated 1953, as last amended by Chapter 105, Laws of Utah 1988, is amended to read:

75-2-1107. Medical services for terminal persons without a directive.

(1) If a person 18 years of age or older has not executed a directive or power of attorney under this part and is unable to communicate, and the attending physician has determined that the person is in a terminal condition or a persistent vegetative state, life-sustaining procedures may be withheld or withdrawn under the supervision of the attending physician as provided in Subsections (2) and (3).

(2) The attending physician shall consult with and obtain written concurrence of:

(a) another physician, that the person's condition is as described in Subsection (1); and

(b) any of the following persons in the following order of priority who is available, willing, and competent to act:

(i) a legal guardian[,] or the person's spouse;

(ii) a parent; or

(iii) the person's children 18 years of age or older.

(3) If a treatment decision is made by any of the parties named in Subsection (2) other than the legal guardian, at least two witnesses who are adults shall be present at the time of the decision and shall sign the document required in Subsection (2) recording the decision.

Section 7. Section Enacted.

Section 75-2-1119, Utah Code Annotated 1953, is enacted to read:

75-2-1119. Reciprocity.

Any directive, special power of attorney, or similar instrument executed in another state shall be presumed to comply with the provisions of Sections 75-2-1101 through 75-2-1118 and may, in good faith, be relied upon by a provider of medical services in this state, unless otherwise provided in the directive, special power of attorney, or similar instrument.

CHAPTER 130
S. B. No. 161
Passed March 1, 1993
Approved March 15, 1993
Effective May 3, 1993

COVERAGE OF INJURY TO NATIONAL GUARD MEMBERS

By Eldon A. Money

AN ACT RELATING TO LABOR; ADDING NATIONAL GUARD MEMBERS TO WORKERS' COMPENSATION STATUTE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-1-43, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 35-1-43, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1988, is amended to read:

35-1-43. "Employee," "worker" or "workmen," and "operative" defined — Mining lessees and sublessees — Partners and sole proprietors — Corporate officers and directors — Real estate agents and brokers.

(1) As used in this chapter, "employee," "worker" or "workmen," and "operative" mean:

(a) each elective and appointive officer and any other person, in the service of the state, or of any county, city, town, or school district within the state, serving the state, or any county, city, town, or school district under any election or appointment, or under any contract of hire, express or implied, written or oral, including each officer and employee of the state institutions of learning and members of the National Guard while on state active duty; and

(b) each person in the service of any employer, as defined in Section 35-1-42, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, including aliens and minors, whether legally or illegally working for hire, but not including any person whose employment is casual and not in the usual course of the trade, business, or occupation of his employer.

(2) Unless a lessee provides coverage as an employer under this chapter, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be covered for compensation by the lessor under this chapter, and shall be subject to this chapter and entitled to its benefits to the same extent as if they were employees of the lessor drawing such wages as are paid employees for substantially similar work. The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) A partnership or sole proprietorship may elect to include as an employee under this chapter any partner of the partnership or the owner of the sole proprietorship. If a partnership or sole proprietorship makes this election, it shall serve written notice upon its insurance carrier and upon the commission naming the persons to be covered. No partner of a partnership or owner of a sole proprietorship is considered an employee under this chapter until this notice has been given. For premium rate making, the insurance carrier shall assume the salary or wage of the employee to be 150% of the state's average weekly wage.

(b) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter. If a corporation makes this election, it shall serve written notice upon its insurance carrier and upon the commission naming the persons to be excluded from coverage. A director or officer of a corporation is considered an employee under this chapter until this notice has been given.

(4) As used in this chapter, "employee," "worker" or "workman," and "operative" do not include a real estate agent or real estate broker, as defined in Section 61-2-2, who performs services in that capacity for a real estate broker if:

(a) substantially all of the real estate agent's or associated broker's income for services is from real estate commissions;

(b) the services of the real estate agent or associated broker are performed under a written contract specifying that the real estate agent is an independent contractor; and

(c) the contract states that the real estate agent or associated broker is not to be treated as an employee for federal income tax purposes.

CHAPTER 131
H. B. No. 32
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

UNIFORM VISITATION GUIDELINES

By Michael G. Waddoups

AN ACT RELATING TO HUSBANDS AND WIVES; PROVIDING FOR DESIGNATION OF CUSTODY OF CHILD IN CASE OF SEPARATION OR DIVORCE; STATING POLICY OF STATEWIDE VISITATION GUIDELINES; PROVIDING ADVISORY GUIDELINES AND MINIMUM SCHEDULE FOR VISITATION WITH CHILDREN; ESTABLISHING A REBUTTABLE PRESUMPTION OF BEST INTERESTS; PROVIDING FOR SPECIAL CIRCUMSTANCES; AND ESTABLISHING SHARED COSTS UPON RELOCATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
30-3-10, AS LAST AMENDED BY CHAPTER 106, LAWS OF UTAH 1988

ENACTS:
30-3-32, UTAH CODE ANNOTATED 1953
30-3-33, UTAH CODE ANNOTATED 1953
30-3-34, UTAH CODE ANNOTATED 1953
30-3-35, UTAH CODE ANNOTATED 1953
30-3-36, UTAH CODE ANNOTATED 1953
30-3-37, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 30-3-10, Utah Code Annotated 1953, as last amended by Chapter 106, Laws of Utah 1988, is amended to read:

30-3-10. Custody of children in case of separation or divorce — Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding the future custody, but the expressed desires are not controlling and the court may determine the children's custody otherwise.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

Section 2. Section Enacted.

Section 30-3-32, Utah Code Annotated 1953, is enacted to read:

30-3-32. Intent — Policy — Definition.

(1) It is the intent of the Legislature to promote visitation at a level consistent with all parties' interests.

(2) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(c) it is in the best interests of the child to have both parents actively involved in parenting the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas school break until the evening before the child returns to school, except for Christmas Eve, Christmas Day, and New Year's Day.

(c) "Extended visitation" means a period of visitation other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(4) and (16), and "Christmas school vacation."

Section 3. Section Enacted.

Section 30-3-33, Utah Code Annotated 1953, is enacted to read:

30-3-33. Advisory guidelines.

In addition to the visitation schedule provided in Section 30-3-35, advisory guidelines are suggested to govern all visitation arrangements between parents. These advisory guidelines include:

(1) visitation schedules mutually agreed upon by both parents are preferable to a court-imposed solution;

(2) the visitation schedule shall be utilized to maximize the continuity and stability of the child's life;

(3) the court may alter this schedule to make shorter visits of greater frequency or other arrangements consistent with the child's best interests for children under age 5: otherwise the visitation schedule as provided in Section 30-3-35 shall apply;

(4) special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule;

(5) the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;

(6) the custodial parent shall have the child ready for visitation at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned;

(7) the court may make alterations in the visitation schedule to reasonably accommodate the work schedule of both parents and may increase the visitation allowed to the noncustodial parent but shall not diminish the standardized visitation provided in Section 30-3-35;

(8) the court may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation;

(9) neither visitation nor child support is to be withheld due to either parent's failure to comply with a court-ordered visitation schedule;

(10) the custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully;

(11) the noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;

(12) each parent shall provide the other with his current address and telephone number within 24 hours of any change;

(13) each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child;

(14) parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

(15) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

(16) each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

Section 4. Section Enacted.

Section 30-3-34, Utah Code Annotated 1953, is enacted to read:

30-3-34. Best interests — Rebuttable presumption.

(1) If the parties are unable to agree on a visitation schedule, the court may establish a visitation schedule consistent with the best interests of the child.

(2) The advisory guildelines as provided in Section 30-3-33 and the visitation schedule as provided in Section 30-3-35 shall be presumed to be in the best interests of the child. The visitation schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence. The presumption may be rebutted based upon a finding of the court including any of the following criteria:

(a) visitation would endanger the child's physical health;

(b) visitation would significantly impair the child's emotional development;

(c) a substantiated allegation of child abuse exists;

(d) the lack of demonstrated parenting skills;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of visitation;

(f) the preference of the child if the court determines the child to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility; and

(h) any other criteria the court determines relevant to the best interests of the child.

(3) Once the visitation schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Section 5. Section Enacted.

Section 30-3-35, Utah Code Annotated 1953, is enacted to read:

30-3-35. Minimum schedule for visitation.

(1) The visitation schedule shall apply to school-age children, ages 5-18, beginning with kindergarten.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m;

(b) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(c) holidays take precedence over the weekend visitation, and changes shall not be made to the regular rotation of the alternating weekend visitation schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Human Rights Day beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iii) Easter holiday beginning at 6 p.m. on Friday until Sunday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) New Year's Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iii) President's Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iv) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(v) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(viii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and

(ix) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended visitation with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to visitation for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended visitation shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended visitation or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours.

Section 6. Section Enacted.

Section 30-3-36, Utah Code Annotated 1953, is enacted to read:

30-3-36. Special circumstances.

(1) When visitation has not taken place for an extended period of time and the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the child and gradually reintroduce an appropriate visitation plan for the noncustodial parent.

(2) For emergency purposes, whenever the child travels with either parent, all of the following will be provided to the other parent:

(a) an itinerary of travel dates;

(b) destinations;

(c) places where the child or traveling parent can be reached; and

(d) the name and telephone number of an available third person who would be knowledgeable of the child's location.

(3) Unchaperoned travel of a child under the age of five years is not recommended.

Section 7. Section Enacted.

Section 30-3-37, Utah Code Annotated 1953, is enacted to read:

30-3-37. Relocation.

(1) When either parent decides to move from the state of Utah or 150 miles or more from the residence specified in the court's decree, that parent shall provide reasonable advance written notice of the intended relocation to the other parent.

(2) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the visitation schedule as provided in Section 30-3-35 and make appropriate orders regarding the visitation and costs for visitation transportation.

(3) In determining the visitation schedule and allocating the transportation costs, the court shall consider:

(a) the reason for the parent's relocation;

(b) the additional costs or difficulty to both parents in exercising visitation;

(c) the economic resources of both parents; and

(d) other factors the court considers necessary and relevant.

(4) Upon the motion of any party, the court may order the parent intending to move to pay the costs of transportation for:

(a) at least one visit per year with the other parent; and

(b) any number of additional visits as determined equitable by the court.

(5) Upon the motion of any party, the court may order uninterrupted visitation with the noncustodial parent for a minimum of 30 days during extended visitation, except if the court finds it is not in the best interests of the child

CHAPTER 132
H. B. No. 44
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

COMMITMENT OF PERSONS WITH MENTAL RETARDATION

By J. Brent Haymond

AN ACT RELATING TO HUMAN SERVICES; AMENDING THE PROCEDURES FOR COMMITMENT OF PERSONS WITH MENTAL RETARDATION; ENACTING PROCEDURES FOR INVOLUNTARY TREATMENT WITH MEDICATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-5-101, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1991
62A-5-102, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1991
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ENACTS:
62A-5-318, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 62A-5-101, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-101. Definitions.

As used in this chapter:

(1) "Board" means the Board of Services for People with Disabilities established in accordance with Section 62A-1-105.

(2) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2 of this chapter.

(3) "Director" means the director of the Division of Services for People with Disabilities.

(4) "Division" means the Division of Services for People with Disabilities.

(5)(a) "Disability" means a severe, chronic disability that:

(i) is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(ii) is likely to continue indefinitely;

(iii) results in a substantial functional limitation in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living; or

(G) economic self-sufficiency; and

(iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that may continue throughout life and must be individually planned and coordinated.

(b) For purposes of this chapter mental illness alone does not constitute a "disability."

(6) "Mental retardation" means a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(7) "Mental retardation facility" means a residential facility for persons with mental retardation, that receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving the population of mentally retarded persons in this state.

Section 2. Section Amended.

Section 62A-5-102, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-102. Division of Services for People with Disabilities — Creation — Authority — Direction.

(1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department. [~~The~~] In accordance with this chapter, the division has [~~authority~~] the responsibility to plan and deliver[~~, as described in this chapter,~~] an array of services and supports to persons with disabilities and their families in this state, and has the functions, powers, duties, rights, and responsibilities described in Section 62A-5-103. The divi-

sion is authorized to work in cooperation with other state, governmental, and private agencies to [~~provide services and supports to persons with disabilities~~] carry out those responsibilities.

(2) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and supports it provides to persons with disabilities:

(a) are provided in the least restrictive and most enabling environment;

(b) ensure opportunities to access employment; and

(c) enable reasonable personal choice in selecting [~~those~~] services and supports that best meet [~~their~~] individual needs and promote [~~their~~] independence, productivity, and integration in community life.

Section 3. Section Amended.

Section 62A-5-103, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-103. Responsibility and authority of division.

The division has the authority and responsibility to:

(1) plan, develop, and manage an array of services and supports for persons with disabilities and their families throughout the state[~~, which~~]. Those services and supports may include, but are not limited to:

(a) residential services and supports;

(b) day training services and supports [~~such as~~], including work activity, sheltered employment, and supported employment;

(c) personal attendant care;

(d) apartment follow-along;

(e) supervised apartment living;

(f) respite care;

(g) specialized foster care;

(h) community skills training;

(i) transportation;

(j) assessment;

(k) case management;

(l) family support;

(m) service coordination services; and

(n) home-based services;

(2) establish programs of outreach, information and referral, prevention, technical assistance, and public awareness, in an effort to enhance the quality of life [of] for persons with disabilities in this state;

(3) supervise the programs and facilities operated by or under contract with the division;

(4) (a) cooperate with other state, governmental, and private agencies [~~in providing~~] that provide services to persons with disabilities;

(b) ensure that the constitutionally protected liberty interests of persons with disabilities are not deprived without due process procedures designed to minimize the risk of error when those persons are admitted to any structured residential mental retardation facility, including the developmental center and facilities within the community such as intermediate care facilities for the mentally retarded. Those services shall include initial and periodic reviews to determine the constitutional appropriateness of the placement. The constitutional due process review process required by this subsection, with regard to intermediate care facilities for the mentally retarded, does not necessitate commitment to the division.

(5) contract for services for persons with disabilities;

(6) act as a fiscal agent to receive and disburse funds;

(7) establish standards and rules for the administration and operation of [~~division~~] programs operated by or under contract with the division;

(8) approve and monitor division programs to insure compliance with the board's policies and standards;

(9) establish standards and rules necessary to fulfill the division's responsibilities under Parts 2 and 3 of this chapter with regard to mental retardation facilities;

(10) establish and collect fair and equitable fees for services provided by the division[~~. The division shall~~], and account for those funds;

(11) establish rules governing the admission, transfer, and discharge of persons with [~~mental retardation~~] disabilities to mental retardation facilities, in accordance with state law, with regard to facilities and programs operated by or under contract with the division, and with regard to facilities and programs that serve persons committed to the division under Part 3;

(12) manage funds for a person residing in a facility operated by the division, upon request [~~by that person's~~] of a parent or guardian, or [~~upon~~] under administrative or court order; and

(13) fulfill the [~~requirements of~~] responsibilities described in Chapter 5a.

Section 4. Section Amended.

Section 62A-5-301, Utah Code Annotated 1953, as last amended by Chapter 240, Laws of Utah 1992, is amended to read:

62A-5-301. Definitions.

As used in this part:

[~~(4)~~] (1) "Designated mental retardation professional" means:

(a) a psychologist licensed under Title 58, Chapter 25a, who has either one year of specialized training

in work with persons with mental retardation or one year of clinical experience with persons with mental retardation and who has been designated by the division as specially qualified, by training and experience, in the treatment of mental retardation; or

(b) a clinical or certified social worker licensed under Title 58, Chapter 35, Social Work Licensing Act, who has two years of clinical experience with persons with mental retardation and who has been designated by the division as specially qualified, by training and experience, in the treatment of mental retardation.

(2) "Licensed physician" means an individual licensed to practice medicine under the Medical Practice Act, Sections 58-12-26 through 58-12-43, or a medical officer of the United States Government while in this state in the performance of official duties.

(3) (a) "Mental retardation facility" means [~~the developmental center and other facilities~~] a residential facility for persons with mental retardation, that [~~are operated by or under contract with the division~~] receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving the population of mentally retarded persons in this state.

[~~(5)~~] (4) "Resident" means an individual under observation, care, or treatment in a mental retardation facility.

[~~(1) "Admission~~] (5) Review committee" means a committee established [~~in accordance with~~] under Section 62A-5-303 to review and approve or disapprove [~~admissions~~] voluntary commitments to the division and admissions to mental retardation facilities in accordance with this part.

Section 5. Section Amended.

Section 62A-5-302, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-302. Division responsibility.

(1) The division is responsible for the supervision, care, and treatment of persons with mental retardation in this state who are committed to its jurisdiction under the provisions of this part.

(2) The division is also responsible to evaluate and determine, after the voluntary commitment criteria described in Subsection 62A-5-303 have been found to exist, the most appropriate, least restrictive setting for a mentally retarded individual.

Section 6. Section Amended.

Section 62A-5-303, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-303. Admission committee — Voluntary commitment.

(1) [~~The administrator of a mental retardation facility~~] The division shall appoint [~~an admission~~] a review committee of designated mental retardation professionals to review and [~~decide admissions~~] approve or disapprove voluntary, adult commitments to the division under Section [~~62A-5-308 or 62A-5-309~~] 62A-5-307.

[~~(2) If an individual to be admitted to a mental retardation facility under Section 62A-5-308 or Section 62A-5-309 does not have a parent, legal guardian, or immediate family member interested in his welfare and available for consultation regarding admission, the administrator or his designee shall appoint a person who is not employed by the proposed mental retardation facility and who is experienced in advocating the rights of persons with mental retardation, to serve as a member of the admission committee during the admission process for that individual.~~]

(2) The review committee shall determine whether there is clear and convincing evidence that:

(a) the individual to be committed has mental retardation;

(b) because of that mental retardation, one or more of the following conditions exist:

(i) the individual poses an immediate danger of physical injury to self or others;

(ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available as certified by the division; and

(d) the facility or program in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

Section 7. Section Amended.

Section 62A-5-306, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-306. Application — Affidavit.

An application by or on behalf of an individual 18 years of age or older for whom [~~admission to a mental retardation facility~~] voluntary commitment to the division is sought under Section 62A-5-307[~~, 62A-5-308, or 62A-5-309~~] shall:

(1) be in the form prescribed by the [~~administrator of the proposed mental retardation facility and approved by the~~] division[~~. The application must~~]; and

(2) be accompanied by an affidavit of a physician, or [~~psychologist licensed to practice in this state,~~

~~which states~~] designated mental retardation professional stating:

(a) that the physician or [~~psychologist~~] designated mental retardation professional has [~~examined~~] completed diagnostic testing of the individual within the last three months[~~, setting forth~~];

(b) the diagnosis of the individual and the date of that diagnosis[~~,~~];

(c) that in [~~his opinion~~] the opinion of the physician or designated mental retardation professional the individual has mental retardation[~~, and that the treatment needs of the individual will be met by the proposed mental retardation facility.~~];

(d) one or more of the conditions described in Subsection 62A-5-303(2) exist; and

(e) if the individual is over the age of 18, and seeks voluntary commitment, that in the physician or designated mental retardation professional's opinion the individual has the mental capacity for informed consent.

Section 8. Section Amended.

Section 62A-5-307, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-307. Voluntary commitment.

The [~~administrator of a mental retardation facility~~] director of the division, or his designee, may [~~admit~~] commit to the division, for observation, diagnosis, care, and treatment any individual 18 years of age or older, who:

(1) has mental retardation or has symptoms of mental retardation[~~, and who~~];

(2) files [an] a voluntary application for [~~admission, if the application is made voluntarily and without coercion.~~] commitment that includes an affidavit in compliance with Section 62A-5-306;

(3) has not been coerced into submitting the application; and

(4) has been reviewed and approved by the division's review committee.

Section 9. Section Amended.

Section 62A-5-308, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-308. Commitment — Persons under age 18.

[~~(1) The administrator of a mental retardation facility,~~] Beginning July 1, 1993, the director of the division or his designee, may [admit] commit an individual under 18 years of age who has mental retardation[;] or [has] symptoms of mental retardation, to the division for observation, diagnosis, care, and treatment if that [admission] commitment is based on:

[~~(a)~~] (1) involuntary commitment under the provisions of [~~this part;~~] Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or

[~~(b)~~] (2) an [~~application for admission, filed by the individual's parent or legal guardian, with prior review and approval by the facility's admission committee~~] emergency commitment in accordance with the provisions of Section 62A-5-311.

[~~(2) If the administrator of a mental retardation facility or his designee determines that an individual with mental retardation under 18 years of age requires immediate admission in order to prevent harm to himself or others, to prevent deterioration of his condition, or to provide temporary respite care, the administrator or his designee may temporarily admit the individual upon application for voluntary emergency admission made by the individual's parent or legal guardian without prior review and approval by the facility's admission committee. The admission committee shall consider the admission at its next regularly scheduled meeting, but no more than 14 days after the individual's initial admission. If the committee disapproves the admission, the individual shall be immediately released to the person who made the application for admission.~~]

Section 10. Section Amended.

Section 62A-5-309, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-5-309. Commitment — Person 18 years or older.

[~~(1) The administrator of a mental retardation facility~~] Beginning July 1, 1993, the director or his designee may [~~admit~~] commit to the division an individual 18 years of age or older [~~whose~~] who has mental retardation, [~~or symptoms of mental retardation, are so severe as to make the individual incapable of voluntary admission,~~] for observation, diagnosis, care, and treatment if that [admission] commitment is based on:

[~~(a)~~] (1) involuntary commitment under the provisions of [~~this part; or~~] Section 62A-5-312;

[~~(b) an application for admission, filed by the individual's parent, legal guardian, or other responsible person having reason to know that the individual is in need of admission, with prior review and approval by the facility's admission committee.~~]

[~~(2) If the administrator or his designee determines that an individual who is 18 years of age or older requires immediate admission in order to prevent harm to himself or others, to prevent deterioration of the individual's condition, or to provide temporary respite care, the administrator or his designee may temporarily admit the individual upon application for admission made by his parent, legal guardian, or other responsible person having reason to know that the individual is in need of admission, without prior review and approval by the facility's admission committee. The admission committee shall consider the admission at its next regularly scheduled meeting, but no more than 14 days after~~

~~the individual's initial admission. If the committee disapproves the admission, the individual shall be immediately released to the person who made the application for admission.~~]

(2) voluntary commitment under the provisions of Section 62A-5-307; or

(3) temporary emergency commitment under the provisions of Section 62A-5-311.

Section 11. Section Amended.

Section 62A-5-311, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-311. Temporary emergency commitment — Observation and evaluation.

(1) [~~An individual may be temporarily, involuntarily committed to a mental retardation facility~~] The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to a mental retardation facility for observation and evaluation upon:

(a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:

(i) a belief that the individual has mental retardation and is likely to cause serious injury to [~~himself~~] self or others if not immediately committed[~~, and stating a~~];

(ii) personal knowledge of the individual's condition; and

(iii) the circumstances supporting that belief;

(b) certification by a licensed physician or designated mental retardation professional stating that the physician or designated mental retardation professional:

(i) has examined the individual within a three-day period immediately preceding the certification[~~;~~]; and

(ii) is of the opinion that the individual has mental retardation, and that because of the individual's mental retardation is likely to injure [~~himself~~] self or others if not immediately committed[~~; and~~].

[~~(c)~~] (2) [~~certification, written or oral, by the administrator of the proposed mental retardation facility~~] If the individual in need of commitment is not placed in the custody of the director or his designee by the person submitting the application, the director or his designee may certify, either in writing or orally that the individual is in need of immediate commitment [~~to the facility~~] to prevent injury to [~~himself~~] self or others.

[~~(2)~~] (3) Upon receipt of the application required by Subsection (1)(a) and [~~certification~~] the certifications required by Subsection (1)(b) and Subsection (2), a peace officer may take the individual named in the application and certificates into custody, and may transport [~~him~~] the individual to [~~the~~] a designated mental retardation facility.

[~~(3)~~] (4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.

(b) After proceedings for involuntary commitment have been commenced[~~, if no order of detention is issued~~] the individual shall be released unless [he]:

(i) the individual has made voluntary application for [~~admission~~] commitment in accordance with Section 62A-5-307; or

(ii) an order of detention is issued in accordance with Section 62A-5-312.

[~~(4)~~] (5) If an individual is committed to [~~a mental retardation facility~~] the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the [~~administrator~~] director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Section 12. Section Amended.

Section 62A-5-312, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-312. Involuntary commitment — Procedures — Necessary findings — Periodic review.

(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has mental retardation, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:

(a) a certificate of a licensed physician or a designated mental retardation professional, stating that within a seven-day period immediately preceding the certification, the physician or designated mental retardation professional examined the individual and believes that [~~he~~] the individual is mentally retarded and is in need of involuntary commitment; or

(b) a written statement by the petitioner stating that the individual was requested but refused to submit to an examination for mental retardation by a licensed physician or designated mental retardation professional, and that the individual refuses to voluntarily go to the division or a mental retardation facility recommended by the division for treatment. That statement shall be under oath and set forth the facts on which it is based.

(2) Before issuing [an] a detention order, the court may require the petitioner to consult with personnel at the division or at a mental retardation facility

and may direct a designated mental retardation professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.

(3) [If] The court may issue a detention order and may direct a peace officer to immediately take the individual to a mental retardation facility to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated mental retardation professionals that there is a reasonable basis to believe that the individual to be committed:

(a) poses an immediate danger of physical injury to [himself] self or others[, and];

(b) requires involuntary commitment pending examination and hearing[, or if the court finds that];

(c) the individual was requested but refused to submit to an examination by a licensed physician or designated mental retardation professional; or

(d) the individual refused to voluntarily go to the division or to a mental retardation facility [for treatment, the court may issue a detention order directing a peace officer to immediately take the individual to a mental retardation facility to be detained for purposes of examination] recommended by the division. [Within 24]

(4) (a) If the court issues a detention order based on an application that did not include a certification by a designated mental retardation professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, [the administrator of a mental retardation facility or his designee shall] examine the individual, report the results of the examination to the court[, orally or in writing,] and inform the court:

(i) whether the director or his designee believes that the individual is mentally retarded[,];

(ii) whether the individual is capable of giving informed consent and has agreed to voluntary admission under Section 62A-5-307[,]; and

(iii) whether appropriate treatment programs are available and acceptable without court proceedings. [Based on that information, the court may immediately terminate the proceedings and dismiss the application.]

(b) If the report of the [administrator] director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

[(4)] (5) Immediately after an individual is involuntarily committed under [Subsection (3)] a detention order or under Section 62A-5-311, the [administrator] director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the [administrator] director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.

[(5)] (6) (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:

[(a)] (i) the individual to be committed;

[(b)] (ii) the applicant;

[(c)] (iii) any legal guardian of the individual;

[(d)] (iv) adult members of the individual's immediate family;

[(e)] (v) legal counsel of the individual to be committed, if any;

[(f)] (vi) the division; and

[(g)] (vii) any other person to whom the individual requests, or the court designates, notice to be given.

(b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.

[(6)] (7) That notice shall:

(a) set forth the allegations of the petition and all supporting facts;

(b) be accompanied by a copy of any detention order issued under Subsection (3); and

(c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.

[(7) Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under this section. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court.]

(8) [If there are no appropriate mental retardation facilities within the judicial district, the] The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:

(a) there are no appropriate facilities for persons with mental retardation within the judicial district; and

(b) the transfer will not be adverse to the interests of the individual.

(9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or [admission] commitment under a detention order, the court shall appoint [one licensed physician and one] two designated mental retardation [professional] professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining [physician or] designated mental retardation [professional] professionals. The examinations shall be conducted:

(i) separately[, and shall be conducted];

(ii) at the home of the individual to be committed, a hospital, a [mental retardation] facility for person's with mental retardation, or any other suitable place not likely to have a harmful effect on the individual[.]; and

(iii) within a reasonable period of time after appointment of the examiners by the court.

(b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners [or], the [administrator of the mental retardation facility] director, or his designee informs the court[, prior to the hearing date,] that:

(i) the individual is not mentally retarded;

(ii) the individual has agreed to voluntary [admission] commitment under Section 62A-5-307; or

(iii) treatment programs are available and acceptable without court proceedings.

(10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, [and if the individual is indigent,] the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

(b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorneys' fees as determined by the court.

(11) The division or a designated mental retardation professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

[(b)] (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given [shall be provided an opportunity] to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The court may, in its discretion[,]:

(i) receive the testimony of any other person[. The court may]:

(ii) allow a waiver of the right to appear only for good cause shown[.]:

[(c) The court may] (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and [may,]

(iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.

[(d)] (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

[(e) The mental retardation facility or designated mental retardation professional in charge of the individual's care shall provide all documented information on the individual to be committed, to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.]

[(11)] (13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

(a) the individual to be committed is mentally retarded;

(b) because of the individual's mental retardation one or more of the following conditions exist:

(i) [he] the individual poses an immediate danger of physical injury to [himself] self or others;

(ii) [he] the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) [he] the individual is in immediate need of habilitation, rehabilitation, care, or treatment to [cure or improve a] minimize the effects of the condition which poses a threat of serious physical or psychological injury to [himself] the individual, and [he] the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the mental retardation facility recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to [his] the individual's condition and needs.

[(12)] (14) In the absence of any of the required findings by the court, described in Subsection [(11)] (13), the court shall dismiss the proceedings.

[(13)] (15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the [mental retardation] facility for persons with mental retardation shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for [an indeterminate] up to a one year period [if it finds by clear and convincing evidence that the required conditions set forth in Subsection (11) will last for an indeterminate period].

(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated mental retardation professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

[~~(b)~~] (17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the [~~administrator~~] director of the [~~mental retardation facility responsible for the care of the individual,~~] division of the impending expiration of the designated commitment period.

(c) The staff of [~~that mental retardation facility~~] the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based[~~. If the conditions justifying commitment no longer exist, the administrator shall~~] and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of [~~that~~] any discharge.

(d) If the [~~administrator~~] director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the mental retardation facility does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section. [~~When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.~~]

[~~(c) The administrator of a mental retardation facility or his designee shall at yearly intervals reexamine the reasons upon which any order of indeterminate commitment was based. If the administrator determines that the conditions justifying the commitment no longer exist, he shall discharge the resident and immediately inform the court of that discharge. If a resident is discharged under this subsection, the division shall provide any further support services required to meet the resident's needs.~~]

[~~(14) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated mental retardation professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.~~]

(e) If the director of the division, or his designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Section 13. Section Amended.

Section 62A-5-314, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-5-314. Release of person voluntarily committed — Exceptions.

A person who has been voluntarily committed who requests release, or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

(1) if the person is 18 years of age or older and was voluntarily admitted on his own application, the release shall be conditioned upon the agreement of the resident; and

[~~If~~] (2) if the [~~administrator of a mental retardation facility,~~] director or his designee, believes that release of a resident, [~~admitted~~] committed under Section 62A-5-307, 62A-5-308, or 62A-5-309 would pose an immediate danger of physical injury to [~~himself~~] self or others, release of that resident may be postponed for up to 48 hours, excluding Saturdays, Sundays, and legal holidays. Within that time period, the [~~administrator~~] director or his designee may initiate involuntary commitment proceedings in the district or juvenile court. The [~~administrator~~] director or his designee shall give the resident immediate written notice of postponement of release and the reasons for that postponement.

Section 14. Section Enacted.

Section 62A-5-318, Utah Code Annotated 1953, is enacted to read:

62A-5-318. Involuntary treatment with medication — Committee — Hearing — Findings.

(1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the facility for persons with mental retardation, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:

(a) a licensed physician experienced in treating persons with mental retardation and related disabilities, who is not directly involved in the resident's

treatment or diagnosis, and who is not biased toward any one facility;

(b) a psychologist who is a designated mental retardation professional who is not directly involved in the resident's treatment or diagnosis; and

(c) another designated mental retardation professional of the facility for persons with mental retardation, or a designee.

(2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:

(a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and

(b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.

(3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication and its possible side effects, and any previous reaction to the same or comparable medication.

(4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Section 15. Legislative Intent.

It is the intent of the Legislature that the director of the division and the administrator of the developmental center consider the wishes and recommendations of the immediate family, or if otherwise designated, the legal representatives of individuals who were admitted to the developmental center prior to July 1, 1993, before considering discharge of those individuals.

Section 16. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 133
H. B. No. 64
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

VETERAN'S PREFERENCE FOR CAREER SERVICE

By Dan Q. Price

AN ACT RELATING TO VETERANS; EXPANDING VETERAN'S PREFERENCE TO CAREER SERVICE POSITIONS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
71-10-1, AS ENACTED BY CHAPTER 45, LAWS OF UTAH 1992
71-10-2, AS ENACTED BY CHAPTER 45, LAWS OF UTAH 1992
71-10-3, AS RENUMBERED AND AMENDED BY CHAPTER 45, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 71-10-1, Utah Code Annotated 1953, as enacted by Chapter 45, Laws of Utah 1992, is amended to read:

71-10-1. Definitions.

As used in this chapter:

(1) "Active duty" means active military duty and does not include active duty for training, initial active duty for training, or inactive duty for training.

[~~(1)~~] (2) "Disabled veteran" means an individual who has:

[~~(a) served on active duty in the armed forces;~~]

[~~(b)~~] (a) been separated or retired from the armed forces under honorable conditions; and

[~~(c)~~] (b) established the [~~present~~] existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the federal Department of Veterans Affairs or a military department.

[~~(2)~~] (3) "Government entity" means the state and any county, municipality, special district, or any other political subdivision or administrative unit of the state.

[~~(3)~~] (4) "Preference eligible" means:

(a) any individual who has served on active duty in the armed forces for [~~at least 90 days~~] more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated under honorable conditions;

(b) a disabled veteran with any percentage of disability;

(c) the unmarried widow or widower of a veteran; [~~or~~]

(d) a purple heart recipient; or

[~~(d)~~] (e) a retired member of the armed forces who retired below the rank of major or its equivalent.

[~~(4)~~] (5) "Veteran" means:

(a) an individual who has served on active duty in the armed forces for [~~at least 90 days~~] more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated or retired under honorable conditions; or

(b) any person incurring an actual service-related injury or disability whether or not that person completed [~~90~~] 180 days of active duty.

Section 2. Section Amended.

Section 71-10-2, Utah Code Annotated 1953, as enacted by Chapter 45, Laws of Utah 1992, is amended to read:

71-10-2. Veteran's preference.

(1) Each government entity shall grant a veteran's preference upon initial hiring to each preference eligible veteran or preference eligible spouse according to the procedures and requirements of this chapter.

(2) The personnel officer of any government entity shall add to the score of a preference eligible who receives a passing score on an examination, or any rating or ranking mechanism used in selecting an individual for any career service position with the government entity:

(a) five [~~points~~] percent of the total possible score, if he is a veteran;

(b) ten [~~points~~] percent of the total possible score, if he is a disabled veteran or a purple heart recipient; or

(c) in the case of a preference eligible widow or widower, the [~~number of points~~] same percentage the qualifying veteran would have been entitled to.

[~~(3) A preference eligible who is 30% or more disabled shall be placed on the appropriate register or list ahead of others having the same rating.~~]

[~~(4)~~] (3) A preference eligible who applies for a position that does not require an examination, or where examination results are other than a numeric score, shall be given preference in interviewing and hiring for the position.

Section 3. Section Amended.

Section 71-10-3, Utah Code Annotated 1953, as renumbered and amended by Chapter 45, Laws of Utah 1992, is amended to read:

71-10-3. Willful failure to employ veteran a misdemeanor.

Any officers, agents, or representatives of a government entity[~~, or any contractor performing work for any government entity~~] who is charged with em-

ployment of people and who willfully fails to give preference [~~in an examination, interview, or employment of a veteran~~] as provided in this chapter is guilty of a misdemeanor.

CHAPTER 134
H. B. No. 68
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

DUTIES AND POWERS OF CITIES

By Jeff Alexander

AN ACT RELATING TO CITIES AND TOWNS; ELIMINATING CERTAIN LAPSED POWERS OF CITIES TO PURCHASE FEDERAL PROPERTY; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-8-2, AS LAST AMENDED BY CHAPTER 18, LAWS OF UTAH 1957

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

Section 1. Section Amended.

Section 10-8-2, Utah Code Annotated 1953, as last amended by Chapter 18, Laws of Utah 1957, is amended to read:

10-8-2. Appropriations — Acquisition and disposal of property.

[~~They~~] (1) A board of commissioners or city council may:

(a) appropriate money for corporate purposes only[~~, and~~];

(b) provide for payment of debts and expenses of the corporation; [~~may~~]

(c) purchase, receive, hold, sell, lease, convey, and dispose of real and personal property[~~, real and personal,~~] for the benefit of the city, [~~both~~] whether the property is within [~~and~~] or without [~~its~~] the city's corporate boundaries[~~,~~]; and

(d) improve [~~and~~], protect [~~such property~~], and [~~may~~] do [~~all~~] any other [~~things~~] thing in relation [~~thereto as natural persons, and may until December 15, 1959, purchase or otherwise acquire property within their corporate limits from the United States or any of its agencies for the purpose of selling or otherwise disposing of all or part of said property. It shall be deemed~~] to this property that an individual could do.

(2) It is considered a corporate purpose to appropriate money for any purpose [~~which~~] that, in the judgment of the board of commissioners or city council [~~will provide~~], provides for the safety, [~~preserve the~~] health, [~~promote the~~] prosperity [~~and improve the morals~~], moral well-being, peace, order, comfort [~~and~~], or convenience of the inhabitants of the city.

CHAPTER 135
H. B. No. 78
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

PROCUREMENT FROM FEDERALLY PROTECTED WORKSHOPS

By Darrell L. Jorgensen

AN ACT RELATING TO PROCUREMENT; REQUIRING PROCUREMENT UNDER CERTAIN CONDITIONS FROM FEDERALLY PROTECTED WORKSHOPS; AND AMENDING DEFINITIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-56-35.8, AS ENACTED BY CHAPTER 67, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-56-35.8, Utah Code Annotated 1953, as enacted by Chapter 67, Laws of Utah 1992, is amended to read:

63-56-35.8. Purchase from sheltered workshops.

(1) As used in this section, "sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals that:

(a) is certified as a sheltered workshop or sheltered work activity center by the United States Department of Labor[.]; or

(b) is a supported employment program approved by the Utah State Office of Rehabilitation if:

(i) the program has as its principal purpose the development of employment opportunities for individuals with severe disabilities; and

(ii) at least 75% of the program employees under the procurement contract in question have severe disabilities.

(2) Notwithstanding any provision in this chapter to the contrary, each public procurement unit [~~may~~] shall purchase goods and services produced by a sheltered workshop if:

(a) the good or service offered for sale by a sheltered workshop reasonably conforms to the needs and specifications of the public procurement unit;

(b) the sheltered workshop can supply the good or service within a reasonable time;

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source;

(d) the sheltered workshop has provided the public procurement unit with a written bid fairly identifying the good or service and naming its price; and

(e) (i) the sheltered workshop has its principal place of business in Utah;

(ii) the good was produced by the sheltered workshop in Utah; or

(iii) the service is provided by individuals, the majority of whom are domiciled in Utah.

(3) The cost of a good or service is considered reasonably competitive under Subsection (2)(c) if it is within 5% of the lowest responsive and responsible bid offer for that good or service.

(4) Each sheltered workshop shall certify on any bid it submits to a public procurement unit under this section that it is claiming a preference under this section.

(5) In the case of conflict between a purchase under this section and a purchase under Section 63-56-35.6, [~~this~~] Section 63-56-35.8 prevails.

CHAPTER 136
H. B. No. 103
Passed March 3, 1993
Approved March 16, 1993
Effective March 16, 1993

MINERAL LEASE FUNDS REVIEW

By Norm Nielsen
Jeff Alexander
Irby N. Arrington
Fred R. Hunsaker
David M. Jones
Byron L. Harward
Kevin S. Garn
J. Reese Hunter
Kim R. Burningham
Christine R. Fox
Ray Short
Jordan Tanner
Michael G. Waddoups
Phil H. Uipi
J. Brent Haymond
Tim Moran
Evan L. Olsen
Stephen M. Bodily
Bill Wright
James F. Yardley
Brad Johnson
Beverly Ann Evans
Melvin R. Brown
Nancy S. Lyon
Dan Q. Price
R. Lee Ellertson
R. Mont Evans
Robert H.M. Killpack
Karen Smith
Afton B. Bradshaw

AN ACT RELATING TO ECONOMIC DEVELOPMENT; REQUIRING SPECIFIC ACCOUNTING OF THE USE OF FEDERAL MINERAL LEASE FUNDS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-21-2, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-21-2, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

59-21-2. Mineral Bonus Account — Allocation of monies from Mineral Lease Account.

(1) The Mineral Bonus Account is created within the General Fund. All bonus money received by the state under Subsection 59-21-1 (3) shall be deposited in this account. The Legislature shall make appropriations from the Mineral Bonus Account in accordance with Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Sec. 191. The money in the Mineral Bonus Account shall be invested by the state treasurer in accordance with the State Money Management Act of 1974, except that all interest or other earnings derived from the account shall be returned to the Mineral Bonus Account rather than the General Fund.

(2) The following appropriations shall be made from the Mineral Lease Account:

(a) to the Permanent Community Impact Fund established by Subsection 51-5-4 (8)(b), 32-1/2% of all deposits made to the Mineral Lease Account;

(b) to the Board of Regents for allocation to the institutions of higher learning, 33-1/2% of all deposits made to the Mineral Lease Account, subject to the limitations described in Subsection (3);

(c) to the Utah State Board of Education, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for education research and experimentation in the utilization of staff and facilities designed to improve the quality of education in Utah;

(d) to the Utah Geological Survey, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state of Utah;

(e) to the Water Research Laboratory at Utah State University, 2-1/4% of all deposits made to the Mineral Lease Account, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state of Utah;

(f) to the Department of Transportation to be distributed by the Transportation Commission to special service districts established by counties for the purpose of constructing, repairing, and maintaining roads or other single purpose special service districts established by counties:

(i) in fiscal year 1988-89, $2,000,000;

(ii) in fiscal year 1989-90, $4,000,000;

(iii) in fiscal year 1990-91, $6,000,000; and

(iv) in fiscal year 1991-92 and each year thereafter, 25% of all deposits made to the Mineral Lease Account; and

(g) to the extent available from the remaining unallocated portion of the Mineral Lease Account, to each county in which are located school or institutional trust lands, lands owned by the Division of Parks and Recreation, or lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, an amount equal to the number of acres of those lands in the county multiplied by:

(i) $.06, in fiscal year 1988-89;

(ii) $.15, in fiscal year 1989-90;

(iii) $.30, in fiscal year 1990-91;

(iv) $.40, in fiscal year 1991-92; and

(v) $.52, in fiscal year 1992-93 and each year thereafter.

(3) (a) The total amount of federal mineral lease funds allocated by the Board of Regents during any

fiscal year may not be increased above the amount allocated during the immediately preceding fiscal year in excess of the percentage increase in the Consumer Price Index published by the United States Department of Labor for the immediately preceding calendar year, but in any event not more than 10%.

(b) If the total amount of mineral lease funds allocated to a recipient agency or institution in any fiscal year is less than the total amount so allocated for the immediately preceding fiscal year, the allocation to that agency or institution during the immediately following fiscal year shall be increased by the amount of the reduction before calculating and applying the percent limitation.

(c) The federal mineral lease funds apportioned to higher educational institutions shall be expended pursuant to institutional work programs. Those programs shall be approved by the Board of Regents when they are satisfied that a majority of the funds will be expended for research, educational, or public service programs of benefit to the subdivisions of the state socially or economically impacted by the development of minerals leased under the Mineral Lands Leasing Act in the planning, construction, and maintenance of public facilities, and the provision of public services.

(d) The amount to which each institution of higher learning is entitled is that proportion of the total amount available which the average number of full-time students enrolled during the preceding year in those institutions bears to the total enrollment of all institutions. Enrollment at the University of Utah and [~~the~~] Utah State University shall first be multiplied by 1.25 and the product shall constitute the enrollment of the University of Utah and [~~the~~] Utah State University for the purposes of this allocation.

(4) The federal mineral lease funds allocated to the Water Research Laboratory at Utah State University are in addition to any other money to which Utah State University is entitled under this section.

(5) Federal mineral lease funds distributed by the Transportation Commission under Subsection (2)(f) shall be allocated to county special service districts in amounts proportionate to the amount of federal mineral lease money generated by the county in which a special service district is located.

(6) Each county receiving money under Subsection (2)(g) shall give the money to a school district or other special purpose governmental entity within the county.

(7) Each agency, board, institution of higher education, and political subdivision receiving money under this chapter shall provide the Legislature, through the Office of the Legislative Fiscal Analyst, with a complete accounting of the use of that money on an annual basis. This accounting shall include actual expenditures for the prior fiscal year, budgeted expenditures for the current fiscal year, and planned expenditures for the following fiscal year and shall be reviewed by the Community and Economic Development Appropriation Subcommittee of the Legislature as part of its normal budgetary process under Title 63, Chapter 38, Budgetary Procedures Act.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 137
H. B. No. 146
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

DOMESTIC RELATIONS AND DOMESTIC VIOLENCE AMENDMENTS

By J. Brent Haymond

AN ACT RELATING TO DIVORCE AND THE JUDICIAL CODE; PROVIDING FOR PAYMENT OF COSTS AND FEES IN THE PROSECUTION AND DEFENSE OF DOMESTIC VIOLENCE AND DOMESTIC RELATIONS ACTIONS; PROVIDING FOR MAINTENANCE AND SUPPORT DURING THE PENDENCY OF THE ACTION; AMENDING PROTECTIVE ORDER PROVISIONS; AND PROVIDING UNIFORM RELIEF IN THE DISTRICT COURT AND JUVENILE COURT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
30-4-1, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1977
30-6-1, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1991
30-6-2, AS LAST AMENDED BY CHAPTER 248, LAWS OF UTAH 1992
30-6-3, AS ENACTED BY CHAPTER 111, LAWS OF UTAH 1979
30-6-4, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1989
30-6-5, AS LAST AMENDED BY CHAPTER 75, LAWS OF UTAH 1991
30-6-6, AS LAST AMENDED BY CHAPTERS 75, 180, AND 241, LAWS OF UTAH 1991
30-6-7, AS ENACTED BY CHAPTER 111, LAWS OF UTAH 1979
30-6-8, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1991
30-6-10, AS ENACTED BY CHAPTER 113, LAWS OF UTAH 1983
76-5-108, AS LAST AMENDED BY CHAPTER 75, LAWS OF UTAH 1991
77-36-1, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1991
77-36-3, AS LAST AMENDED BY CHAPTER 256, LAWS OF UTAH 1990
78-3A-20, AS LAST AMENDED BY CHAPTER 12, LAWS OF UTAH 1984
78-45A-5, AS LAST AMENDED BY CHAPTER 160, LAWS OF UTAH 1992

REPEALS AND REENACTS:
30-3-3, UTAH CODE ANNOTATED 1953

REPEALS:
30-3-5.5, AS ENACTED BY CHAPTER 180, LAWS OF UTAH 1991
30-6-6.5, AS ENACTED BY CHAPTER 180, LAWS OF UTAH 1991
78-3A-20.5, AS LAST AMENDED BY CHAPTER 105, LAWS OF UTAH 1990
78-3A-20.6, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1991
78-3A-20.7, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1984
78-3A-20.8, AS LAST AMENDED BY CHAPTER 105, LAWS OF UTAH 1990
78-3A-20.9, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1984
78-3A-20.10, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1984

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

Section 1. Section Repealed and Reenacted.

Section 30-3-3, Utah Code Annotated 1953, is repealed and reenacted to read:

30-3-3. Award of costs, attorney and witness fees — Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Section 2. Section Amended.

Section 30-4-1, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1977, is amended to read:

30-4-1. Action by spouse — Grounds.

Whenever a resident of this state [~~shall have deserted~~]:

(1) deserts a spouse without good and sufficient cause[~~, or~~];

(2) being of sufficient ability to provide support [~~shall have neglected~~], neglects or [~~refused~~] refuses to properly provide for and suitably maintain that spouse[~~, or~~];

(3) having property within this state and the spouse being a resident of this state [~~shall have~~], so [~~deserted~~] deserts or [~~neglected~~] neglects or [~~refused~~] refuses to provide such support; or

(4) where a married person without that person's fault lives separate and apart from that spouse, the district court shall, on the filing of a complaint [~~therefor~~], allot, assign, set apart and decree as alimony the use of [~~such part of~~] the real and personal estate or earnings of the deserting spouse as the court may determine [~~in its discretion; and during the pendency of the proceedings the court may require that deserting spouse to pay such sums for costs, expenses and attorneys' fees, and for the support of either spouse, as it shall deem necessary and proper in the same manner as in actions for divorce~~] appropriate. During the pendency of the action, the court may require the deserting spouse to pay a sum as provided in Section 30-3-3.

Section 3. Section Amended.

Section 30-6-1, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1991, is amended to read:

30-6-1. Definitions.

As used in this chapter:

(1) "Abuse" means [~~the occurrence of any of the following acts between cohabitants or against any child residing with a cohabitant: (a)~~] attempting to cause, or intentionally or knowingly causing[~~;~~] to an adult or minor physical harm[~~;~~] or [~~(b)~~] intentionally placing another in fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is [~~presently~~] or was [~~formerly~~] a spouse of the other party;

(b) is [~~presently~~] or was [~~formerly~~] living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party [~~to the action, regardless of whether they have been married or have lived together at any time~~]; or

(e) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include the relationship of natural parent, adoptive parent, or step-parent to a minor.

[~~(3)~~] (4) "Court clerk" means a district court clerk or juvenile court clerk.

[~~(4)~~] (5) "Department" means the Department of Human Services.

[~~(5)~~] (6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

[~~(6)~~] (7) "Good cause" means the occurrence of abuse or a substantial likelihood of immediate danger of abuse.

[~~(7)~~] (8) "Law enforcement unit" means any public agency having general police power and charged with making arrests in connection with [~~enforcements~~] enforcement of the criminal statutes and ordinances of this state or any political subdivision.

[~~(8)~~] (9) "Peace officer" means those persons specified in Section 77-1a-1.

[~~(9)~~] (10) "Protective order" means a restraining order issued pursuant to this chapter subsequent to a hearing on the plaintiff's complaint, of which the plaintiff has given notice in accordance with this chapter.

Section 4. Section Amended.

Section 30-6-2, Utah Code Annotated 1953, as last amended by Chapter 248, Laws of Utah 1992, is amended to read:

30-6-2. Abuse or danger of abuse — Complaint and protective orders authorized.

(1) Any [~~person~~] cohabitant or any child residing with a cohabitant who has been subjected to abuse, or to whom there is a substantial likelihood of immediate danger of abuse, [~~is entitled to~~] may file a verified complaint and seek protective orders as provided by this chapter, whether or not that person has left the residence in an effort to avoid further abuse.

(2)(a) A complaint under this chapter may be filed regardless of whether an action for divorce between the parties is pending.

(b) If a petition for divorce has already been filed in the district court, a complaint under this chapter may be filed as part of the initial divorce complaint of subsequent proceedings.

(3) A cohabitant, the department, or any person or institution interested in a minor may file a verified complaint on behalf of the minor under the circumstances described in Subsection (1), regardless of whether the minor could have filed a complaint on his own behalf. If a cohabitant intends to file a complaint on his own behalf and on behalf of a minor, a single complaint may be filed.

(4) The court shall appoint a guardian ad litem to represent the minor if the court considers the appointment necessary for the welfare of the minor.

(5) The county attorney or district attorney, if appropriate, shall represent the department where the department appears as a petitioner.

(6) A complaint under this section may not be withdrawn without approval of the court.

Section 5. Section Amended.

Section 30-6-3, Utah Code Annotated 1953, as enacted by Chapter 111, Laws of Utah 1979, is amended to read:

30-6-3. Venue of action.

(1) The district court has jurisdiction of any action brought under this chapter. The juvenile court has jurisdiction concurrent with the district court of an action brought under this chapter if the complaint is filed on behalf of a minor unless the complaint is filed by a natural parent, adoptive parent, or step-

parent of the minor against a natural parent, adoptive parent, or step-parent of the minor.

(2) An action [~~may be~~] brought pursuant to this [~~act~~] chapter shall be filed in the [~~district court of the~~] county [~~wherein~~] where either party resides or in which the action complained of took place.

Section 6. Section Amended.

Section 30-6-4, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1989, is amended to read:

30-6-4. Assistance by court clerk and county attorney — Affidavits of impecuniosity.

(1) The offices of the court clerk and the county attorney shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter. By mutual agreement either office may be the sole provider of those services.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, that person shall be informed of the following:

(a) the right to file an affidavit of impecuniosity, and the requirements for such filing. Assistance with an impecunious filing shall be provided to the plaintiff where applicable;

(b) the means available for the service of process; and

(c) legal service organizations that may represent the plaintiff in an action brought under this chapter.

(3) If a plaintiff has filed an affidavit of impecuniosity, no charges may be imposed by a [~~district~~] court clerk or county sheriff for:

(a) filing a complaint;

(b) obtaining an ex parte protective order;

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) service of the complaint, ex parte protective order, or protective order.

Section 7. Section Amended.

Section 30-6-5, Utah Code Annotated 1953, as last amended by Chapter 75, Laws of Utah 1991, is amended to read:

30-6-5. Hearing upon verified complaint — Protective orders — Ex parte protective orders — Procedures.

(1)(a) When a verified complaint is filed pursuant to this chapter, the court shall set a time for hearing the matters alleged in the complaint within 20 days after that filing. The defendant may request an earlier hearing through the clerk of the court and, if an earlier hearing is set, the defendant shall serve notice on the plaintiff at least two days, excluding weekends and holidays, prior to the hearing or on such shorter notice as the court may [~~proscribe~~] prescribe.

(b) A [~~domestic relations~~] court commissioner may hold [~~the~~] any hearing on the complaint and make recommendations to the district court judge regarding a protective order. Within ten days following the date of the hearing before the commissioner, either party may request a hearing de novo before the district court judge by filing a request for hearing with the clerk of the court. Any protective order issued as a result of the recommendation of a commissioner remains in force until the hearing before the district court judge or until expiration of the order.

(2) Upon application to the court, for good cause shown in the complaint, the court may immediately issue, without bond, an ex parte protective order that remains in effect until the hearing. [~~The judge may issue an ex parte protective order under rules established by the Judicial Council.~~]

(3) [~~The complaint and any~~] Any ex parte protective order issued under this section shall contain notice of the date, time, and place for the hearing. Copies of the complaint and any ex parte protective order shall be served personally on the defendant in accordance with Rule 4 of the Utah Rules of Civil Procedure, not less than five days prior to that hearing. [~~That~~] The time [~~period~~] for service may be shortened by order of the court for good cause shown.

(4)(a) If the plaintiff establishes the allegation of abuse by a preponderance of the evidence at the hearing, the court shall, without bond, [~~extend the ex parte protective order or, if no such order has been issued,~~] issue a protective order for a definite period of time, not to exceed 120 days.

(b) If the plaintiff has been granted leave to proceed by filing an affidavit of impecuniosity, the court shall question the plaintiff and defendant regarding the [~~plaintiff's~~] financial status of the parties and may require the plaintiff or defendant to pay the filing fee and costs, including service fees, to the court clerk or the county that incurred the expense.

(5) Upon issuance of a protective order, either ex parte or following a hearing, the court clerk shall provide [~~two~~] four certified copies to the party protected by that order. The protected party shall keep one certified copy and shall:

(a) cause [~~the other~~] a certified copy to be served on the party restrained, in accordance with Rule 4 of the Utah Rules of Civil Procedure; [~~and~~]

(b) deliver a certified copy of the protective order, together with a copy of the proof of service or acceptance of service, to the law enforcement unit or units that have jurisdiction over the protected locations; and

(c) if a minor is protected by the order, deliver a certified copy to the nearest office of the Division of Family Services.

(6) If the defendant has been personally served with the ex parte protective order and notice of the hearing[~~, but fails to appear~~] regardless if he appears at the hearing, and the court issues a protective order, the terms of the ex parte protective order shall remain in effect until a certified copy of the

protective order is properly served on the defendant.

(7) No protective order issued under this chapter affects title to real property except that a judgment for costs awarded under this chapter constitutes a lien on real property as provided in Section 78-22-1.

Section 8. Section Amended.

Section 30-6-6, Utah Code Annotated 1953, as last amended by Chapters 75, 180, and 241, Laws of Utah 1991, is amended to read:

30-6-6. Ex parte protective orders and protective orders — Contents — Rights and interests not affected — Change of address of protected party — Notice to court of provisions of order.

(1) Any ex parte protective order issued pursuant to this chapter may include an order that the defendant refrain from abusing the plaintiff or any children residing with the plaintiff, that the defendant immediately vacate and refrain from entering the plaintiff's dwelling, or such other order as the court may find appropriate. However, an ex parte protective order may not affect the parties' rights or interests in any of the following:

(a) custody or visitation rights;

(b) child or spousal support responsibilities; or

(c) recovery for medical expenses or other damages suffered as a result of the abuse.

(2) A protective order issued pursuant to this chapter may [~~include an order, effective for no more than 120 days, that~~]:

(a) order one or both parties to refrain from abusing the other;

(b) order one or both parties to refrain from contacting the other;

(c) order one or both parties to refrain from abusing any children residing with either party;

(d) order one of the parties to immediately vacate the other's dwelling;

(e) order one or both parties to remain away from and refrain from entering the other's present dwelling or any subsequent dwelling[~~; (f) one or both parties remain away from the premises of the other's residence~~], place of employment, or other place as the court may order;

(f) order the abuser to undergo counseling; and

(g) insofar as it [~~effects~~] affects the issue of abuse, the protective order may:

(i) award temporary custody of minor children;

(ii) provide temporary orders for child support, spousal support, visitation, payment of medical expenses, or for other damages suffered as a result of the abuse;

(iii) provide access to real or personal property; and

(iv) include any other orders the court finds appropriate.

(3) Mutual protective orders shall be entered only upon the stipulation of the parties or if supported by the record of proceedings before the court.

[~~(3)~~] (4) If a party who has obtained a protective order moves from the address contained in the protective order, that party may without further hearing obtain from the court an amended protective order containing the new address [~~from the court that issued the original protective order~~]. [~~The~~] A certified copy of the amended protective order shall be served on the restrained party [~~in the same manner required for the original protective order~~], a certified copy of the amended protective order shall be delivered to the Division of Family Services, if a child is protected by the order, and a certified copy of the amended protective order and a copy of the return of service or acceptance of service shall be delivered to the law enforcement unit or units having jurisdiction over the protected locations in accordance with Subsection 30-6-5(5).

[~~(4)~~] (5) Each protective order and ex parte protective order issued pursuant to this chapter, either ordering the defendant to refrain from abusing or contacting the plaintiff or any children of the plaintiff, or ordering the defendant to vacate the plaintiff's dwelling or to remain away from plaintiff's residence, place of employment, or other place identified by the court, shall conspicuously bear the following language: "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE CONSTITUTING A CLASS A MISDEMEANOR, CARRYING PENALTIES OF FINE AND IMPRISONMENT."

[~~(5)~~] (6) In any action between the parties during the effective period of the protective order or ex parte protective order[~~, other than an action under this chapter~~]:

(a) the parties shall notify [~~that~~] the court of the provisions of the protective order or ex parte protective order; and

(b) [~~that~~] the court may modify[~~, amend,~~] or preempt the provisions of a protective order or ex parte protective order.

Section 9. Section Amended.

Section 30-6-7, Utah Code Annotated 1953, as enacted by Chapter 111, Laws of Utah 1979, is amended to read:

30-6-7. Proceedings independent from other actions.

All proceedings pursuant to this [act] chapter are separate and independent of any proceedings for divorce, annulment, or separate maintenance and the remedies provided are in addition to any other available civil or criminal remedies.

Section 10. Section Amended.

Section 30-6-8, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1991, is amended to read:

30-6-8. Peace officers — Notification and enforcement of orders — Prevention of

abuse in absence of order — Limitation on liability.

(1) Law enforcement units shall establish procedures to ensure that peace officers at the scene of an alleged violation of a protective order may be informed of the existence and terms of such order. Those officers shall use every reasonable means to enforce the orders, including immediately arresting the offender and taking that offender into physical custody.

(2) When any peace officer has reason to believe a [~~family member~~] cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of [~~that member being abused~~] abuse, although no protective order has been issued, that officer shall use all reasonable means to prevent [~~further~~] the abuse, including:

(a) remaining on the scene as long as it reasonably appears there would otherwise be danger [~~to the physical safety of the victim~~] of abuse;

(b) making arrangements for the victim to obtain emergency medical treatment [~~necessitated by the abuse~~];

(c) making arrangements for the victim to obtain emergency housing or shelter care;

(d) explaining to the victim his or her rights in these matters;

(e) asking the victim to sign a written statement describing the incident of abuse; or

(f) arresting and taking into physical custody the [~~assailant~~] abuser if any of the situations set forth in Section 77-7-2 exist.

[~~(3) When any peace officer has reason to believe a child is being abused, or that there is substantial likelihood of immediate danger of that child being abused, although no protective order has been issued, that officer shall use all reasonable means to prevent further abuse, including:~~]

[~~(a) remaining on the scene as long as it reasonably appears there would otherwise be danger to the physical safety of the child victim;~~]

[~~(b) making arrangements for the child victim to obtain emergency medical treatment necessitated by the abuse;~~]

[~~(c) making arrangements for the child victim to obtain emergency housing or foster care;~~]

[~~(d) explaining to the child victim his or her rights in these matters when the child is considered competent to comprehend; or~~]

[~~(e) arresting and taking into physical custody the assailant if any of the situations set forth in Section 77-7-2 exist.~~]

[~~(4) A peace officer~~] (3) No person or institution may [~~not~~] be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that [~~officer~~] person acted in good faith and without malice.

Section 11. Section Amended.

Section 30-6-10, Utah Code Annotated 1953, as enacted by Chapter 113, Laws of Utah 1983, is amended to read:

30-6-10. Standardization of forms.

Forms for a complaint, protective order and ex parte protective order provided by the [~~county~~] court clerks or county attorneys shall be in a form standardized under the direction of the [~~Utah~~] Judicial Council.

Section 12. Section Amended.

Section 76-5-108, Utah Code Annotated 1953, as last amended by Chapter 75, Laws of Utah 1991, is amended to read:

76-5-108. Protective orders restraining abuse of another — Violation.

Any person who has been restrained from abusing or contacting another or ordered to vacate a dwelling or remain away from the premises of the other's residence, employment, or other place as ordered by the court under a protective order or ex parte protective order issued under Title 30, Chapter 6, or Title 78, Chapter 3a, who violates that order after having been properly served with it, is guilty of a class [B] A misdemeanor.

Section 13. Section Amended.

Section 77-36-1, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1991, is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" [~~means an emancipated person pursuant to Section 15-2-1 who:~~] has the same meaning as in Section 30-6-1.

[~~(a) is presently or was formerly a spouse;~~]

[~~(b) is presently or was formerly living as a spouse;~~]

[~~(c) is related by blood or marriage;~~]

[~~(d) has one or more children in common with the other party to the action, regardless of whether they have been married or have lived together at any time; or~~]

[~~(e) resides or has resided in the same residence.~~]

(2) "Domestic violence" includes any of the following crimes when committed by one cohabitant against another:

(a) assault, as described in Section 76-5-102;

(b) aggravated assault, as described in Section 76-5-103;

(c) mayhem, as described in Section 76-5-105;

(d) criminal mischief, as described in Section 76-6-106;

(e) burglary, as described in Section 76-6-202;

(f) aggravated burglary, as described in Section 76-6-203;

(g) criminal trespass, as described in Section 76-6-206;

(h) aggravated kidnapping, as described in Section 76-5-302; [or]

(i) unlawful detention, as described in Section 76-5-304[.]; or

(j) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a.

(3) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 14. Section Amended.

Section 77-36-3, Utah Code Annotated 1953, as last amended by Chapter 256, Laws of Utah 1990, is amended to read:

77-36-3. Court's powers and duties in domestic violence actions — Order restraining defendant — Penalty for violation.

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:

(a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney, upon a showing that there is a possibility of further violence. The court may order the defendant's attorney not to disclose the victim's location to his client;

(d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;

(e) may not dismiss a charge involving domestic violence at the request of the victim unless it has reasonable cause to believe that the dismissal would benefit the victim; and

(f) may hold a plea in abeyance, making treatment for the defendant a condition of that status. If the defendant fails to complete treatment as directed, the court may accept the defendant's plea.

(2) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial, the court authorizing the release may issue an order prohibiting the defendant from having any contact with the victim. A violation of that order is a class [B] A misdemeanor.

(b) The order releasing the defendant shall contain the court's directives and shall state: Violation of this order is a class [B] A misdemeanor. The prosecutor shall provide a certified copy of the order to the victim.

Section 15. Section Amended.

Section 78-3a-20, Utah Code Annotated 1953, as last amended by Chapter 12, Laws of Utah 1984, is amended to read:

78-3a-20. Offenses against children by adults — Practice and procedure in juvenile court.

(1) In proceedings [in adult cases except in relation to the issuance and enforcement of a protective order under this chapter] under Subsection 78-3a-19(1), the practice and procedure of the juvenile court shall conform to the practice and procedure provided by law or rule of court for criminal proceedings in the district court, except that the proceedings may be commenced by complaint and a trial jury shall consist of four jurors. The county attorney shall prosecute any case brought under [this section and] Section 78-3a-19.

(2) The court may have a preliminary investigation made by the probation department or other agency designated by the court, and with the consent of the defendant or person involved may permit such nonjudicial adjustment as may be practicable, without prosecution.

(3) If the defendant in proceedings under this section demands a jury trial, the court may transfer the case to a circuit court.

Section 16. Section Amended.

Section 78-45a-5, Utah Code Annotated 1953, as last amended by Chapter 160, Laws of Utah 1992, is amended to read:

78-45a-5. Remedies.

(1) The district court has jurisdiction of an action to establish paternity. All remedies for enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for legitimate children shall apply. The court has continuing jurisdiction to modify or revoke a judgment for future education and necessary support. All remedies under Title 77, Chapter 31, Uniform Reciprocal Enforcement of Support Act, are available for enforcement of duties of support under this act.

(2) The obligee may enforce his right of support against the obligor and the Department of Human Services may proceed on behalf of the obligee or in its own behalf, pursuant to the provisions of Title 62A, Chapter 11, to enforce that right of support against the obligor. In such actions by the department, the provisions of Title 62A, Chapter 11, shall apply. [(3)] Whenever the department commences an action under this act, it shall be the duty of the attorney general or the county attorney of the county where the obligee resides to represent the department.

(3) The court may enter an order awarding costs, attorney fees, and witness fees in the manner prescribed by Section 30-3-3 upon a judgment or acknowledgment of paternity.

Section 17. Repealer.

Section 30-3-5.5, Petition to protect abused child — Jurisdiction under this chapter, Utah Code An-

notated 1953, as enacted by Chapter 180, Laws of Utah 1991;

Section 30-6-6.5, Petition to protect abused child — Jurisdiction under this chapter, Utah Code Annotated 1953, as enacted by Chapter 180, Laws of Utah 1991;

Section 78-3a-20.5, Petition for protective order for abused child — Filing — Guardian ad litem — Assistance to petitioner — Forms, Utah Code Annotated 1953, as last amended by Chapter 105, Laws of Utah 1990;

Section 78-3a-20.6, Protective order — Ex parte issuance — Contents — Service — Extension or issuance at hearing — Agencies receiving copies, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1991;

Section 78-3a-20.7, Protective order — Permissible scope — Warning required, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1984;

Section 78-3a-20.8, Protective order proceeding — Relation to other proceedings concerning child, Utah Code Annotated 1953, as last amended by Chapter 105, Laws of Utah 1990;

Section 78-3a-20.9, Peace officers' duties to enforce protective orders and prevent child abuse — Immunity from liability, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1984; and

Section 78-3a-20.10, Immunity of person aiding petitioner for protective order, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1984, are repealed.

CHAPTER 138
H. B. No. 183
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

SALES OF SURPLUS PROPERTY

By Dan Q. Price

AN ACT RELATING TO SURPLUS PROPERTY; MORE CLEARLY DEFINING THE DIVISION'S POWERS AND DUTIES; MORE CLEARLY ESTABLISHING THE PARAMETERS FOR THE STATE SURPLUS PROPERTY PROGRAM; REQUIRING GEOGRAPHIC DISPERSION IN STORAGE AND SALES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

RENUMBERS AND AMENDS:
63A-8-101,(RENUMBERED FROM 63-17-1, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-102,(RENUMBERED FROM 63-17-3, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-201,(RENUMBERED FROM 63-17-1.1, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-202,(RENUMBERED FROM 63-17-1.2, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-203,(RENUMBERED FROM 63-17-1.3, AS ENACTED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-301,(RENUMBERED FROM 63-17-2, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-302,(RENUMBERED FROM 63-17-4, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-303,(RENUMBERED FROM 63-17-6, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)
63A-8-304,(RENUMBERED FROM 63-17-8, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984)

REPEALS:
63-17-5, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1953
63-17-7, AS ENACTED BY CHAPTER 40, LAWS OF UTAH 1953

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

Section 1. Section Renumbered and Amended.

Section 63A-8-101, Utah Code Annotated 1953, which is renumbered from Section 63-17-1, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[63-17-1] 63A-8-101. Creation — Administration of state and federal programs.

(1) (a) There is created [and established] within the Department of Administrative Services the Division of Surplus Property[~~, which~~] administered by a director.

(b) The executive director of the Department of Administrative Services shall appoint a director with the approval of the governor.

(2) The division shall administer both state and federal surplus property programs for [~~the state of~~] Utah.

Section 2. Section Renumbered and Amended.

Section 63A-8-102, Utah Code Annotated 1953, which is renumbered from Section 63-17-3, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-3~~] 63A-8-102. Employees — Delegation of powers — Bonds.

[~~The executive director of the Department of Administrative Services may delegate to any employee of the Division of Surplus Property such power and authority as he deems reasonable and proper for the effective administration of this act.~~] The executive director of the Department of Administrative Services may [~~in his discretion~~] bond any person in the employ of the Division of Surplus Property[~~, handling moneys, signing~~] who handles money, signs checks, or [~~receiving or distributing~~] receives or distributes property from the United States [~~or receiving or distributing property from the United States under authority of this act~~].

Section 3. Section Renumbered and Amended.

Section 63A-8-201, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.1, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-1.1~~] 63A-8-201. State surplus property program — Administration.

[~~The division shall~~] (1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" includes the legislative branch, the judicial branch, and the board of regents.

(iii) "Agency" does not mean an institution of higher education or its board of trustees.

(b) "Division" means the Division of Surplus Property.

(c) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(d) "Judicial district" means the geographic districts established by Section 78-1-2.1.

(e) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.

(ii) "Surplus property" does not mean real property.

(2)(a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) Those rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling; and

(viii) procedures governing the timing and location of public sales of inventory property.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the [~~state~~] agency requesting the sale of surplus property, the price at which the surplus property shall be sold[~~. The~~]; and

(c) transfer proceeds arising from the sale of state surplus property [~~shall be retained by the state~~] to the agency requesting the sale in accordance with the Budgetary Procedures Act, less an amount established by the division by rule [~~which shall be retained by the division in order~~] to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this chapter by explicit reference to this chapter, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 4. Section Renumbered and Amended.

Section 63A-8-202, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.2, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-1.2~~] 63A-8-202. Methods of disposition of surplus authorized.

The division may dispose of state surplus property by public auction, sealed bids, or by other means established by rule.

Section 5. Section Renumbered and Amended.

Section 63A-8-203, Utah Code Annotated 1953, which is renumbered from Section 63-17-1.3, Utah Code Annotated 1953, as enacted by Chapter 64, Laws of Utah 1984, is amended to read:

[~~63-17-1.3~~] 63A-8-203. Annual report to Legislature.

The division shall prepare an annual report to the Legislature [~~annually~~] that includes:

(1) the costs of administering the surplus property program [~~and~~];

(2) the amount retained by each state agency requesting the sale of any surplus property[~~.~~];

(3) each direct transfer of property from one state agency to another that was approved by the division under Section 63A-8-201; and

(4) the estimated fair market value of each item of property transferred.

Section 6. Section Renumbered and Amended.

Section 63A-8-301, Utah Code Annotated 1953, which is renumbered from Section 63-17-2, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-2~~] 63A-8-301. Acquisition of federal surplus property — Powers and duties — Rules and regulations — Advisory boards and committees — Personnel — Expenditures and contracts — Clearinghouse of information — Reports.

(1) As used in this section:

(a) "Property" includes equipment, materials, books, and other supplies.

(b) "Property act" means Section 203(j) of the Federal Property and Administrative Services Act of 1949.

[~~(1)~~] (2) The Division of Surplus Property [~~is hereby authorized and empowered~~] may:

(a) [~~to~~] acquire from the United States of America under and in conformance with the [~~provisions of section 203(j) of the Federal~~] property [~~and Administrative Services~~] act [~~of 1949, as amended, hereinafter referred to as the "act," such~~] any property[~~, including equipment, materials, books, or other supplies~~] under the control of any department or agency of the United States [~~of America as may be~~] that is

usable and necessary for [educational purposes, public health purposes, or civil defense, including research for any such purpose, and for such other] any purposes [as may now or hereafter be] authorized by federal law;

(b) [to] warehouse [such] that property if it is not real property; and

(c) [to] distribute [such] that property within [the state] Utah to:

(i) tax-supported medical institutions, hospitals, clinics, and health centers[,];

(ii) school systems, schools, colleges, and universities [within the state, and to];

(iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities [which have been held] that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954[, to];

(iv) civil defense organizations [of the state, or];

(v) political subdivisions [and instrumentalities thereof, which are established pursuant to state law,]; and [to such]

(vi) any other types of institutions or activities [as may now be or thereafter become] that are eligible [under federal law] to acquire [such] the property under federal law.

[(2)] (3) The Division of Surplus Property [is hereby authorized to] may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property[,];

(b) investigate the [same,] applications;

(c) obtain [expression of views respecting such] opinions about those applications from the appropriate health or educational authorities of [the state,] Utah;

(d) make recommendations [as to] about the need of [such] the applicant for the property, the merits of [its] the applicant's proposed [program of utilization,] use of the property, and the suitability of the property for [such] those purposes[,]; and

(e) otherwise assist in the processing of [such] those applications for acquisition of real and related personal property of the United States under [section 203(k) of] the property act.

[(3) For the purpose of executing its authority under this act, the Division of Surplus Property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other actions as are deemed necessary and suitable in the administration of this act, to assure maximum utilization by and benefit to health, educational, and civil defense institutions and organizations within the state from property distributed under this act.]

(4) The Division of Surplus Property [is authorized and empowered to] may appoint advisory boards or committees[, and to employ such personnel and to fix their compensation with the approval of the Department of Finance, and prescribe their duties, as are deemed necessary and suitable for the administration of this act. The positions of all personnel so employed shall be filled by persons selected and appointed on a nonpartisan merit basis].

(5) If required by law or regulation of the United States in connection with the disposal of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the division from the United States, the division [of Surplus Property is authorized and empowered to] may:

(a) make [such] certifications, take [such] action, and make [such] expenditures[, and];

(b) enter into [such] contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for [utilization] use by and exchange between them of the property, facilities, personnel, and services of each by the other[,];

(c) require [such] reports; and

(d) make [such] investigations [as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America].

(6) The division [of Surplus Property is authorized and empowered to] shall act as clearinghouse of information for [the] public and private nonprofit institutions, organizations, and agencies [referred to in subsection (1) and other institutions] eligible to acquire federal surplus real property[,] to:

(a) locate both real and personal property available for acquisition from the United States [of America, to];

(b) ascertain the terms and conditions under which [such] that property may be obtained[, to];

(c) receive requests from [the above-mentioned] those institutions, organizations, and agencies and [to] transmit to them all available information in reference to [such] that property[,]; and [to]

(d) aid and assist [such] those institutions, organizations, and agencies in every way possible in [the consummation or] those acquisitions or transactions [hereunder].

(7) The division [of Surplus Property, in the administration of this act,] shall:

(a) cooperate [to the fullest extent consistent with the provisions of the act,] with the departments or agencies of the United States [of America and shall];

(b) file a state plan of operation [equivalent to the plan adopted by the legislature,];

(c) operate [in accordance therewith, and] according to that plan;

(d) take [~~such action as may be~~] the actions necessary to meet the minimum standards prescribed [~~in accordance with~~] by the property act[~~, and~~];

(e) make [~~such~~] any reports [~~in such form and containing such information as~~] required by the United States [~~of America~~] or any of its departments or agencies [~~may from time to time require, and it shall~~]; and

(f) comply with the laws of the United States [~~of America~~] and the [~~rules and~~] regulations of any of the departments or agencies of the United States [~~of America~~] governing the allocation of, transfer of, use of, or accounting for[~~,~~] any property [~~donable or~~] donated to the state.

Section 7. Section Renumbered and Amended.

Section 63A-8-302, Utah Code Annotated 1953, which is renumbered from Section 63-17-4, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-4~~] 63A-8-302. Charges and fees assessed for surplus property.

[~~Any charges made or fees assessed by the Division of Surplus Property~~] (1) The division may assess charges and fees for the acquisition, warehousing, distribution, or transfer of any property of the United States [~~of America~~] for educational, public health, or civil defense purposes, including research, [~~shall be limited to~~] only if those charges and fees are reasonably related to the division's care and handling costs [~~of care and handling in respect to its acquisition, receipt, warehousing, distribution, or transfer by the Division of Surplus Property~~] of acquiring, receipting, warehousing, distributing, or transferring the property.

(2) The division may reduce or eliminate charges on property that is found not to be usable for the purpose for which it was procured. [~~And, in the case of real property, such~~]

(3) The division shall limit the charges and fees [~~shall be limited~~] assessed against real property to the reasonable administrative costs [~~of~~] that the division [~~of Surplus Property~~] incurred in effecting transfer.

Section 8. Section Renumbered and Amended.

Section 63A-8-303, Utah Code Annotated 1953, which is renumbered from Section 63-17-6, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-6~~] 63A-8-303. Priority to state and local agencies in purchasing surplus property.

[~~Any moneys found by the division to be in excess of the costs incurred in procuring, storing, handling, and disposing of such property shall be retained by the state agency requesting the sale in accordance with the Budgetary Procedures Act.~~] The [~~Department of Administrative Services~~] division shall [promulgate] make rules giving priority to state and local agencies in purchasing surplus property for a 30-day period.

Section 9. Section Renumbered and Amended.

Section 63A-8-304, Utah Code Annotated 1953, which is renumbered from Section 63-17-8, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

[~~63-17-8~~] 63A-8-304. Authority of state or local subdivision to receive property — Revocation of authority of officer.

[~~Any provision of law to the contrary notwithstanding~~] (1) Notwithstanding any other provision of law, the governing board[~~,~~] or [~~in case there be none~~] the executive [~~head~~] director of any state department, instrumentality, or agency or the legislative body of any city, county, school district, or other political subdivision may by order or resolution [~~confer upon~~] give any officer or employee [~~thereof continuing~~] the authority [~~from time to time~~] to:

(a) secure the transfer to it of surplus property through the division [~~of Surplus Property~~] under the provisions of Section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended[~~,~~]; and [~~to~~]

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of [~~such~~] those transfers.

(2) The authority conferred upon any [~~such~~] officer or employee by [~~any such~~] an order or resolution [~~shall remain~~] remains in effect [~~unless and~~] until:

(a) the order or resolution is [~~duly~~] revoked; and

(b) the division has received written notice of [~~such~~] the revocation [~~shall have been received by the Division of Surplus Property~~].

Section 10. Repealer.

Section 63-17-5, Authority of legislature to make appropriations, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1953; and

Section 63-17-7, Revolving fund, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1953, are repealed.

CHAPTER 139
H. B. No. 186
Passed March 3, 1993
Approved March 16, 1993
Effective March 16, 1993

DRIVER LICENSE SUSPENSION AMENDMENTS

By Karen B. Smith

AN ACT RELATING TO MOTOR VEHICLES; CLARIFYING THAT JUSTICE COURT CONVICTIONS OF LICENSE SANCTION OFFENSES ARE SUBJECT TO SR22 FILINGS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-12A-412, AS LAST AMENDED BY CHAPTER 80, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-12a-412, Utah Code Annotated 1953, as last amended by Chapter 80, Laws of Utah 1992, is amended to read:

41-12a-412. Proof of owner's or operator's security required to preserve registration.

(1) A motor vehicle may not be registered in the name of any person required to file proof of owner's security unless proof of that security is furnished for the motor vehicle.

(2)(a) Subject to Subsection (b), if the department lawfully suspends or revokes the driver's license of any person upon receiving record of a conviction or a forfeiture of bail from a court [~~of record~~], the department shall also suspend the registration for all motor vehicles registered in the name of the person.

(b) Unless otherwise required by law, the department may not suspend the person's motor vehicle registration under Subsection (a), if the person has given or immediately gives and then maintains proof of owner's security for all motor vehicles registered by the person.

(3) Licenses and registrations suspended or revoked under this section may not be renewed, nor may any driver's license thereafter be issued, nor may any motor vehicle be thereafter registered in the name of the person until he gives and thereafter maintains proof of owner's security.

(4) If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, a license may not thereafter be issued to the person and a motor vehicle may not continue or be registered in his name until he gives and thereafter maintains proof of owner's security.

(5) If the department suspends or revokes a nonresident's operating privilege because of a conviction or forfeiture of bail, the privilege remains suspended or revoked unless the person has given or immediately gives and thereafter maintains proof of owner's security.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 140
H. B. No. 200
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

EMPLOYEE LEASING COMPANY LICENSING ACT

By John L. Valentine

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING; PROVIDING FOR THE LICENSURE OF EMPLOYEE LEASING COMPANIES; DEFINING CERTAIN TERMS; CREATING A BOARD; ADOPTING REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE; REQUIRING FINANCIAL RESPONSIBILITY; REQUIRING WRITTEN CONTRACTS; REQUIRING CONFIDENTIALITY OF RECORDS; PROVIDING EXEMPTIONS; ADOPTING PENALTIES FOR UNLAWFUL CONDUCT; DISCLAIMING STATE LIABILITY; REPEALING SUPERSEDED SECTIONS; AMENDING PROVISIONS RELATED TO THE REPEALER; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-1-42, AS LAST AMENDED BY CHAPTER 178, LAWS OF UTAH 1992

ENACTS:
58-59-101, UTAH CODE ANNOTATED 1953
58-59-102, UTAH CODE ANNOTATED 1953
58-59-201, UTAH CODE ANNOTATED 1953
58-59-301, UTAH CODE ANNOTATED 1953
58-59-302, UTAH CODE ANNOTATED 1953
58-59-303, UTAH CODE ANNOTATED 1953
58-59-304, UTAH CODE ANNOTATED 1953
58-59-305, UTAH CODE ANNOTATED 1953
58-59-306, UTAH CODE ANNOTATED 1953
58-59-307, UTAH CODE ANNOTATED 1953
58-59-401, UTAH CODE ANNOTATED 1953
58-59-501, UTAH CODE ANNOTATED 1953
58-59-601, UTAH CODE ANNOTATED 1953

REPEALS:
16-14-1, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-2, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-3, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-4, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-5, AS LAST AMENDED BY CHAPTER 178, LAWS OF UTAH 1992
16-14-6, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-7, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-8, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991
16-14-9, AS ENACTED BY CHAPTER 228, LAWS OF UTAH 1991

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

Section 3. Section Amended.

Section 35-1-42, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1992, is amended to read:

35-1-42. Employers enumerated and defined — Regularly employed — Statutory employers.

(1) The state, and each county, city, town, and school district in the state are considered employers under this title.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written is considered an employer under this title. As used in this subsection:

(a) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(b) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is independent of the employer in all that pertains to the execution of the work, is not subject to the rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, Employee Leasing Company Licensing Act, [~~as defined in Subsection 16-14-2(2),~~] is considered the employer of [~~the~~] leased employees [~~leased~~] and shall secure workers' compensation benefits for [~~leased employees~~] them by complying with [~~commission rules in securing workers' compensation insurance under~~] Subsection 35-1-46(1)(a) or (b) and commission rules.

(b) Insurance carriers may underwrite such a risk showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements must be filed with the commission as directed by rule.

(4) (a) An agricultural employer is not considered an employer under this title if:

(i) his employees are all members of his immediate family and he has a proprietary interest in the farm where they work; or

(ii) he employed five or fewer persons other than immediate family members for 40 hours or more per week per employee for 13 consecutive weeks during any part of the preceding 12 months.

(b) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this title.

(5) An employer of agricultural laborers or domestic servants who is not under this title has the right and option to come under it by complying with its provisions and the rules of the commission.

(6) (a) If any person who is an employer procures any work to be done wholly or in part for him by a contractor over whose work he retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by him, all subcontractors under him, and all persons employed by any of these subcontractors, are considered employees of the original employer.

(b) A general contractor may not be considered to have retained supervision or control over the work of a subcontractor solely because of the customary trade relationship between general contractors and subcontractors.

(c) A portion of a construction project subcontracted to others may be considered to be a part or process in the trade or business of the general building contractor, only if the general building contractor, without regard to whether or not it would need additional employees, would perform the work in the normal course of its trade or business.

(d) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that he owns or is in the process of acquiring as his personal residence may not be considered an employee or employer solely by operation of Subsection (a).

(e) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (a) if:

(i) the person is not included as an employee under Subsection 35-1-43 (3) (a); or

(ii) the person is included as an employee under Subsection 35-1-43 (3) (a), but his employer fails to insure or otherwise provide adequate payment of direct compensation, which failure is attributable to an act or omission over which the person had or shared control or responsibility.

(f) For purposes of Subsection (e) (ii):

(i) a partner of a partnership and an owner of a sole proprietorship are presumed to have had or shared control or responsibility for any failure to insure or otherwise provide adequate payment of direct compensation, the burden of proof being on any person seeking to establish the contrary; and

(ii) evidence affirmatively establishing that a partner of a partnership or an owner of a sole proprietorship had or shared control or responsibility for any failure to insure or otherwise provide adequate payment of direct compensation may only be overcome by clear and convincing evidence to the contrary.

(g) A director or officer of a corporation may not be considered an employee under Subsection (a) if the director or officer is excluded from coverage under Subsection 35-1-43 (3) (b).

Section 4. Section Enacted.

Section 58-59-101, Utah Code Annotated 1953, is enacted to read:

58-59-101. Short title.

This chapter is known as the "Employee Leasing Company Licensing Act."

Section 5. Section Enacted.

Section 58-59-102, Utah Code Annotated 1953, is enacted to read:

58-59-102. Definitions.

In addition to the definitions in Section 58-1-2, as used in this chapter:

(1) "Board" means the Employee Leasing Company Licensing Board created in Section 58-59-201.

(2) "Client company" means a person or entity that leases any or all of its permanent employees from an employee leasing company.

(3) "Employee leasing company" or "leasing company" means an individual or business that, under an agreement between the client company and the leasing company, and for a fee, places all or substantially all of the regular, full-time employees of the client company on the leasing company's payroll and leases them to the client company on an ongoing basis with no restriction or limitation on the duration of employment.

(4) "Employment agreement" means the written agreement between an employee leasing company and each of its employees who are employed for the purpose of being leased as permanent employees to client companies.

(5) "Engage in practice as an employee leasing company" means to hold oneself out as an employee leasing company, to lease an employee to another person, and to receive any consideration for providing employee leasing services or to expect payment of any consideration for providing employee leasing services.

(6) (a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the board that an applicant or licensee can successfully engage in business as an employee leasing company without jeopardizing:

(i) the interests of the employees of the leasing company who are leased to a client company;

(ii) the interests of the client company; and

(iii) the interests of the public.

(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant for licensure, including past, present, and expected condition and record of financial solvency and business conduct.

(7) "Lease agreement" means the written agreement between an employee leasing company and a client company in accordance with which the leasing company leases employees to the client company

and the client company leases individuals from the leasing company.

(8) "Regular employee" means an individual who is an employee of an employee leasing company for the purpose of being placed by the employee leasing company as a regular full-time or regular part-time employee of a client company.

(9) "Represent oneself as an employee leasing company" means to hold oneself out by any means as an employee leasing company.

(10) "Temporary employee," as may be further defined by rule, means an individual who is an employee of, registered for temporary assignment by, or otherwise associated with a temporary help company that engages in the assignment of individuals as temporary full-time or part-time personnel to fill assignments with a finite ending date to another independent entity.

(11) "Temporary help company," as may be further defined by rule, means a person or entity that provides temporary employees to fill assignments with a finite ending date to another independent entity in special, unusual, seasonal, or temporary skill shortage situations.

(12) "Unlawful conduct" as defined in Section 58-1-10 includes the following conduct by a licensee:

(a) committing the acts prohibited under Subsections 58-59-501(2) and (3);

(b) offering to its employees any self-funded medical plan without delivering to each plan participant a summary plan description that accurately describes terms of the plan;

(c) providing leased employees to any client company under any provision, term, or condition that is not contained in a clearly written agreement between the leasing company and client company;

(d) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction, which causes material injury to a client company or employee leased to a client company;

(e) failing to maintain or ensure that client companies maintain in full force and effect required workers' compensation insurance on all leased employees in accordance with Utah law pursuant to Section 35-1-42; and

(f) failing to pay in a timely manner any federal or state income tax withholding, FICA, unemployment tax, employee insurance benefit premium, workers' compensation premium, or other obligation due and payable directly as a result of engaging in business as an employee leasing company.

(13) "Unprofessional conduct" as defined in Section 58-1-2 and as may be further defined by rule includes:

(a) failing to establish, maintain, or demonstrate financial responsibility and management competence while licensed as an employee leasing company;

(b) failing to maintain proper registration with any agency for which registration is required as a condition of licensure under this act;

(c) failing to maintain current lease agreements and employment agreements in appropriate form and content as required under this chapter; and

(d) failing to inform the division of a change in ownership, in the address of its owners or officers, or in its principal business address within ten days after the change.

Section 6. Section Enacted.

Section 58-59-201, Utah Code Annotated 1953, is enacted to read:

58-59-201. Board.

(1) There is created an Employee Leasing Company Board consisting of:

(a) three members who are owners or officers of separate licensed employee leasing companies within the state;

(b) one member who is an owner or officer of a client company; and

(c) one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-7.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-8 through 58-1-9.

Section 7. Section Enacted.

Section 58-59-301, Utah Code Annotated 1953, is enacted to read:

58-59-301. License required — License issuance.

(1) An individual may not engage in practice as an employee leasing company unless licensed or exempted from licensure under this chapter.

(2) The division shall issue to persons qualified under the provision of this chapter a license as an employee leasing company.

Section 8. Section Enacted.

Section 58-59-302, Utah Code Annotated 1953, is enacted to read:

58-59-302. Qualifications for licensure.

Each applicant for licensure as an employee leasing company shall:

(1) submit an application in a form prescribed by the division;

(2) pay a fee as determined by the department under Subsection 63-38-3(2);

(3) provide documentation that the applicant is properly registered with:

(a) the Division of Corporations and Commercial Code;

(b) the Department of Employment Security;

(c) the State Tax Commission;

(d) the Internal Revenue Service; and

(e) any other agency identified by rule that is determined by the division and the board as necessary for a person engaged in practice as an employee leasing company;

(4) provide documentation satisfactory to the division and the board that employees leased by the employee leasing company to any client company are covered by workers' compensation insurance pursuant to Section 35-1-42;

(5) provide evidence to the division and the board of financial responsibility, as this evidence is prescribed by rule;

(6) in the case of an employee leasing company that is commencing or reentering business as an employee leasing company, provide evidence to the division and the board, in accordance with generally accepted accounting principals, of at least $50,000 net worth as starting capital;

(7) provide evidence satisfactory to the division and the board of the financial responsibility of any self-funded or partially self-funded insurance plan as defined by rule;

(8) provide evidence satisfactory to the division and the board that the responsible managers of the leasing company have education and experience in the conduct of business that demonstrate a reasonable expectation that the company will be managed with the skill and expertise necessary to protect the interests of its employees, client companies, and the public; and

(9) provide evidence that the applicant is of good moral character.

Section 9. Section Enacted.

Section 58-59-303, Utah Code Annotated 1953, is enacted to read:

58-59-303. Financial responsibility.

(1) Each applicant for licensure as an employee leasing company, and each licensee applying for renewal of a license as an employee leasing company, shall demonstrate financial responsibility as a condition precedent to licensure or renewal of license. The burden to demonstrate financial responsibility is upon the applicant or licensee.

(2) If there is presented to the division and the board sufficient information to cause a reasonable belief that the financial responsibility of a licensee is impaired to the extent that there is a threat to the public interest, the division or the board may order the licensee to provide current audited financial information prepared by an independent certified public accountant and other supporting information upon which to make a competent evaluation of the licensee's financial responsibility.

(3) Financial responsibility shall be demonstrated on a quarterly basis by providing the division and the board with evidence from an independent certified public accounting firm that all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premium, and employee benefit plan premiums have been paid, and any other relevant information the applicant, licensee, division, or board considers appropriate for consideration by the division and board.

(4) Upon a showing of reasonable cause, the division and board may inquire into the financial responsibility of the corporation's officers and directors as a factor in determining the corporation's financial responsibility.

Section 10. Section Enacted.

Section 58-59-304, Utah Code Annotated 1953, is enacted to read:

58-59-304. Contracts.

(1) There shall be in place and effect an employment contract, in form and content as established by rule, between an employee leasing company and each employee of that leasing company who is hired or in any other way retained by the leasing company for the purpose of being placed with any client company.

(2) There shall be in place and effect a leasing contract, in form and content as established by rule, between an employee leasing company and each client company.

Section 11. Section Enacted.

Section 58-59-305, Utah Code Annotated 1953, is enacted to read:

58-59-305. Records and reports protected.

Financial information submitted to the board by or at the request and direction of an applicant or licensee for the purpose of supporting a representation of financial responsibility shall be classified as a protected record under Section 63-2-304.

Section 12. Section Enacted.

Section 58-59-306, Utah Code Annotated 1953, is enacted to read:

58-59-306. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a one year renewal cycle established by rule. The division may extend or shorten a renewal period by as much as six months to maintain or change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory documentation in accordance with Section 58-59-303 of each of the following renewal requirements:

(a) current evidence of financial responsibility; and

(b) current evidence of financial responsibility in all self-funded insurance programs.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-314.

Section 13. Section Enacted.

Section 58-59-307, Utah Code Annotated 1953, is enacted to read:

58-59-307. Exemptions from licensure.

Related companies under common ownership that are not individually considered employee leasing companies under this chapter may, without being licensed in accordance with this chapter, combine employees of one commonly owned company with employees of another commonly owned company on either a temporary or regular basis.

Section 14. Section Enacted.

Section 58-59-401, Utah Code Annotated 1953, is enacted to read:

58-59-401. Grounds for denial of license and disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-15.

Section 15. Section Enacted.

Section 58-59-501, Utah Code Annotated 1953, is enacted to read:

58-59-501. Penalty for unlawful conduct.

(1) Any person who violates this chapter by engaging in practice as an employee leasing company without a license is guilty of a third degree felony.

(2) It is a third degree felony for any licensee under this chapter to offer to its employees a self-funded medical program, unless:

(a) the program provides its benefits under an employee benefit plan that complies with 29 U.S.C. Sec. 1143 et seq.; and

(b) the program is maintained for the sole benefit of eligible plan participants.

(3) It is a third degree felony for any licensee under this chapter to misrepresent that any self-funded medical program it offers is other than self-funded.

(4) Any person who commits unlawful conduct under this chapter, other than the acts prohibited in Subsections (2) and (3), is guilty of a class A misdemeanor.

Section 16. Section Enacted.

Section 58-59-601, Utah Code Annotated 1953, is enacted to read:

58-59-601. No guarantee.

By licensing and regulating employee leasing companies under this chapter, the state:

(1) does not guarantee any right, claim, or defense of any employee leasing company, client company, regular employee, or other person;

(2) does not guarantee the financial responsibility or solvency of any employee leasing company; and

(3) does not waive any right, claim, or defense of immunity that it may have under Title 63, Chapter 30, Utah Governmental Immunity Act, or other law.

Section 17. Repealer.

Section 16-14-1, Short title, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-2, Definitions, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-3, Registration required — Fees — Cancellation, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-4, Application contents — Information update, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-5, Benefit plans — Employment contributions — Tax withholdings — Compliance required, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1992;

Section 16-14-6, Agreement required, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-7, Business name, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991;

Section 16-14-8, Criminal penalty — Right of action, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991; and

Section 16-14-9, No exemptions from other laws or rules, Utah Code Annotated 1953, as enacted by Chapter 228, Laws of Utah 1991, are repealed.

CHAPTER 141
H. B. No. 237
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

TRADEMARK AND SERVICE MARKS

By DeMar Bowman

AN ACT RELATING TO TRADEMARKS AND TRADE NAMES; MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
70-3-1, AS LAST AMENDED BY CHAPTER 108, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 70-3-1, Utah Code Annotated 1953, as last amended by Chapter 108, Laws of Utah 1990, is amended to read:

70-3-1. Definitions.

As used in this [section] chapter:

(1) "Adopted and used" means a service mark is used to identify the services of one person and distinguish them from the services of others and that the services are sold or otherwise rendered in this state.

(2) "Applicant" means the person filing an application for registration of a trademark or service mark under this [act] chapter, his legal representatives, successors, or assigns.

(3) "Filed" means the Division of Corporations and Commercial Code has received and approved, as to form, a document submitted under the provisions of this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(4) "Registrant" means the person to whom the registration of a trademark or service mark under this [act] chapter is issued, his legal representatives, successors, or assigns.

(5) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. "Service mark" includes the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.

(6) "Trademark" means any [work] word, name, mark, brand, symbol, emblem, stamp, imprint, or device, or any combination adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(7) "Used," when referring to a trademark or service mark, means the trademark or service mark is placed in any manner on the goods or services, on their containers, or on the tags or labels affixed to the containers, and that the goods or services are distributed in this state.

CHAPTER 142
H. B. No. 255
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

INCOMPETENCE OF DEFENDANT

By Phil H. Uipi

AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURE; CLARIFYING DEFINITION OF INCOMPETENT TO PROCEED; PROVIDING PRESUMPTION OF COMPETENCY; ESTABLISHING BURDEN OF PROOF; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-15-2, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-15-5, AS LAST AMENDED BY CHAPTER 166, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 77-15-2, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-15-2. "Incompetent to proceed" defined.

For the purposes of this chapter, a person is incompetent to proceed if he is suffering from a mental disease or defect resulting either in:

(1) [~~In~~] his inability to [~~comprehend the nature~~] have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or

(2) [~~In~~] his inability to [~~assist~~] consult with his counsel [~~in his defense~~] with a reasonable degree of rational understanding.

Section 2. Section Amended.

Section 77-15-5, Utah Code Annotated 1953, as last amended by Chapter 166, Laws of Utah 1991, is amended to read:

77-15-5. Order for hearing — Examinations of defendant or prisoner — Stay of other proceedings.

(1) When a petition is filed pursuant to Section 77-15-3, the court shall enter an order for a hearing on the mental condition of the person who is the subject of the petition.

(2) Prior to the hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning his mental condition.

(3) Upon completion of the evaluation or examination under Subsection (2), a written report shall be submitted to the court setting forth the opinion of the department or the person or agency directed by the department to conduct the examination, as to the mental condition of the person. The report shall state the facts relied on as the basis for the opinion and shall be made available to the prosecuting and defense attorneys.

(4) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) When the report is received the court shall set a date for a mental hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause. The hearing shall be conducted [~~as provided~~] according to the procedures outlined in [~~Section~~] Subsections 62A-12-234(9)(b) through (9)(f). [~~The~~] Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent. The burden of proof is upon the proponent of incompetency at the hearing.

(6) All other proceedings pending against the defendant shall be stayed until the proceedings to determine his mental condition are terminated.

CHAPTER 143
H. B. No. 297
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

MOTOR CARRIER PROOF OF INSURANCE

By Christine R. Fox

AN ACT RELATING TO PUBLIC UTILITIES; AUTHORIZING INTERSTATE MOTOR CARRIERS TO PASS THROUGH THE STATE ONCE BY SIGNING A CERTIFICATE AND AFFIDAVIT OF INSURANCE COVERAGE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
54-6-3, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1986
54-6-29, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1986
54-6-36, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1986
54-6-37, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
54-6-42, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1986

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

Section 1. Section Amended.

Section 54-6-3, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1986, is amended to read:

54-6-3. Definitions.

As used in this chapter:

(1) "Agent" or "agent for service of process" means a person maintaining a residence within the state upon whom service of process, notices, or orders may be made under this chapter.

(2) "Baseline rate" means a rate [~~which~~] that is:

(a) published and filed with the commission;

(b) [~~is~~] in effect; and

(c) [~~is~~] designated as a baseline rate on the tariff.

(3) "Certificate" means the authority issued under this chapter to operate common carrier services by motor vehicle.

(4) "Certificate and affidavit of insurance" means the document executed under Section 54-6-37 to obtain a temporary license.

[~~(4)~~] (5) "Commission" means the Public Service Commission of this state.

[~~(5)~~] (6) "Common motor carrier" means any person with a certificate from the commission and who is holding [~~itself~~] himself out to the general public as engaging in commercial transportation of passengers or property by motor vehicle in this state for compensation, except public transit districts.

[~~(6)~~] (7) "Contract motor carrier" means any person with a permit from the commission and engaging in the transportation, other than transportation under Subsection [~~(5)~~] (6), by motor vehicle of passengers or property in commerce, in the state, for compensation under individual contracts or agreements with named shippers.

[~~(7)~~] (8) "Department" means the Utah Department of Transportation.

[~~(12)~~] (9) [~~"Public highway"~~] "Highway" means every [~~public~~] street, alley, road, [~~or~~] highway, or thoroughfare of any kind used by the public.

(10) "ICC" means the federal Interstate Commerce Commission.

[~~(8)~~] (11) "Interested parties" include all carriers operating over routes or any part of a route in the territory involved in any application for a certificate or permit, or an application to file or change any schedule, rates, charges, fares, rule, or practice, and other parties the commission considers interested in the matter.

(12) "License" means authorization from the commission to a person engaged in interstate transportation of passengers or property by motor vehicle in this state for compensation.

[~~(9)~~] (13) "Motor vehicle" means any motor driven automobile, truck, trailer, semitrailer, tractor, motorbus, or any vehicle used [~~upon~~] on any [~~public~~] highway [~~of this state~~] to transport passengers or property.

[~~(10)~~] (14) "Permit" means the permit issued under this chapter to contract motor carriers.

[~~(11)~~] (15) "Private carrier" means a person not included in the terms "common carrier" or "contract carrier" [~~which~~] who transports in commerce by motor vehicle property the person owns, leases, or bails, and the property is for the furtherance of the person's commercial enterprise not related to transportation.

[~~(13)~~] (16) "Rate" means every individual or joint rate, fare, toll, charge, rental, or other compensation of any carrier.

[~~(14)~~] (17) "Schedule" means a schedule of actual rates and charges in a publication or document containing contract motor carrier rates and provisions.

[~~(15)~~] (18) "Tariff" means a publication or document containing common motor carrier rates and provisions, or rates and provisions applicable via rail carrier under contract.

[~~(16)~~] (19) "Transportation" means the actual movement of property or passengers by motor vehicle, including loading, unloading, and any ancillary service provided by the carrier in connection with movement by motor vehicle, which is performed by or on behalf of the carrier, its employees or agents, or under the authority of the carrier, its employees or agents, or under the apparent authority and with the knowledge of the carrier.

[~~(17)~~] (20) "ZORF" is an acronym for "zone of rate flexibility" and means a range defined in percentage

above and below a baseline rate within which rates may be adjusted by a motor carrier under this chapter.

Section 2. Section Amended.

Section 54-6-29, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1986, is amended to read:

54-6-29. Common carrier — Interstate authority.

(1) [No] (a) A common motor carrier may not operate as a carrier in interstate commerce within this state without a license.

(b) An applicant shall submit to the commission a copy of the carrier's interstate operating authority and information, in writing, concerning:

[(a)] (i) the ownership and equipment to be used by the applicant; and

[(b)] (ii) other information the commission may request covering observance of state safety rules, insurance, and payment of fees.

(2) Upon receipt of the application and the information, and on compliance with this chapter and the payment of fees, the commission shall issue a license to the applicant.

(3) The commission may accept a certificate and affidavit of insurance from a motor carrier entering the state for the first time as provided in Section 54-6-37.

Section 3. Section Amended.

Section 54-6-36, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1986, is amended to read:

54-6-36. Contract carrier — Interstate authority.

(1) [No] (a) A contract motor carrier may not operate as a carrier in interstate commerce within this state without a license.

(b) An applicant for a license shall submit to the commission a copy of the carrier's interstate operating authority and information in writing concerning:

[(a)] (i) the ownership, financial condition, equipment to be used, and physical property of the applicant;

[(b)] (ii) the proposed schedules; and

[(c)] (iii) other information as the commission may request covering observance of state [police regulations] safety rules, insurance, and payment of fees.

(2) Upon receipt of the application and the information, and on compliance with this chapter and the payment of fees, the commission shall issue a permit to the applicant.

(3) The commission may accept a certificate and affidavit of insurance from a motor carrier entering the state for the first time as provided in Section 54-6-37.

Section 4. Section Amended.

Section 54-6-37, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

54-6-37. Temporary authority.

(1) The commission may grant temporary authority to intrastate common and contract carriers when the commission:

(a) [it] receives a verified application;

(b) [it] determines that the requirements of its applicable rules have been met; and

(c) [it] determines that there is immediate and urgent need for the service.

(2) The temporary authority shall specify the commodity or number of passengers to be transported, and the point of origin and point of destination.

(3) The commission may not issue a temporary authority for more than 60 days and may not assess a fee for its issuance.

(4) Issuance of a grant of temporary authority [creates no] does not create a presumption that corresponding permanent authority will be granted.

(5) (a) The commission may grant a ten-day temporary license to interstate common and contract motor carriers when the carrier:

(i) is passing through the state for the first time;

(ii) executes a certificate of insurance and affidavit at a port-of-entry; and

(iii) certifies that insurance or security is currently in force for the motor carrier in compliance with Section 54-6-42.

(b) On entering a state the second time, a motor carrier's ICC authority must be registered with the commission. tf

Section 5. Section Amended.

Section 54-6-42, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1986, is amended to read:

54-6-42. Insurance requirements.

(1) [No] (a) A certificate [or], permit, or license may not be issued by the commission to any common or contract motor carrier or remain in effect unless the applicant, or authorized carrier, has complied with rules the commission prescribes governing filing and approval of certificates of insurance and has obtained commission approval of a certificate of insurance executed by an insurance company or association authorized to transact business in this state.

(b) The certificate shall be executed upon a form prescribed by the commission, [indicating] and contain terms and conditions the commission determines to be necessary.

(c) The certificate shall indicate that there is a valid policy of insurance to pay any final judgment recovered against the motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor ve-

hicles under the certificate [or], permit, or license, or for loss or damage to property of others.

(d) The insurance shall be in a reasonable sum the commission prescribes to be adequate to protect the interests of the public. [~~However, each~~]

(e) Each motor carrier shall have public liability insurance policies for personal injury or death[;] and for acts of negligence.

(2) (a) Each common and contract motor carrier of property operating wholly within this state shall file with the commission under rules the commission prescribes an additional certificate of cargo insurance in an amount to be fixed by the commission.

(b) The policy shall cover all motor vehicles used or to be used, and shall provide that any person having a right of action against the motor carrier for injuries to persons, loss of or damage to property, or loss of or damage to cargo, when service cannot be obtained on the motor carrier within this state, may bring action for recovery directly upon the insurance policy and against the insurance company or association.

(3) [~~No insurance~~] (a) Insurance other than that prescribed in this chapter may not be required of any motor carrier by any city [~~or~~], town, or other agency of this state.

(b) This section does not apply to carriers to whom insurance is not available to do business in this state, due to the type of service rendered or commodity transported.

(c) In these cases no other insurance coverage is required.

(4) (a) The commission[~~, in its discretion,~~] may require any common motor carrier who holds a certificate for the transportation of property in intrastate commerce within this state to file a certificate of policies of insurance as established by the commission to be conditioned upon the common motor carrier making prompt remittance to the consignor or other person designated by the consignor as payee of sums belonging to the consignor or designated payee which come into the possession of the common motor carrier through C.O.D. collections.

(b) Every common motor carrier required by the commission to file a certificate of insurance conditioned upon the prompt remittance of C.O.D. collections shall maintain a complete record of all C.O.D. shipments and related information as prescribed by the commission.

(5) (a) Failure to comply with this section and the rules of the commission is cause for cancellation by the commission of the carrier's certificate or permit to operate in intrastate commerce.

(b) Before the cancellation the carrier shall be given notice of failure to comply and an opportunity to comply with this section and the rules of the commission.

(6) The commission shall enforce [~~all provisions of~~] this section and make necessary orders and rules for enforcement.

CHAPTER 144
H. B. No. 340
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

SOCIAL WORK LICENSING ACT AMENDMENTS

By Karen B. Smith

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING PROVISIONS RELATED TO THE PRACTICE OF SOCIAL WORK; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-35-6, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 58-35-6, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is amended to read:

58-35-6. Scope of practice.

(1) A licensed clinical social worker may:

(a) engage in each act, practice, procedure, method, and assessment involved in the practice of social work within the recognized standards and ethics of the profession;

(b) diagnose and treat mental illness in individuals, couples, families, and other groups by psychotherapy or other appropriate professional and competent means within the recognized standards and ethics of the profession;

(c) engage in the private, independent, unsupervised practice of clinical social work, whether as a self-employed individual, in partnership with other licensed clinical or certified social workers, as a professional corporation, or in any other capacity or business entity; and

(d) supervise and train other licensees under this chapter as provided by rule.

(2) A licensed certified social worker may:

(a) to the extent of the training track completed in earning a master or doctor of social work degree, engage in each act, practice, procedure, method, and assessment involved in the practice of social work within the recognized standards and ethics of the profession;

(b) as a trainee under the supervision of a licensed clinical social worker, diagnose and treat mental illness in individuals, couples, families, and other groups by psychotherapy or other appropriate professional and competent means within the recognized standards and ethics of the profession;

(c) as long as he does not practice unsupervised psychotherapy, engage in the private, independent, unsupervised practice of social work, whether as a self-employed individual, in partnership with other licensed clinical or certified social workers, as a professional corporation, or in any other capacity or business entity; and

(d) supervise social service workers and social service aides as provided by rule.

(3) (a) A licensed social service worker may:

(i) under approved supervision, engage in each act, practice, procedure, method, and assessment involved in the practice of social work within the recognized standards and ethics of the profession; and

(ii) supervise social service aides as provided by rule.

(b) [A] (i) Except as provided in Subsection (b)(ii), a licensed social service worker may not engage in the practice of psychotherapy nor in the private practice of social work.

(ii) A licensed social service worker may engage in the practice of psychotherapy if:

(A) he practiced psychotherapy in Utah prior to April 27, 1992;

(B) he was licensed to practice psychotherapy in another state prior to April 27, 1992, and is currently licensed in that state;

(C) he holds a masters or doctoral degree in a program approved by the Social Work Licensing Board as equivalent to a degree in social work;

(D) he has ten or more years of documented experience in the practice of psychotherapy; and

(E) he is supervised and employed by a person licensed and authorized to practice psychotherapy under the laws of this state.

(4) (a) A licensed social service aide may, under approved supervision, engage in each act, practice, procedure, method, and assessment involved in the practice of social work within the recognized standards and ethics of the profession.

(b) A licensed social service aide may not engage in the practice of psychotherapy nor in the private practice of social work.

CHAPTER 145
H. B. No. 393
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

MEDICAL BENEFITS RECOVERY ACT

By Fred R. Hunsaker

AN ACT RELATING TO MEDICAL ASSISTANCE; GIVING THE DEPARTMENT OF HEALTH AUTHORITY TO SEEK REIMBURSEMENT FROM EMPLOYEE BENEFIT PLANS FOR SERVICE IT PROVIDES TO MEDICAID RECIPIENTS; CLARIFYING ASSIGNMENT OF BENEFITS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-19-2, AS LAST AMENDED BY CHAPTER 163, LAWS OF UTAH 1989
26-19-8, AS LAST AMENDED BY CHAPTER 34, LAWS OF UTAH 1984

ENACTS:
26-19-4.5, UTAH CODE ANNOTATED 1953
26-19-9, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 26-19-2, Utah Code Annotated 1953, as last amended by Chapter 163, Laws of Utah 1989, is amended to read:

26-19-2. Definitions.

As used in this chapter:

(1) "Employee welfare benefit plan" means a medical insurance plan developed by an employer under 29 U.S.C. Section 1001, et. seq., the Employee Retirement Income Security Act of 1974 as amended.

[~~(1)~~] (2) "Medical assistance" means any funds expended by the state under Title 26, Chapter 18, and under Titles XVIII and XIX of the Social Security Act.

[~~(2)~~] (3) "Property" includes the homestead and all other property, personal or real, in which the recipient has a legal interest.

[~~(3)~~] (4) "Provider" means a person or entity [~~receiving compensation from any public medical assistance program for goods or services provided~~] who provides services to a recipient.

[~~(4)~~] (5) "Recipient" means a person who has applied for or received medical assistance from the state; his guardian, conservator, or other personal representative, if he is a minor or incapacitated person; and his estate and survivors if he is deceased.

(6) "State plan" means the state Medicaid program as defined in Section 26-18-2.

[~~(5)~~] (7) "Third party" means:

(a) an individual, institution, corporation, public or private agency, trust, estate, insurance carrier, employee welfare benefit plan, health maintenance organization, health service organization, preferred provider organization, governmental program such as Medicare, CHAMPUS, and workers' compensation, which may be liable to pay all or part of the medical costs of injury, disease, or disability of a recipient; and

(b) a spouse or a parent who:

(i) may be liable to pay all or part of the medical costs of a recipient under law or court or administrative order; or

(ii) has been ordered to maintain health, dental, or disability insurance to cover medical expenses of a spouse or dependent child by court or administrative order.

Section 2. Section Enacted.

Section 26-19-4.5, Utah Code Annotated 1953, is enacted to read:

26-19-4.5. Assignment of rights to benefits.

(1) To the extent that medical assistance is actually provided to a recipient, all benefits for medical services or payments from a third party otherwise payable to or on behalf of a recipient are deemed to be assigned to the department if the department provides, or becomes obligated to provide, medical assistance. That assignment authorizes the department to submit its claim to the third party and authorizes payment of benefits directly to the department. The assignment is effective for services that are paid or to be paid by the department under the state plan, Section 26-18-10, and Title XIX of the federal Social Security Act.

(2) The department may recover the assigned benefits or payments in accordance with Section 26-19-5 and as otherwise provided by law.

(3) The assignment of benefits includes medical support and third party payments ordered, decreed, or adjudged by any court of this state or any other state or territory of the United States. That assignment is not in lieu of, and does not supercede or alter any other court order, decree, or judgment.

(4) When an assignment takes effect, the recipient is entitled to receive medical assistance, and the benefits paid to the department are a reimbursement to the department.

Section 3. Section Amended.

Section 26-19-8, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1984, is amended to read:

26-19-8. Statute of limitations — Survival of right of action — Insurance policy not to limit time allowed for recovery.

(1) (a) An action commenced by the department under this chapter against a health insurance carrier or employee welfare benefit plan must be commenced within two years after the date of the injury or onset of the illness or within six months after the date of the last medical assistance payment, whichever is later.

(b) An action against any other third party must be commenced within four years after the date of the

injury or onset of the illness, or within six months after the date of the last medical assistance payment, whichever is later.

(2) The death of the recipient does not abate any right of action established by this chapter.

(3) No insurance policy issued or renewed after June 1, 1981, may contain any provision that limits the time in which the department may submit its claim to recover medical assistance benefits to a period of less than 24 months from the date the provider furnishes services or goods to the recipient.

Section 4. Section Enacted.

Section 26–19–9, Utah Code Annotated 1953, is enacted to read:

26–19–9. Employee benefit plans.

As allowed pursuant to 29 U.S.C. Section 1144, an employee benefit plan may not include any provision that has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan based on the fact that the individual is eligible for or is provided services under the state plan.

CHAPTER 146
H. B. No. 446
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

DIVISION OF REAL ESTATE AMENDMENTS

By Michael G. Waddoups

AN ACT RELATING TO THE DIVISION OF REAL ESTATE; PRESCRIBING TIME LIMITS FOR REAPPLICATION AFTER A LICENSE IS REVOKED; AMENDING CONSEQUENCES OF PAYING FEES WITH A BAD CHECK; CLARIFYING GROUNDS FOR DISCIPLINARY ACTIONS; CLARIFYING REQUIREMENTS FOR FORMS FILED WITH THE DIVISION; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
61-2-5, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
61-2-6, AS LAST AMENDED BY CHAPTER 182, LAWS OF UTAH 1988
61-2-9, AS LAST AMENDED BY CHAPTER 165, LAWS OF UTAH 1991
61-2-11, AS LAST AMENDED BY CHAPTER 165, LAWS OF UTAH 1991
61-2-12, AS LAST AMENDED BY CHAPTER 165, LAWS OF UTAH 1991
61-2-17, AS LAST AMENDED BY CHAPTER 178, LAWS OF UTAH 1986
61-2-20, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1985
61-2A-4, AS LAST AMENDED BY CHAPTER 165, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 61-2-5, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

61-2-5. Division of Real Estate created — Functions — Director appointed — Functions.

(1) There is created within the Department of Commerce a Division of Real Estate. It is responsible for the administration and enforcement of:

(a) this chapter[,];

(b) the Real Estate Education, Research, and Recovery Fund[, the] under Title 61, Chapter 2a;

(c) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act[, and the];

(d) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(e) Title 57, Chapter 23, Real Estate Cooperative Marketing Act; and

(f) Title 61, Chapter 2b, Real Estate Appraiser Registration and Certification Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds his office at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

(4) On or before [the first day of] October 1 of each year, the director shall, in conjunction with the department, report to the governor and the Legislature concerning the division's work for the preceding fiscal year ending June 30.

(5) The director, in conjunction with the executive director, shall prepare and submit to the governor and the Legislature a budget for the fiscal year next following the convening of the Legislature.

Section 2. Section Amended.

Section 61-2-6, Utah Code Annotated 1953, as last amended by Chapter 182, Laws of Utah 1988, is amended to read:

61-2-6. Licensing procedures and requirements.

(1) The Real Estate Commission shall determine the qualifications and requirements of applicants for a principal broker, associate broker, or sales agent license. The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license. The division, with the concurrence of the commission, shall require an applicant for a sales agent license to complete an approved educational program not to exceed 90 hours, and an applicant for an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours. The hours required by this section mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours available to an individual is ten hours per day. The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles and practices, the provisions of this chapter, the rules established by the Real Estate Commission, and any other aspect of Utah real estate license law considered appropriate. Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state. The commission shall establish by rule the criteria by which it will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) The division, with the concurrence of the commission, may require an applicant to furnish a

sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(3) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency. A nonresident associate broker or sales agent may become licensed in this state by conforming to all the provisions of this chapter except that of residency and by being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.

(4) An applicant who has had a real estate license revoked shall be relicensed as prescribed for an original application, but may not apply for a new license until at least five years after the revocation. In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of license.

Section 3. Section Amended.

Section 61-2-9, Utah Code Annotated 1953, as last amended by Chapter 165, Laws of Utah 1991, is amended to read:

61-2-9. Examination and license fees — Renewal of licenses — Education requirements — Activation of inactive licenses — Recertification — Licenses of firm, partnership, or association — Miscellaneous fees.

(1) (a) Upon filing an application for a principal broker, associate broker, or sales agent license examination, the applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Subsection 63-38-3 (2) for admission to the examination.

(b) A principal broker, associate broker, or sales agent applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Subsection 63-38-3 (2) for issuance of an initial license or license renewal.

(c) Each license issued under this subsection shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.

(2) (a) A license expires if it is not renewed on or before its expiration date. Effective January 1, 1992, as a condition of renewal, each active licensee shall demonstrate competence by viewing an approved real estate education video program and completing a supplementary workbook, or complete 12 hours of professional education approved by the division and commission within each two-year renewal period. The division with the concurrence of the commission shall certify education which may include, but shall not be limited to, state conventions, home study courses, video courses, and closed circuit television courses. The commission with concurrence of the division may exempt a licensee from this education requirement for a period not to exceed four years upon a finding of reasonable cause and under conditions established by rule.

(b) For a period of 30 days after the expiration date, a license may be reinstated upon payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Subsection 63-38-3 (2) and upon providing proof acceptable to the division and the commission of the licensee having completed the hours of education or demonstrated competence as required under Subsection (a).

(c) After this 30-day period, and until six months after the expiration date, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Subsection 63-38-3 (2);

(ii) providing to the division proof of satisfactory completion of the applicable hours of prelicensing education required under Section 61-2-6, which must be completed within six months prior to reinstatement, or providing to the division evidence of successful completion of the respective sales agent or broker licensing examination within six months prior to reinstatement; and

(iii) providing proof acceptable to the division and the commission of the licensee having completed the hours of education or demonstrated competence as required under Subsection (a).

(d) A person who does not renew his license within six months after the expiration date shall be relicensed as prescribed for an original application.

(3) As a condition for the activation of an inactive license, a licensee shall supply the division with proof of:

(a) successful completion of the respective sales agent or broker licensing examination within six months prior to activation; or

(b) the successful completion of professional education required by Subsection (2)(a) for each two-year renewal period that the license has been on inactive status, up to the minimum number of hours required for original licensure. Credit shall be given for education only if it is taken during the five years preceding activation and if at least six of the hours are taken in the year preceding activation.

(4) A principal broker license may be granted to a corporation, partnership, or association if the corporation, partnership, or association has affiliated with it an individual who has qualified as a principal broker under the terms of this chapter, and who serves in the capacity of a principal broker. Application for [such] the license shall be made in accordance with the rules adopted by the division with the concurrence of the commission.

(5) The division may charge and collect reasonable fees determined by the commission with the concurrence of the division under Subsection 63-38-3 (2) to cover the costs for:

(a) issuance of a new or duplicate license;

(b) license histories or certifications;

(c) certified copies of official documents, orders, and other papers and transcripts;

(d) certifying real estate schools, [~~course providers~~] courses, and instructors, the fees for which shall, notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and Recovery Fund; and

(e) other duties required by this chapter.

(6) [~~The division may suspend, until payment of the applicable fee is received in full, the license of any~~] If a licensee [~~who~~] submits or causes to be submitted a check, draft, or other negotiable instrument to the division for payment of fees, [~~if~~] and the check, draft, or other negotiable instrument is dishonored, the transaction for which the payment was submitted is void and will be reversed by the division if payment of the applicable fee is not received in full.

(7) The fees under this chapter and the additional license fee for the Real Estate Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license fees or assessments that might otherwise be imposed or charged by the state or any of its political subdivisions, upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee if the licensee maintains a place of business within the jurisdiction of the political subdivision. Unless otherwise exempt, each licensee under this chapter is subject to all taxes imposed under Title 59.

Section 4. Section Amended.

Section 61-2-11, Utah Code Annotated 1953, as last amended by Chapter 165, Laws of Utah 1991, is amended to read:

61-2-11. Investigations — Subpoena power of division — Grounds for disciplinary action.

The division may investigate or cause to be investigated the actions of any principal broker, associate broker, sales agent, real estate school, course provider, or school instructor licensed or certified by this state, or of any applicant for licensure or certification, or of any person who acts in any of those capacities within this state. The division is empowered to subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information considered relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond to a subpoena is considered as a separate violation of this chapter. The commission, with the concurrence of the director, may impose a civil penalty in an amount not to exceed $500 per violation [~~or~~], impose educational requirements, and suspend, revoke, place on probation, or deny renewal, reinstatement, or reissuance of any license or the certification of a real estate school course provider or instructor if at any time the licensee or certificate holder, whether acting as an agent or on his own account, is found guilty of:

(1) making any substantial misrepresentation;

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation, or of making false promises through agents, sales agents, advertising, or otherwise;

(4) acting for more than one party in a transaction without the informed consent of all parties;

(5) acting as an associate broker or sales agent while not licensed with a licensed principal broker, representing or attempting to represent a broker other than the principal broker with whom he is affiliated, or representing as sales agent or having a contractual relationship similar to that of sales agent with other than a licensed principal broker;

(6) failing, within a reasonable time, to account for or to remit any monies coming into his possession [~~which~~] that belong to others, or commingling those funds with his own, or diverting those funds from the purpose for which they were received;

(7) paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that valuable consideration may be shared with a licensed principal broker of another jurisdiction or as provided under the Professional Corporation Act;

(8) being unworthy or incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(9) failing to voluntarily furnish copies of all documents to all parties executing the documents;

(10) failing to keep and make available for inspection by the division a record of each transaction, including the names of buyers and sellers or lessees and lessors, the identification of the property, the sale or rental price, any monies received in trust, any agreements or instructions from buyers [~~or~~] and sellers or lessees and lessors, and any other information required by rule;

(11) failing to disclose, in writing, in the purchase [~~or~~], sale, or rental of property, whether the purchase [~~or~~], sale, or rental is made for himself or for an undisclosed principal;

(12) [~~conviction~~] regardless of whether the crime was related to real estate, being convicted of a criminal offense involving moral turpitude, including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a criminal offense involving moral turpitude;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of his licensees and any unlicensed staff;

(15) violating or disregarding this chapter, an order of the commission, or the rules adopted by the commission and the division;

(16) breaching a fiduciary duty owed by a licensee to his principal in a real estate transaction;

(17) any other conduct which constitutes dishonest dealing; [~~or~~]

(18) unprofessional conduct as defined by statute or rule; or

(19) suspension, revocation, surrender, or cancellation of a real estate license issued by another jurisdiction, or of another professional license issued by this or another jurisdiction, based on misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness.

Section 5. Section Amended.

Section 61-2-12, Utah Code Annotated 1953, as last amended by Chapter 165, Laws of Utah 1991, is amended to read:

61-2-12. Disciplinary action — Judicial review.

(1) (a) [~~(i)~~] Before imposing an educational requirement, a civil penalty, revoking, suspending, placing on probation, or denying the renewal, reinstatement, or reissuance of any license or certificate based on violation of Section 61-2-11, the division shall give notice to the licensee or certificate holder and schedule an adjudicative proceeding.

[~~(ii)~~] (b) If the licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of the hearing.

[~~(iii)~~] (c) If after the hearing the commission determines that any licensee or certificate holder is guilty of a violation of this chapter, the license or certificate may be suspended, revoked, denied reissuance, or a civil penalty may be imposed by written order of the commission in concurrence with the director.

[~~(b) If the hearing is delegated by the commission to an administrative law judge, and a ruling has been issued by the commission and the director, the licensee or certificate holder may request reconsideration by the commission by filing a written request stating specific grounds upon which relief is requested.~~]

(2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the complainant, may obtain judicial review or agency review by the executive director of any adverse ruling, order, or decision of the director and the commission.

(b) If the applicant, certificate holder, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(c)(i) No order, rule, or decision of the director and the commission may take effect until [~~30 days after~~] the time for appeal to the court has expired.

(ii) If an appeal is taken by a licensee, the division shall stay enforcement of the commission's action in accordance with the provisions of Section 63-46b-18.

(iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

Section 6. Section Amended.

Section 61-2-17, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986, is amended to read:

61-2-17. Penalty for violation of chapter.

(1) Any individual violating this chapter, in addition to being subject to a license sanction or a fine ordered by the commission, is, upon conviction of a first violation, guilty of a class A misdemeanor[~~; any~~]. Any imprisonment shall be for a term not to exceed six months. If the violator is a corporation, it is, upon conviction of a first violation, guilty of a class A misdemeanor.

(2) Upon conviction of a second or subsequent violation, an individual is guilty of a third degree felony[~~; imprisonment~~]. Imprisonment shall be for a term not to exceed two years. If a corporation is convicted of a second or subsequent violation, it is guilty of a third degree felony.

(3) Any officer or agent of a corporation, or any member or agent of a partnership or association, who personally participates in or is an accessory to any violation of this chapter by such corporation, partnership, or association, is subject to the penalties prescribed for individuals.

[~~(2)~~] (4) If any person receives any money or its equivalent, as commission, compensation, or profit by or in consequence of a violation of this chapter, that person is liable for an additional penalty of not less than the amount of the money received and not more than three times the amount of money received, as may be determined by the court. This penalty may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved for his own use and benefit.

[~~(3)~~] (5) All fines imposed by the commission and the [~~executive~~] director [~~pursuant to~~] under this chapter shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and Recovery Fund to be used in a manner consistent with the requirements of the Real Estate Recovery Fund Act.

Section 7. Section Amended.

Section 61-2-20, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1985, is amended to read:

61-2-20. Rights and privileges of real estate licensees.

Real estate licensees may fill out only those legal forms approved by the [~~Utah Real Estate~~] commis-

sion and the attorney general, and those forms provided by statute, with the following exceptions:

(1) [~~principal~~] Principal brokers and associate brokers may fill out any documents associated with the closing of a real estate transaction.

(2) [~~real~~] Real estate licensees may fill out real estate forms prepared by legal counsel of the buyer, seller, lessor, or lessee[~~, or any legal counsel, provided that the Real Estate Commission and attorney general have not approved a specific form necessary to that transaction~~].

(3) If the commission and the attorney general have not approved a specific form for the transaction, principal brokers, associate brokers, and sales agents may fill out real estate forms prepared by any legal counsel, including legal counsel retained by the brokerage to develop these forms.

Section 8. Section Amended.

Section 61-2a-4, Utah Code Annotated 1953, as last amended by Chapter 165, Laws of Utah 1991, is amended to read:

61-2a-4. Additional license fee — Purpose.

[~~Every~~] (1) Each person who applies for or renews a real estate principal broker or associate broker license shall pay, in addition to the application or renewal fee, a reasonable annual fee of up to $18, as determined by the Division of Real Estate with the concurrence of the Real Estate Commission [~~of not in excess of $18 annually~~]. [~~Every~~]

(2) Each person who applies for or renews a real estate sales agent license shall pay in addition to the application or renewal fee a reasonable annual fee of up to $12, as determined by the division with the concurrence of the commission [~~of not in excess of $12 annually~~]. [~~These~~]

(3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid into the Real Estate Education, Research, and Recovery Fund to be used for the purposes of this chapter.

CHAPTER 147
S. B. No. 6
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

CHILD ABUSE REPORTING REQUIREMENTS

By Delpha A. Baird

AN ACT RELATING TO SOCIAL SERVICES; AMENDING CHILD ABUSE REPORTING REQUIREMENTS TO THE LOCAL LAW ENFORCEMENT AGENCY BY DELETING SERIOUS INJURY AS PREREQUISITE FOR REPORTING; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-4-503, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 62A-4-503, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-4-503. Reporting requirements.

(1) [~~Whenever~~] When any person including[~~, but not limited to,~~] persons licensed under [~~the~~] Title 58, Chapter 12, Part 5, Medical Practice Act, or [~~the~~] Title 58, Chapter 31, Nurse Practice Act, has reason to believe that a child has been subjected to incest, molestation, sexual exploitation, sexual abuse, physical abuse, or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in sexual abuse, physical abuse, or neglect, he shall immediately notify the nearest peace officer, law enforcement agency, or office of the division. On receipt of this notice, the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect as defined in Section 76-5-109 is made to the division [~~and the abuse or neglect has caused serious injury~~], the division shall immediately notify the local law enforcement agency.

(2) The notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, if:

(a) the confession was made directly to the clergyman or priest by the perpetrator; and

(b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) [If] (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, he is required to give notification on the basis of that information even though he may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

CHAPTER 148
S. B. No. 14
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

GANG VIOLENCE AND DRUG PREVENTION PROGRAM MATERIALS

By Delpha A. Baird

AN ACT RELATING TO APPROPRIATIONS; APPROPRIATING $19,500 FOR THE DRUG ABUSE RESISTANCE EDUCATION PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriations.

There is appropriated in S. B. 212 $19,500 from the General Fund to the Department of Public Safety for fiscal year 1993–94 for materials for the Drug Abuse Resistance Education (D.A.R.E.) Program administered by the Utah Council for Crime Prevention.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 149
S. B. No. 15
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

OFFICER FRIENDLY PROGRAM

By Delpha A. Baird

AN ACT RELATING TO APPROPRIATIONS; APPROPRIATING $10,000 FOR THE OFFICER FRIENDLY PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriations.

There is appropriated in S. B. 212 $10,000 from the General Fund to the Department of Public Safety for fiscal year 1993-94 for the Officer Friendly Program administered by the Utah Council for Crime Prevention.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 150
S. B. No. 16
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

GANG VIOLENCE AND DRUG PREVENTION PROGRAM TRAINING

By Delpha A. Baird

AN ACT RELATING TO APPROPRIATIONS; APPROPRIATING $20,500 FOR THE DRUG ABUSE RESISTANCE EDUCATION PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriations.

There is appropriated in S. B. 212, $20,500 from the General Fund to the Department of Public Safety for fiscal year 1993–94 for training of personnel for the Drug Abuse Resistance Education (D.A.R.E.) Program administered by the Utah Council for Crime Prevention.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER151
S. B. No. 22
Passed February 22, 1993
Approved March 16, 1993
Effective May 3, 1993

OIL, GAS AND MINING AMENDMENTS

By Alarik Myrin

AN ACT RELATING TO MINES AND MINING; ALLOWING THE DIVISION OF OIL, GAS AND MINING TO ASSESS CIVIL PENALTIES FOR VIOLATIONS OF COAL MINING LAW AND PROVIDING FOR AN INFORMAL REVIEW OF THOSE VIOLATIONS BY THE DIVISION; ALLOWING THE DIVISION TO WAIVE CERTAIN FEES AND LIENS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
40-6-9, AS LAST AMENDED BY CHAPTER 34, LAWS OF UTAH 1992
40-10-20, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986
40-10-28, AS ENACTED BY CHAPTER 145, LAWS OF UTAH 1979
40-10-28.1, AS ENACTED BY CHAPTER 225, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 40-6-9, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1992, is amended to read:

40-6-9. Proceeds from sale of production — Payment of proceeds — Requirements — Proceeding on petition to determine cause of nonpayment — Remedies — Penalties.

(1) (a) The oil and gas proceeds derived from the sale of production from any well producing oil or gas in the state shall be paid to any person legally entitled to the payment of the proceeds not later than 180 days after the first day of the month following the date of the first sale and thereafter not later than 30 days after the end of the calendar month within which payment is received by the payor for production, unless other periods or arrangements are provided for in a valid contract with the person entitled to the proceeds.

(b) The payment shall be made directly to the person entitled to the payment by the payor.

(c) The payment is considered to have been made upon deposit in the United States mail.

(2) Payments shall be remitted to any person entitled to oil and gas proceeds annually for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is $100 or less.

(3) (a) Any delay in determining whether a person is legally entitled to an interest in the oil and gas proceeds does not affect payments to other persons entitled to payment.

(b) (i) If accrued payments cannot be made within the time limits specified in Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual oil and gas proceeds owner to an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form.

(ii) The deposit shall earn interest at the highest rate being offered by that institution for the amount and term of similar demand deposits.

(iii) The escrow agent may commingle money received into escrow from any one lessee or operator, purchaser, or other person legally responsible for payment.

(iv) Payment of principal and accrued interest from the escrow account shall be made by the escrow agent to the person legally entitled to them within 30 days from the date of receipt by the escrow agent of final legal determination of entitlement to the payment.

(v) Applicable escrow fees shall be deducted from the payments.

(4) Any person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing to determine why the proceeds have not been paid.

(5) Upon receipt of the petition, the board shall set the matter for investigation and negotiation by the division within 60 days.

(6) (a) If the matter cannot be resolved by negotiation as of that date, the board may set a hearing within 30 days.

(b) If the board does not set a hearing, any information gathered during the investigation and negotiation shall be given to the petitioner who may then seek a remedy in a court of competent jurisdiction.

(7) (a) If, after a hearing, the board finds the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), the board may order that:

(i) a complete accounting be made; and

(ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for an escrow account interest rate, accruing from the date the payment should have been suspended in accordance with Subsection (3).

(b) If, after a hearing, the board finds the delay of payment is without reasonable justification, the board may:

(i) if the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3):

(A) order a complete accounting;

(B) require the proceeds and accruing interest to remain in the escrow account; and

(C) assess a penalty of up to 25% of the total proceeds and interest in the escrow account; or

(ii) if the proceeds have not been deposited in an interest bearing escrow account in accordance with

Subsection (3), assess a penalty of up to 25% of the total proceeds and interest as determined under Subsection (a).

(c) (i) Upon finding that the delay of payment is without reasonable justification, the board shall set a date not later than 90 days from the hearing for final distribution of the total sum.

(ii) If payment is not made by the required date, the total proceeds, interest, and any penalty as provided in Subsection (b) shall be subject to interest at a rate of 1-1/2% per month until paid.

(d) If, after a hearing, the board finds the delay of payment is [~~without~~] with reasonable justification and the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3), the payor may not be required to make an accounting or payment of appropriately suspended proceeds until the condition which justified suspension has been satisfied.

(8) The circumstances under which the board may find the suspension of payment of proceeds is made with reasonable justification, such that the penalty provisions of Subsections (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:

(a) the payor:

(i) fails to make the payment in good faith reliance upon a title opinion by a licensed Utah attorney objecting to the lack of good and marketable title of record of the person claiming entitlement to payment; and

(ii) furnishes a copy of the relevant portions of the opinion to the person for necessary curative action;

(b) the payor receives information which:

(i) in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;

(ii) has rendered the title unmarketable; or

(iii) may expose the payor to the risk of liability to third parties if the payment is made;

(c) the total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than $100 at the end of any month; or

(d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.

(9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:

(a) suspend and escrow the payments in accordance with Subsection (3); or

(b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

Section 2. Section Amended.

Section 40-10-20, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

40-10-20. Civil penalty for violation of chapter — Informal conference — Public hearing — Contest of violation or amount of penalty — Collection — Criminal penalties — Civil penalty for failure to correct violation.

(1) (a) Any permittee who violates any permit condition or [~~who violates any~~] other provision of this chapter may be assessed a civil penalty by the [~~board, except that if~~] division. If the violation leads to the issuance of a cessation order under Section 40-10-22, the civil penalty shall be assessed. [~~This~~]

(b) (i) The penalty [~~shall~~] may not exceed $5,000 for each violation.

(ii) Each day of a continuing violation may be deemed a separate violation for purposes of the penalty assessments.

(c) In determining the amount of the penalty, consideration shall be given to:

(i) the permittee's history of previous violations at the particular surface coal mining operation;

(ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(iii) whether the permittee was negligent; and

(iv) the demonstrated good faith of the permittee [~~charged~~] in attempting to achieve rapid compliance after notification of the violation.

(2) (a) Within 30 days after the issuance of a notice or order charging that a violation of this chapter has occurred, the division shall inform the permittee of the proposed assessment.

(b) The person charged with the penalty shall then have 30 days to pay the proposed assessment in full, or request an informal conference before the division.

(c) The informal conference held by the division may address either the amount of the proposed assessment or the fact of the violation, or both.

(d) If the permittee who requested the informal conference and participated in the proceedings is not in agreement with the results of the informal conference, the permittee may, within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board.

(e) (i) Prior to any review of the proposed assessment or the fact of a violation by the board, and within 30 days of receipt of the decision made by the division in the informal conference, the permittee shall forward to the division the amount of the proposed assessment for placement in an escrow account.

(ii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall within 30 days remit the appropriate amount to the operator with interest accumulated.

[~~(2)~~] (3) (a) A civil penalty [~~shall be~~] assessed by the [~~board~~] division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing. [~~Where the~~]

(b) If a public hearing [~~has been~~] is held, the board shall make findings of fact[~~,~~] and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) When appropriate, the board shall consolidate [~~these~~] the hearings with other proceedings under Section 40-10-22.

(d) Any hearing under this section shall be of record and shall be conducted pursuant to board rules [~~and regulations~~] governing the proceedings. [~~Where~~]

(e) If the person charged with a violation fails to avail himself of the opportunity for a public hearing, [~~a civil penalty shall be assessed by the board after the board has determined that a violation did occur and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid~~] a civil penalty shall be assessed by the division after the division:

(i) has determined:

(A) that a violation did occur; and

(B) the amount of the penalty which is warranted; and

(ii) has issued an order requiring that the penalty be paid.

[~~(3) Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the board shall inform the operator within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the board for placement in an escrow account. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the board shall within 30 days remit the appropriate amount to the person, with interest accumulated. Failure to forward the money to the board within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.~~]

(4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.

(5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order issued under Section 40-10-22 or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection [~~(2)~~] (3), shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or both.

(6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection [~~(2)~~] (3), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).

(7) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or both.

(8) (a) Any operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-10-22 (1) within the period permitted for its correction [~~(which period shall~~] shall be assessed a civil penalty of not less than $750 for each day during which the failure or violation continues.

(b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-10-22(1) may not end until:

(i) the entry of a final order by the board, in the case of any review proceedings initiated by the operator in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements[~~,~~]; or [~~until~~]

(ii) the entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation[~~), shall be assessed a civil penalty of not less than $750 for each day during which the failure or violation continues~~].

Section 3. Section Amended.

Section 40-10-28, Utah Code Annotated 1953, as enacted by Chapter 145, Laws of Utah 1979, is amended to read:

40-10-28. Recovery of reclamation costs — Lien against reclaimed land.

(1) All reclamation costs of each project shall be recovered to the extent possible, taking into consideration the objectives of the project and the criteria under which the project was selected for reclamation work, in accordance with the following:

(a) All possible reclamation costs shall be recovered at the time of first sale of land following reclamation as follows:

(i) Whenever reclaimed land is sold at a value higher than that at which the unreclaimed land was appraised immediately prior to reclamation, the difference between the pre and post reclamation values shall be payable to the fund to mitigate or offset the cost of the reclamation program[~~; and~~].

(ii) When land is to be sold to a state or local government for public purposes, the amount of the sale price may be less than the market value after reclamation but may not be less than the actual costs of reclamation.

(b)(i) Special charges for use of land may be levied, including recreation fees, leases, livestock grazing fees, or [~~special lawful uses~~] other land use fees. These fees may be waived by the [~~board~~] division when deemed to be to the public benefit.

(ii) These user fees, however, shall be charged to all users of the reclaimed lands [~~which~~] if the uses result in financial or personal benefits to persons, corporations, or profit-making organizations.

(iii) All fees collected, less operating and maintenance expenses, shall be [~~redeposited~~] deposited in the fund.

(2) (a) The division shall place a lien against reclaimed land [~~at~~], the market value of which has increased as a result of the reclamation work, except where the surface owner neither consented to [~~not~~] nor participated in nor exercised control over the mining operation which necessitated the reclamation work.

(b) The [~~board~~] division may waive the requirement of a lien where land is owned by a state, local government, or municipality or when owned and operated for a charitable public purpose by a non-profit charitable organization.

(c) The amount of the lien shall consist of the monies expended for the reclamation work but shall not exceed the resulting increase in the market value of the reclaimed land as determined by an independent appraiser.

(d) A written statement of monies expended for the reclamation work, together with a notarized appraisal of an independent appraiser of the market value of the land before and after the reclamation work, shall within six months after completion of the reclamation work, be filed in the office of the county recorder of the county in which the land lies.

Section 4. Section Amended.

Section 40-10-28.1, Utah Code Annotated 1953, as enacted by Chapter 225, Laws of Utah 1991, is amended to read:

40-10-28.1. Certification of completion of coal reclamation.

(1) The governor may certify to the secretary of the United States Department of Interior that all of the priorities stated in Subsection 40-10-25 (2) for the eligible lands and waters specified in Subsection 40-10-25 (3) have been achieved.

(2) (a) If the secretary concurs with the certification made by the governor, Subsection 40-10-25 (3) does not apply for the purpose of determining the eligibility of lands and waters for annual grants, and, except as provided in Subsection (2)(b), eligible lands, waters, and facilities are those:

(i) which were mined or processed for minerals or which were affected by mineral mining or processing;

(ii) abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(iii) for which there is no continuing reclamation responsibility under state or other federal laws.

(b) In determining the eligibility of federal lands, water, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in Subsection (2)(a), the applicable dates shall be August 28, 1974, and November 26, 1980, respectively.

(3) Expenditures of monies for lands, waters, and facilities referred to in Subsection (2) shall reflect the following objectives and priorities in the order stated, instead of the priorities set forth in Subsection 40-10-25 (2):

(a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices;

(b) the protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices; and

(c) the restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(4) Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 et seq., or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., are not eligible for expenditures from the fund under this section.

(5) The following projects may be undertaken if they relate to the priorities stated in Subsection (3):

(a) reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply or roads, or other facilities serving the public that are adversely affected by mineral mining and processing practices; or

(b) the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(6) Notwithstanding Subsection (5), if the secretary concurs in the certification referenced in Subsection (1) and if the governor determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in [~~a state~~] an area impacted by coal or minerals development and the secretary concurs in this need, then the division may use annual grants made available under Subsection 40-10-25(1) to carry out these activities or construction.

(7) Sections 40-10-27 and 40-10-28, which govern the reclamation of abandoned coal mines, shall also apply to the reclamation of abandoned mineral operations.

CHAPTER 152
S. B. No. 29
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

SANCTIONS FOR DENIAL OF CHILD VISITATION

By Delpha A. Baird

AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING DEFINITIONS; PROVIDING VISITATION RIGHTS OF NONCUSTODIAL PARENT, GRANDPARENTS, AND OTHER IMMEDIATE FAMILY MEMBERS; CREATING THE PILOT PROGRAM IN THE FIRST JUDICIAL DISTRICT FOR MANDATORY SANCTIONS FOR SUBSTANTIAL NONCOMPLIANCE WITH THE VISITATION ORDER; PROVIDING CORRESPONDING REMEDIES TO FREQUENCY OF ENFORCEMENT ORDERS FILED; PROVIDING FOR FUNDING UNDER THE CHILDREN'S LEGAL DEFENSE ACCOUNT; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
30-3-5, AS LAST AMENDED BY CHAPTER 257, LAWS OF UTAH 1991
30-5-2, AS ENACTED BY CHAPTER 123, LAWS OF UTAH 1977
63-63A-8, AS ENACTED BY CHAPTER 253, LAWS OF UTAH 1992
78-32-12.1, AS LAST AMENDED BY CHAPTER 253, LAWS OF UTAH 1992

ENACTS:
78-32-12.2, UTAH CODE ANNOTATED 1953
78-32-12.3, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 30-3-5, Utah Code Annotated 1953, as last amended by Chapter 257, Laws of Utah 1991, is amended to read:

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification — Meritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other [~~relatives~~] members of the immediate family, the court shall consider the [~~welfare~~] best interest of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) [~~When~~] If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court [~~may~~] shall order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(8) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent,

or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

Section 2. Section Amended.

Section 30-5-2, Utah Code Annotated 1953, as enacted by Chapter 123, Laws of Utah 1977, is amended to read:

30-5-2. Visitation rights of grandparents and other immediate family members.

(1) The district court may grant grandparents and other immediate family members reasonable rights of visitation [~~to grandchildren,~~] if it is in the best interest of the [~~grandchildren~~] children.

(2) Grandparents and other immediate family members may petition the court as provided in Section 78-32-12.2 to remedy a parent's wrongful noncompliance with a visitation order.

Section 3. Section Amended.

Section 63-63a-8, Utah Code Annotated 1953, as enacted by Chapter 253, Laws of Utah 1992, is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, Mandatory Educational Course on Children's Needs for Divorcing Parents - Pilot Program, and Sections 30-3-15.3, 30-3-18, and 30-3-19 through 30-3-31, Mediation Pilot Program - Child Custody or Visitation;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-44.5, 78-3a-63, 78-3a-65, 78-11-6, and 78-7-9, and termination of parental rights as provided in Sections 78-3a-39, 78-3a-42, 78-3a-47, and 78-3a-101 through 78-3a-115. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-63; [~~and~~]

(c) requiring community service for violation of visitation orders or failure to pay child support as provided in Section 78-32-12.1; and

(d) enforcing and administering the pilot program as provided in Section 78-32-12.3 establishing the sanctions for substantial noncompliance with visitation orders as provided in Section 78-32-12.2.

(4) The following withheld fees shall be allocated to the Children's Legal Defense Account:

(a) an additional fee of $10 shall be withheld on every marriage license issued in the state of Utah as provided in Section 21-2-2; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Section (4) from the General Fund to the Children's Legal Defense Account.

Section 4. Section Amended.

Section 78-32-12.1, Utah Code Annotated 1953, as last amended by Chapter 253, Laws of Utah 1992, is amended to read:

78-32-12.1. Community service for violation of visitation order or failure to pay child support.

(1) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of visitation ordered in a decree of divorce, the court [~~may~~] shall order the parent to:

(a) perform a minimum of 10 hours of community service; and

(b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

(2) If a custodial parent is ordered to perform community service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted visitation by the court to provide child care during the time the custodial parent is complying with community service or education in order to recompense him for visitation time wrongfully denied by the custodial parent under the divorce decree.

(3) If a noncustodial parent is ordered to perform community service or undergo court-ordered education, the court shall attempt to schedule the community service or education at times that will not interfere with the noncustodial parent's visitation with the child.

(4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

(5) If a court finds by a preponderance of the evidence that an obligor, as defined in Section 78-45-2, has refused to pay child support as ordered by a court in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act, the court [~~may~~] shall order the obligor to:

(a) perform a minimum of 10 hours of community service; and

(b) participate in workshops, classes, or individual counseling to educate the obligor about the impor-

tance of complying with the court order and providing the children with a regular and stable source of support.

(6) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.

(7) If a court orders an obligor to perform community service or undergo court-ordered education, the court shall attempt to schedule the community service or education at times that will not interfere with the obligor's visitation with the child.

(8) The [penalties] sanctions that the court [may] shall impose under this section do not prevent the court from imposing other [penalties] sanctions as provided [by] in Section 78-32-12.2 or other provisions in this chapter, or prevent any person from bringing a cause of action allowed under state or federal law.

(9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Section 5. Section Enacted.

Section 78-32-12.2, Utah Code Annotated 1953, is enacted to read:

78-32-12.2. Definitions — Sanctions.

(1) For purposes of this section:

(a) "Make up visitation" means visitation which is:

(i) of the same type and duration of visitation as that which was denied, including visitation during weekdays, weekends, holidays, and during extended visitation periods;

(ii) to be made up within one year after the court has entered its order of make up visitation; and

(iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

(b) "Petition" means a petition brought by a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a visitation order in a decree of divorce or a subsequent visitation enforcement order which may be brought at different stages in the alleged pattern of noncompliance:

(i) a first petition is a petition to enforce an original order of visitation or a petition filed after three years from the last visitation enforcement order;

(ii) a second petition is a petition filed within three years following entry of the first visitation enforcement order; and

(iii) a third petition is a petition filed within three years following entry of the second visitation enforcement order.

(c) "Substantial noncompliance" means conduct which:

(i) substantially interferes with a court ordered visitation schedule; or

(ii) interferes with parent's right to frequent, meaningful, and continuing access with his child and which substantially impairs that parent-child relationship.

(d) "Visitation enforcement order" means an order to enforce compliance with an original visitation order through the use of sanctions.

(2) Upon a first petition, the court shall order:

(a) if the first petition is uncontested, by default:

(i) a permanent injunction enjoining the noncompliance with the court's visitation order;

(ii) make up visitation for the aggrieved parent and child; and

(iii) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

(b) if the first petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation order.

(3) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up visitation for the aggrieved parent and child;

(c) a minimum of 10 hours of community service as provided in Subsection 78-32-12.1 (1) (a); and

(d) a permanent injunction enjoining the noncompliance with the court's visitation order.

(4) Upon a finding of substantial noncompliance, the court may order:

(a) mediation with the requirement to report back to the court on the results of mediation within 30 days;

(b) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

(c) a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10.

(5) Upon a second petition, the court shall order:

(a) if the second petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up visitation to be provided for the aggrieved parent and child;

(iii) a minimum of 10 hours of community service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the second petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation orders.

(6) Upon a finding of a substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up visitation to be provided for the aggrieved party and child at twice the amount of time previously wrongfully denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(c) a minimum of 20 hours of community service as provided in Subsection 78-32-12.1(1)(a);

(d) a contempt order which imposes a fine or jail sentence as provided in Section 78-32-10; and

(e) the violator to post bond or security in the amount determined by the court to insure future compliance.

(7) The court may impose additional sanctions which may include any additional remedies, terms, or conditions which are consistent with the court's previous order.

(8) Upon a third petition, the court shall order:

(a) if the third petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up visitation to be provided for the aggrieved party and child at twice the amount of time previously denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(iii) a minimum of ten hours of community service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the third petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the visitation orders.

(9) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) a finding that there has been a prima facie showing of a substantial change of circumstances which is against the best interest of the child for purposes of modification of custody and order a temporary change of custody for a duration to be determined by the court; and

(c) a finding that there has been a probable cause showing of custodial interference as provided in Section 76-5-303 and order the case to be referred to the county attorney for prosecution.

(10) The court may decline to issue an order with the alternative sanctions as provided in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the court provides findings on the record explaining why a sanction or sanctions were not imposed.

(11) The noncustodial parent shall give the court and the custodial parent written notice of his intention to exercise the make up visitation at least seven days before the proposed visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on a holiday or an extended visitation period.

(12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is pending in the courts on the allegations.

(13) The filing of any petition under this section which is found to be without merit and not asserted or defended against in good faith shall be subject to sanctions as determined by the court.

(14) This section shall be implemented only as a pilot program in the first judicial district as provided in Section 78-32-12.3.

Section 6. Section Enacted.

Section 78-32-12.3, Utah Code Annotated 1953, is enacted to read:

78-32-12.3. Pilot program — Purpose — Evaluation of pilot program — Exceptions.

(1) There is established a Mandatory Sanctions for Substantial Noncompliance with Visitation Orders Pilot Program in the first judicial district to be administered by the Administrative Office of the Courts beginning July 1, 1993, to July 1, 1994. The mandatory sanctions program is designed to provide a petitioner with a speedy and effective remedy for substantial noncompliance to visitation orders as provided in Section 78-32-12.2.

(2) The Judicial Council shall adopt rules to implement and administer this pilot program.

(3) As used in this section, a petitioner who files a petition under Section 78-32-12.2 in the first judicial district as defined in Section 78-1-2.1, where the pilot program is administered, is governed by this section.

(4) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee on the date of implementation of this section and on the results beginning October 1993 and April 1994. The criteria used to determine the results shall include a survey of the:

(a) petitioners and respondents in the first judicial district who participated in the pilot program and the remedies they recovered for substantial noncompliance with a visitation order or orders;

(b) participants in the pilot program, including petitioners, respondents, practitioners, court commissioners, and judges on the issues of noncompliance with visitation orders;

(c) petitioners and respondents in the second judicial district who did not participate in the pilot program and the remedies they recovered for substantial noncompliance with a visitation order or orders; and

(d) practitioners, court commissioners, and judges in the second judicial district on the issues of noncompliance with visitation orders.

(5) The court shall suspend any proceedings under Section 78-32-12.2 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is pending in the courts on the allegations.

CHAPTER 153
S. B. No. 47
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

DAM SAFETY AMENDMENTS

By Leonard M. Blackham

AN ACT RELATING TO DAM SAFETY; EXEMPTING CERTAIN DAMS FROM DAM SAFETY STANDARDS; REQUIRING THE STATE ENGINEER TO MAKE A REPORT ON DAM SAFETY; ALLOWING MONEYS IN THE WATER RESOURCES CONSTRUCTION FUND TO BE USED TO PROVIDE LOANS AND GRANTS TO DAM OWNERS FOR DAM SAFETY STUDIES; AND APPROPRIATING $450,000 TO THE DIVISION OF WATER RIGHTS AND WATER RESOURCES CONSTRUCTION FUND FOR DAM SAFETY STUDIES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
73-5A-502, AS ENACTED BY CHAPTER 319, LAWS OF UTAH 1990
73-10-8, AS LAST AMENDED BY CHAPTER 215, LAWS OF UTAH 1987

ENACTS:
73-5A-106, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 73-5a-106, Utah Code Annotated 1953, is enacted to read:

73-5a-106. Dams classified according to hazard, size, and use.

(1) Dams shall be classified according to hazard, size, and use.

(2) Hazard classifications are as follows:

(a) high hazard - those dams which, if they fail, have a high probability of causing loss of human life or extensive economic loss, including damage to critical public utilities;

(b) moderate hazard - those dams which, if they fail, have a low probability of causing loss of human life, but would cause appreciable property damage, including damage to public utilities; and

(c) low hazard - those dams which, if they fail, would cause minimal threat to human life, and economic losses would be minor or limited to damage sustained by the owner of the structure.

(3) Size classifications are as follows:

(a) minor - dams with a hydraulic height of 10 feet or less and a storage capacity of 20 acre-feet or less;

(b) small - dams which do not meet the classification of a minor dam and have:

(i) a hydraulic height of 10 feet to 50 feet and a storage capacity of less than 20 acre-feet; or

(ii) a hydraulic height less than 25 feet and a storage capacity of less than 1,000 acre-feet;

(c) large - dams with:

(i) a hydraulic height greater than 100 feet or a storage capacity of greater than 50,000 acre-feet; or

(ii) a hydraulic height in excess of 50 feet and a storage capacity in excess of 1,000 acre-feet; and

(d) intermediate - dams which do not meet the criteria for a large dam, small dam, or minor dam.

(4) Use classifications are as follows:

(a) water storage - dams which impound water for prolonged periods, including those built for irrigation, power generation, water supply, aquatic culture, and recreation;

(b) flood control - dams constructed to operate only during significant runoff events and which impound water for a small percentage of time, including those built for flood control or sediment control and debris basins;

(c) tailings - dams in which a large component of the material impounded consists of saturated solids; and

(d) other - dams which impound a minimal amount of water or where the head behind the dam is minimal, including stock ponds, wash water ponds, recirculated process water ponds, regulating reservoirs, and diversion dams.

Section 2. Section Amended.

Section 73-5a-502, Utah Code Annotated 1953, as enacted by Chapter 319, Laws of Utah 1990, is amended to read:

73-5a-502. State engineer to set minimum standards for existing dams — Exceptions — Report to Legislature.

(1) The state engineer shall establish minimum standards for existing dams by rule. The standards for existing dams may differ from the design criteria established for new construction.

[~~(2) (a) In implementing this section, the state engineer will develop a priority list giving appropriate consideration to:~~]

[~~(i) the potential for loss of life;~~]

[~~(ii) possible property damage;~~ and]

[~~(iii) the size of the dams.~~]

[~~(b) Upon completion of the listing, the state engineer will, beginning in 1991:~~]

[~~(i) select the 25 top priority dams on the list each year;~~ and]

[~~(ii) undertake preliminary investigations to determine:~~]

[~~(A) in what areas the dams and appurtenant facilities do not comply with the minimum standards set by the state engineer;~~ and]

[~~(B) what information is lacking to make an adequate determination.~~]

(2) (a) No minimum standards shall be established for existing dams which are:

(i) low hazard dams; or

(ii) moderate hazard dams within the minor or small size classifications.

(b) No seismic standards shall be established for existing high hazard or moderate hazard dams within the flood control use classification.

(3) (a) In implementing this section, the state engineer will develop a priority list of dams. The list will be determined by calculating the relative anticipated breach flows in the event of a dam failure. The dams will be ranked from the largest breach flow to the smallest for all high hazard dams, followed by all eligible moderate hazard dams ranked from highest breach flow to the lowest.

(b) The state engineer shall investigate annually 25 dams on the priority list in order of their ranking to determine in what areas they are deficient or do not meet minimum standards.

(c) Once a determination is made, the owner will be notified that he will be required to undertake investigations to determine requirements necessary to bring the dam into compliance with minimum standards.

(d) Once the owner has been informed of the deficiencies of the dam, he will be given 90 days to respond, in writing, as to what steps he is taking to investigate the deficiencies and the time required to complete the investigations.

(e) The state engineer will review the proposal, and if it appears reasonable, will approve it.

(4) By October, 1995, the state engineer shall submit a report to the Energy, Natural Resources, and Agriculture Interim Committee indicating to what extent the dams for which investigations have been completed meet the hydrologic and seismic standards established in rule. The report shall:

(a) state what percent of the probable maximum flood the reservoir can pass and what seismic loadings the structures can withstand; and

(b) include estimated costs to upgrade the structures to minimum standards.

(5) The state engineer will not require any upgrading of a dam or its appurtenant structures to meet the minimum standards adopted pursuant to this section for spillway capacity and seismic design prior to the legislative review of the report.

Section 3. Section Amended.

Section 73-10-8, Utah Code Annotated 1953, as last amended by Chapter 215, Laws of Utah 1987, is amended to read:

73-10-8. Water Resources Construction Fund - Creation and contents of fund — Use — Investigation account created — Interest on moneys resulting from remarketing loans — Retainage escrow.

(1) There is created [~~a fund to be known as~~] the Water Resources Construction Fund, which [shall consist] consists of [all moneys which may be]:

(a) money appropriated [~~thereto by the Legislature,~~] or [~~which may be~~] otherwise made available to it by the Legislature[~~, and such charges as may become a part thereof under the terms of the preceding section~~];

(b) money from the sale or management of the 500,000 acres of land selected for the establishment of reservoirs under Section 12 of the Utah Enabling Act;

(c) charges assessed against water and power users pursuant to Section 73-10-6; and

(d) interest accrued pursuant to Subsection (5). [~~This fund shall be a continuing fund and shall not revert to the General Fund of the state at the end of any fiscal year.~~]

(2) The board[~~, in addition to the amount allocated to a project to cover the actual cost of construction, may allocate to the project constructed by it, under contract or otherwise, such amounts as may be determined by it for investigating, engineering, inspection, and other expenses, and~~] may authorize the use of moneys in the fund for the following purposes:

(a) to develop water conservation projects, including paying the costs of construction, engineering, investigation, inspection, and other related expenses;

(b) to provide loans to dam owners to conduct dam safety studies and evaluations; or

(c) as otherwise provided by law.

(3) The board may provide for the repayment of the [~~same~~] costs of investigation, engineering, and inspection out of the first moneys [~~repayable from the project~~] to be paid under [~~the~~] a contract for [~~its~~] the construction[~~, and such~~] of a water project. Those moneys [~~so~~] repaid shall be [~~accounted for~~] deposited into a subaccount within the Water Resources Construction Fund known as the Investigation Account, to be used by the board for the purpose of making investigations for the development and use of the water resources of the state.

(4) Contributions of money, property, or equipment may be received from any [~~county, municipality~~] political subdivision of the state, federal agency, [~~water conservation district, metropolitan water district, conservancy district,~~] water users' association, person, or corporation for use in making investigations, constructing projects, or otherwise carrying out the purposes of this section.

[~~(2)~~] (5) All moneys deposited into the Water Resources Construction Fund, as a result of the remarketing of loans as prescribed by Section 63-65-5, shall be invested by the state treasurer with interest accruing to the Water Resources Construction Fund.

[~~(3)~~] (6) (a) If any payment on a contract with a private contractor [~~for construction of projects to be~~

~~pai.-for~~] to construct a project funded by the Water Resources Construction Fund is retained or withheld, it shall be placed in an interest bearing account [~~and the~~]. The interest shall accrue for the benefit of the contractor and subcontractors [~~to be paid~~]. The payment with interest shall be made after the project is completed and accepted by the board.

(b) It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(7) Loans to dam owners for dam safety studies shall be secured by the taking of a security interest in water rights, the dam, or related facilities.

Section 4. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 1992-93:

(a) $150,000 to the Division of Water Rights for a study to develop site-specific meteorologic and hydrologic procedures for determining probable maximum floods; and

(b) $300,000 to the Water Resources Construction Fund for loans and grants to dam owners for dam safety studies as provided by Subsection (2).

(2) The Board of Water Resources may provide grants from the $300,000 appropriated to the Water Resources Construction Fund under Subsection (1) as follows:

(a) Only nonprofit mutual irrigation companies or water users associations are eligible to receive grants.

(b) The grants shall be for dam safety studies required by the state engineer pursuant to Section 73-5a-502.

(c) The amount of any grant shall be limited to up to 50% of the costs of dam safety studies for any dam and may not exceed $25,000.

(3) The money appropriated in Subsection (1) is nonlapsing.

CHAPTER 154
S. B. No. 71
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

INDUSTRIAL LOAN CORPORATION AMENDMENTS

By Lane Beattie

AN ACT RELATING TO FINANCIAL INSTITUTIONS; AMENDING LOAN AND CREDIT LIMIT REQUIREMENTS FOR THRIFT INSTITUTIONS; PROVIDING RULEMAKING POWER; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
7-8-5, AS LAST AMENDED BY CHAPTER 133, LAWS OF UTAH 1991

ENACTS:
7-8-20, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 7-8-5, Utah Code Annotated 1953, as last amended by Chapter 133, Laws of Utah 1991, is amended to read:

7-8-5. Acquisition of own stock restricted — Capital and insurance requirements.

[~~(1) The total loans and extensions of credit by any industrial loan corporation to any person outstanding at one time may not exceed 15% of that industrial loan corporation's total capital.~~]

[~~(2) No~~] (1) An industrial loan corporation may not accept as collateral or be a purchaser of shares of its own capital stock, unless the taking of the collateral or purchase of the shares is necessary to prevent loss upon a debt previously contracted in good faith. All shares of [~~the~~] stock acquired under this subsection by the industrial loan corporation through any purchase, foreclosure, judgment, or otherwise shall be sold within 12 months from the date of [~~its~~] acquisition. The par value of all the shares held after acceptance or purchase may not exceed 10% of the capital and surplus of [~~such~~] the industrial loan corporation.

[~~(3)~~] (2) Each industrial loan corporation whose deposits are insured by a federal deposit insurance agency shall maintain the minimum amount of capital [~~as is~~] required by the relevant federal regulatory agency. The commissioner may require a greater amount of capital if he determines that it is necessary to protect the interests of the depositors and other customers of the industrial loan corporation and the public.

[~~(4)~~] (3) An industrial loan corporation may not accept or hold deposits, unless its accounts are insured by a federal deposit insurance agency.

Section 2. Section Enacted.

Section 7-8-20, Utah Code Annotated 1953, is enacted to read:

7-8-20. Limitations on loans to one borrower — Exceptions — Rules.

(1) Except as provided in this section, the total loans and extensions of credit by any industrial loan corporation to any person outstanding at any one time may not exceed 15% of the industrial loan corporation's total capital.

(2) Subsection (1) does not apply to an extension of credit that is subject to, or expressly exempted from, a federal statute or federal regulation limiting the amount of total loans and credit that may be extended to any person or group of persons.

(3) The commissioner may by rule:

(a) exempt from Subsection (1) any class of loans or class of extensions of credit that are adequately secured or are not otherwise a risk to the safe and sound operation of an industrial loan corporation;

(b) define terms and phrases necessary to interpret and implement this section;

(c) adopt standards for aggregating or segregating loans to the same or different persons;

(d) describe records required to be maintained;

(e) require specific actions to be taken by an institution's board of directors or executive officers; and

(f) prescribe other actions necessary to interpret and implement this section.

CHAPTER 155
S. B. No. 72
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

CONSTRUCTION TRADES LICENSING AMENDMENTS

By Eldon A. Money

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING; CREATING THE LICENSE CLASSIFICATION OF PLUMBING FIXTURE REPAIRMAN; PROVIDING DEFINITIONS; ADOPTING QUALIFICATIONS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATING CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-55-2, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-4, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-5, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-6, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 58-55-2, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-2. Definitions.

The definitions in Section 58-1-2 apply to this chapter. As used in this chapter:

(1) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under approved supervision of a master electrician or a journeyman electrician.

(2) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

(3) "Approved supervision" means the immediate supervision of apprentices by qualified licensed electricians or plumbers as a part of a planned program of training.

(4) "Board" means the Contractors Licensing Board, Electrician Licensing Board, or Plumbers Licensing Board created in Section 58-55-3, as its use is applied in context in this chapter.

(5) "Construction trade" means any trade or occupation involving construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property.

(6) "Contractor" means any person, firm, partnership, corporation, association, or other organization or any combination of them who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(a) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

(b) any person who represents himself to be a contractor by advertising or any other means;

(c) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(d) any person engaged in any construction trade for which licensure is required under this chapter; or

(e) a construction manager who performs management and counseling services on a construction project for a fee.

(7)(a) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

[~~(a)~~] (b) "Electrical trade" does not include such activities as:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

(iii) work commonly done by unskilled labor or any installations under the exclusive control of electrical utilities.

[~~(b)~~] (c) For purposes of Subsection [~~(a)~~] (b):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) no shop may so employ unlicensed persons in excess of the five-to-one ratio permitted by this subsection.

(8) "Employee" means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Industrial Commission of Utah.

(9) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(10) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an appli-

cant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(11) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(12) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any or all of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works. However, a general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(13) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with applicable standards.

(14) "Individual" means a natural person.

(15) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(16) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(17) (a) "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

(b) "Master residential electrician" means a person licensed under this chapter as a master residential electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

(18) "Monetary limit on the combined amount of work which a licensee may undertake" means the maximum value of work in process which a licensee may undertake at any one time, while engaged in any work requiring licensure under this chapter.

(19) "Percentage of completion on a contract" is the percentage obtained by dividing costs to date by total estimated costs and multiplying by 100. Unless otherwise specified by rule, specific application of this definition shall be based upon the "cost-to-cost method" provided in the 1990 edition of the "Audit and Accounting Guide for Construction Contractors[,]," Appendix D, published by the American Institute of Certified Public Accountants. The division may, upon request or upon its own action, establish an alternate generally recognized method of calculation to determine percentage of completion, if the method is appropriate to the licensee's or applicant's accounting procedures.

(20) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the water supply, discharge of liquid and water carried waste, or the building drainage system within the walls of the building. It includes that work pertaining to the water supply, distribution pipes, fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

(21) "Ratio of apprentices" means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work. All on-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

(22) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor quali-

fied by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multi-family residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical, and mechanical, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(23) "Residential apprentice plumber" means a person licensed under this chapter as a residential apprentice plumber who is learning the residential plumbing trade while working on residential buildings under the approved supervision of a residential journeyman plumber or a journeyman plumber.

(24) "Residential building," as it relates to the license classifications of residential apprentice plumber and residential journeyman plumber, means a single or multiple family dwelling of up to four units.

[~~(23)~~] (25) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(26) "Residential journeyman plumber" means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

[~~(24)~~] (27) "Residential project," as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

[~~(25)~~] (28) "Residential trainee electrician" means a person licensed under this chapter as a residential trainee electrician who is learning the residential electrician trade under approved supervision of a master electrician, journeyman electrician, or a residential journeyman electrician.

[~~(26)~~] (29) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

[~~(27)~~] (30) "Wages" means all amounts due an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

[~~(28)~~] (31) "Work in process" means all unfinished work under verbal or written contract, whether in or out of Utah, regardless of whether licensure is required under this chapter, for which costs have accrued or been realized. The value of unfinished work on a contract shall be determined by expressing the current percentage of completion as a decimal fraction, subtracting it from 1.00 and multiplying the difference by the total dollar amount of the contract.

Section 2. Section Amended.

Section 58-55-4, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-4. License classifications.

(1) The division shall issue licenses under this chapter to qualified persons in the following classifications:

(a) general engineering contractor;

(b) general building contractor;

(c) residential and small commercial contractor;

(d) specialty contractor;

(e) journeyman plumber;

(f) apprentice plumber;

(g) residential journeyman plumber;

(h) residential apprentice plumber;

[~~(g)~~] (i) master electrician;

[~~(h)~~] (j) master residential electrician;

[~~(i)~~] (k) journeyman electrician;

[~~(j)~~] (l) residential journeyman electrician;

[~~(k)~~] (m) residential trainee electrician; and

[~~(l)~~] (n) apprentice electrician.

(2) An applicant may apply for a license in one or more classification or specialty contractor subclassification. A license shall be granted in each classification or subclassification for which the applicant qualifies. A separate application and fee must be submitted for each license classification or subclassification.

Section 3. Section Amended.

Section 58-55-5, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-5. Qualifications for licensure — Expiration of licenses — Renewal.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under Section 63-38-3;

(c) (i) pass an examination approved by the division in collaboration with the board, except for the classifications of apprentice plumber, residential apprentice plumber, apprentice electrician, and residential trainee electrician for whom no examination is required; or

(ii) the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility;

(ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; and

(iii) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license; or

(iv) be a journeyman plumber or residential journeyman plumber if an applicant for a plumbing contractor's license.

(2) After approval of an applicant for a contractor's license by the board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule; and

(c) proof of registration with the Utah Department of Commerce, Division of Corporations and Commercial Code, Utah Department of Employment Security, the State Tax Commission, and the Internal Revenue Service as required by applicable law.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) A journeyman plumber applicant shall produce:

(i) satisfactory evidence of successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber and in accordance with a planned program of training approved by the division; or

(ii) satisfactory evidence of at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board.

(b) A residential journeyman plumber shall produce satisfactory evidence of completion of:

(i) the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed journeyman plumber in accordance with a planned program of training approved by the division; or

(ii) at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work.

[~~(b)~~] (c) A master electrician applicant shall produce satisfactory evidence that he either:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) is a graduate of an electrical trade school, having received a certificate of completion following successful completion of a course of study approved by the division, and has four years of practical experience as a journeyman electrician;

(iv) has at least eight years of practical experience under the supervision of a licensed journeyman or master electrician;

(v) meets the qualifications determined by the division and board to be equivalent to these qualifications; or

(vi) a master residential electrician applicant shall produce satisfactory evidence that he has at least two years of practical experience as a residential journeyman electrician.

[~~(c)~~] (d) A journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has six years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master or journeyman electrician; or

(iii) meets the qualifications determined by the division and board to be equivalent to these qualifications.

[~~(d)~~] (e) A residential journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed two years of training in an electrical training program approved by the division; or

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, or residential journeyman electrician.

[~~(e)~~] (f) The conduct of licensed apprentice electricians, residential trainee electricians, and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician or residential trainee electrician shall be under the immediate supervision of a licensed master, journeyman, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, or residential journeyman electrician may have under his immediate supervision on a residential project up to three licensed apprentice or residential trainee electricians.

(iii) A licensed master or journeyman electrician may have under his immediate supervision on nonresidential projects only one licensed apprentice electrician.

(4) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(5) At the time of renewal the licensee shall show satisfactory evidence of continuing financial responsibility as required under Section 58-55-8.

(6) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with the provisions of Section 58-1-14.

Section 4. Section Amended.

Section 58-55-6, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-6. License required — Unlawful activity — Penalty — Exceptions from licensure.

(1) Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, must apply for and be licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under this section. The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a construction trade or as a contractor within the state. The state or any political subdivision of the state shall not require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensed contractor to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies or the payment of any fee for such license, registration, or certification established as a condition to do business in that local jurisdiction.

(2) It is unlawful for any person:

(a) not licensed or excepted from licensure under this chapter to engage in a construction trade, to act as a contractor, to represent himself to be engaged in a construction trade, or to be acting as a contractor in a construction trade requiring licensure;

(b) licensed under this chapter to act in a construction trade beyond the scope of the license held;

(c) to hire or employ in any manner, other than an employee for wages a person who is not required to be licensed under this chapter or any other person to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure, unless that person is licensed under this chapter;

(d) to apply for or obtain a building permit either for himself or another when not licensed or excepted from licensure as a contractor under this chapter;

(e) to issue a building permit to any person for whom there is no evidence of a current license or exception from licensure as a contractor under this chapter;

(f) to apply for or obtain a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(g) to fail to obtain a building permit when required by law or rule;

(h) to submit a bid for any work for which a license is required under this chapter by a person not licensed or excepted from licensure as a contractor under this chapter;

(i) as an applicant or licensee to willfully or deliberately misrepresent or omit a material fact in connection with an application to obtain or renew a license under this chapter;

(j) licensed under this chapter to allow his license to be used by another except as provided by statute or rule;

(k) licensed under this chapter to do business under a name other than that set forth upon the license;

(l) licensed as a contractor, to exceed his monetary limit as defined by statute or rule;

(m) licensed as a journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, to fail to directly supervise an apprentice under his super-

vision or to exceed the number of apprentices he may have under his supervision;

(n) licensed as a contractor or representing himself as a contractor to receive any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and thereafter to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(o) licensed under this chapter to willfully or deliberately disregard or violate:

(i) the building or construction laws of the state or any political subdivision;

(ii) the safety and labor laws applicable to a project;

(iii) any provision of the health laws applicable to a project;

(iv) the worker's compensation insurance laws of the state applicable to a project;

(v) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, social security taxes, or other required withholdings; or

(vi) reporting, notification, and filing laws of this state or the federal government; or

(p) to aid or abet any person in evading the provisions of this chapter or rules.

(3) Any person who violates the provisions of Subsections (2)(a) through (m), (o), and (p), or who fails to comply with a citation issued under Subsection (6) after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection (2) (h) may not be awarded a contract for the performance of the work.

(4) Any person who violates the provisions of Subsection (2) (n) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(5) Failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required or related rules, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier, shall be considered by the division and the board as grounds for immediate suspension of the licensee's license.

(6) (a) If upon inspection or investigation, the division concludes that a contractor has violated the provisions of Subsections (2)(a), (b), (c), or any rule or order issued with respect to either subsection, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the contractor according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the contractor to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsections (2)(a), (b), or (c), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (6)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections (2)(a), (b), or (c).

(ii) The licensure sanctions cited in Section 58-55-12 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The citation shall clearly state that the recipient thereof must notify the division within 10 working days of the citation's issuance if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may, in its discretion, issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 10 working days from the issuance of a citation by the division, the recipient fails to notify the division that the recipient intends to contest the citation, the citation shall be deemed a final order of the division and not be subject to review by any court or agency. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) Fines shall be assessed by the director or his designee according to the following:

(i) for a first offense handled pursuant to Subsection (a), a citation or fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (a), a citation or fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (a), a violation or fine of up to $2,000 for each day of unlicensed practice.

(7) Any penalty imposed by the director under this subsection shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this subsection, reasonable attorney's fees and costs shall be awarded.

(8) The following persons may engage in the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:

(a) persons exempted from licensure under Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) any authorized representative of the United States government or any authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of their trust, office, or employment;

(c) any person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, hauling to and from construction sites, and lumbering;

(d) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business;

(e) sole owners of property engaged in building structures on their property for their own noncommercial nonpublic use; except, any person other than the property owner who engages in building the structure must be licensed under this chapter if he is otherwise required to be licensed under this chapter;

(f) any person engaged in the sale or merchandising of personal property which by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(g) any contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

(h) any person engaged in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value of less than $500, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; however, work in the plumbing and electrical trades must be performed by a licensed electrician or plumber regardless of the dollar value of the work;

(i) any person practicing a specialty contractor classification or construction trade which is not classified by rule by the director as significantly impacting the public's health, safety, and welfare;

(j) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

(k) any person who ordinarily would be subject to the plumber licensure requirements set forth in this chapter when installing or repairing a water conditioner or other water treatment apparatus and the conditioner or apparatus meets the appropriate state construction codes or local plumbing standards and is installed or repaired under the direction of a person authorized to do such work under an appropriate specialty contractor license;

(l) any person who ordinarily would be subject to the electrician licensure requirements set forth in this chapter when employed by or under contract with:

(i) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(ii) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power; and

(m) persons involved in minor electrical work incidental to a mechanical or service installation.

Section 5. Coordinating Clause.

If this bill and S.B. 20, Division of Occupational and Professional Licensing Act Amendment, both pass in the 1993 General Session, it is the intent of the Legislature that the amendment to Subsection 58-55-6(2)(m) in this bill be incorporated into the definition of "unlawful conduct" in Section 58-55-2 of S.B. 20.

CHAPTER 156
S. B. No. 73
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

DISTRIBUTION OF CRIMINAL SURCHARGE

By Lyle W. Hillyard

AN ACT RELATING TO STATE AFFAIRS; MODIFYING THE DISTRIBUTION OF CRIMINAL SURCHARGE MONIES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-8-2.5, AS LAST AMENDED BY CHAPTER 83, LAWS OF UTAH 1992
63-63A-1, AS LAST AMENDED BY CHAPTER 272, LAWS OF UTAH 1992
63-63A-2, AS LAST AMENDED BY CHAPTER 233, LAWS OF UTAH 1992
63-63A-3, AS LAST AMENDED BY CHAPTER 298, LAWS OF UTAH 1990
63-63A-4, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-63A-5, AS ENACTED BY CHAPTER 268, LAWS OF UTAH 1991
63-63A-6, AS ENACTED BY CHAPTER 268, LAWS OF UTAH 1991
63-63A-7, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-63A-9, AS ENACTED BY CHAPTER 233, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 26-8-2.5, Utah Code Annotated 1953, as last amended by Chapter 83, Laws of Utah 1992, is amended to read:

26-8-2.5. Receipt of funds obtained from traffic violation fine or bail — Use of funds — Report to Legislature.

(1) (a) The department shall receive[~~,~~] as nonlapsing dedicated credits[~~, $3.50 for each reportable traffic violation when a fine is imposed or bail is forfeited~~] the amount established in Section 63-63a-3. That amount shall be transferred to the department by the Division of Finance from funds generated by the surcharge imposed under Title 63, Chapter 63a.

(b) Funds transferred to the department under this section shall be used for improvement of statewide delivery of emergency medical services. Appropriations to the department for the purposes enumerated in this section shall be made from those dedicated credits.

(2) The department may use up to 3% of the funds transferred to it under Subsection (1) to provide staff support and for other expenses incurred in administration of those funds.

(3) After funding staff support and administrative expenses, emergency medical services grants shall be made by the department to agencies, political subdivisions of local or state government, or nonprofit entities from the funds received as dedicated credits under Subsection (1) as follows:

(a) Forty-two and one-half percent shall be available to prehospital emergency medical services provider agencies in the form of block grants for discretionary use specifically related to the provision of emergency medical services.

(i) The department shall determine the amounts of those grants by prorating available funds on a per capita basis by county. Population figures used as a basis for allocating grants shall be derived from the most recent population estimates issued by the state planning coordinator.

(ii) Allocation of funds to prehospital emergency medical services provider agencies within each county shall be in proportion to the weighted number of state certified prehospital personnel in each prehospital emergency medical services provider agency that is actively involved in the provision of emergency care within the county. Weighting factors are: basic life support personnel = 1; advanced life support personnel (excluding EMT-paramedics) = 2; and EMT-paramedics = 3. The number of certified personnel is based upon the personnel rosters of each prehospital emergency medical services provider agency on March 1 immediately prior to the grant year.

(iii) The department may only disburse grant funds under this section after receipt of a claim for reimbursement from the agency, accompanied by a written description of the expenditures made.

(b) Forty-two and one-half percent shall be distributed as grants to applicants based upon rules established by the state Emergency Medical Services Committee.

(c) Fifteen percent shall be used to fund high school emergency medical training programs developed under Subsection 26-8-5 (13).

(4) Funds received under Subsection (1) may not be used to fund new local government emergency medical services if the new services compete with existing licensed private emergency medical services.

(5) (a) The department shall make an annual report to the Legislature which includes the amount received during the previous fiscal year and the estimated amounts for the current fiscal year. These amounts are the basis for legislative appropriations from the dedicated credits described in Subsection (1).

(b) The Legislature finds that these funds are for a general and statewide public purpose.

Section 2. Section Amended.

Section 63-63a-1, Utah Code Annotated 1953, as last amended by Chapter 272, Laws of Utah 1992, is amended to read:

63-63a-1. Surcharge — Application and exemptions.

(1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed by the courts.

(b) The surcharge shall be:

(i) 85% upon conviction of a:

(A) felony[;];

(B) class A misdemeanor[;];

(C) violation of Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving[;]; or [any]

(D) class B misdemeanor not classified within Title 41, Motor Vehicles, including violation of comparable county or municipal ordinances[. The surcharge shall be]; or

(ii) 35% upon conviction of any other offense, including violation of county or municipal ordinances not subject to the 85% surcharge.

(2) The surcharge shall not be imposed:

(a) upon nonmoving traffic violations;

(b) upon court orders when the offender is ordered to perform community service work in lieu of paying a fine; and

(c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section 78-3a-22.

(3) (a) The surcharge and the exceptions under [Subsection] Subsections (1) and (2) also apply to all fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if committed by an adult.

(b) However, the surcharge does not include amounts assessed or collected separately by juvenile courts for the Juvenile Restitution Account, which is independent of this chapter and does not affect the imposition or collection of the surcharge.

(4) The [Legislature intends that the] surcharge under this section shall be imposed in addition to the fine charged for a criminal offense, and [that] no reduction may be made in the fine charged due to the surcharge imposition.

(5) [It is the intent of the Legislature that fees] Fees, assessments, and surcharges related to criminal or traffic offenses shall be authorized and managed by this chapter rather than attached to particular offenses.

Section 3. Section Amended.

Section 63-63a-2, Utah Code Annotated 1953, as last amended by Chapter 233, Laws of Utah 1992, is amended to read:

63-63a-2. Surcharge deposited with state treasurer — Purpose of surcharge — Allocation of collections.

(1) The amount of the surcharge imposed under this chapter shall be collected before any fine and deposited with the state treasurer.

(2) The purpose of the surcharge is to finance the trust funds and support accounts [created by] as provided in this chapter.

(3) (a) From the surcharge, the Division of Finance shall [first] allocate [$3.8 million or 40% of the collected surcharge, whichever is greater,] in the manner and for the purposes described in Sections 63-63a-3 [and 63-63a-4. The division shall then allocate the remaining amounts in the manner and for the purposes described in Sections 63-63a-5] through [63-63a-8 and the] 63-63a-9.

(b) The balance of the collected surcharge [to] shall be deposited in the General Fund.

(c) Allocations shall be made on a fiscal year basis.

[(4) From collections occurring between January 1, 1992, and June 30, 1992, the allocation for the purposes of Sections 63-63a-3 and 63-63a-4 shall be $1.9 million or 40% of the collected surcharge, whichever is greater.]

Section 4. Section Amended.

Section 63-63a-3, Utah Code Annotated 1953, as last amended by Chapter 298, Laws of Utah 1990, is amended to read:

63-63a-3. EMS share of surcharge — Accounting.

(1) The Division of Finance shall [monthly record as a reduction in the received surcharge revenue the amount of that revenue that is to be deposited for] allocate 14% of the collected surcharge established in Section 63-63a-1, but not to exceed the amount appropriated by the Legislature, to the Emergency Medical Services (EMS) Grants Program Account under Section 26-8-2.5.

(2) The amount shall be recorded by the Department of Health as a dedicated credit.

[(2) The amount shall be equal to a $3.50 assessment on each reportable traffic violation for which the court has imposed a fine or bail forfeiture.]

[(3) The funds recorded for the EMS account under this subsection shall be based on a monthly report of reportable traffic violations. The state court administrator shall provide the report to the Division of Finance.]

Section 5. Section Amended.

Section 63-63a-4, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-63a-4. Reparation fund — Victim reparation and specific appropriations.

(1) In this section:

(a) "Reparation fund" means the Crime Victim Reparation Trust Fund.

(b) "Safety fund" means the Public Safety Support Fund.

[(1)] (2) (a) There is created an expendable trust fund known as the Crime Victim Reparation Trust Fund[, referred to in this chapter as the reparation fund,] to be administered and distributed as pro-

vided in this chapter by the Reparations Office under Title 63, Chapter 63, Crime Victims' Reparations Act, in cooperation with the Division of Finance.

(b) Monies deposited in this fund are for victim reparations and, as appropriated, for administrative costs of the Reparations Office under Title 63, Chapter 63.

[~~(2)~~] (3) (a) There is created a restricted revenue fund in the General Fund known as the Public Safety Support Fund[~~, referred to in this chapter as the safety fund,~~] to be administered and distributed by the Department of Public Safety in cooperation with the Division of Finance as provided in this chapter.

(b) Monies deposited in this fund shall be appropriated to:

(i) Peace Officer Standards and Training [~~(P.O.S.T.)~~] (POST) as described in Title 67, Chapter 15, Peace Officer Training; and

(ii) the Office of the Attorney General for the support of the Utah Prosecution Council established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

[~~(3) The funds created under this section shall be funded by the surcharge imposed under Section 63-63a-1, as provided under this chapter.~~]

(4) [~~After the amount is recorded for the EMS account under Section 63-63a-3, the~~] The Division of Finance shall allocate [~~the remainder of the $3.8 million or 40% of~~] from the collected surcharge [~~monies referred to in Subsection 63-63a-2 (3), 60%~~] established in Section 63-63a-1:

(a) 35% to the reparation fund[~~, and 40%~~], but not to exceed $2,500,000 for fiscal year 1993-94;

(b) 18.5% to the safety fund for POST, but not to exceed the amount appropriated by the Legislature; and

(c) 3% to the safety fund for support of the Utah Prosecution Council, but not to exceed the amount appropriated by the Legislature.

[~~(5) When adequate funding is available, P.O.S.T. and the Office of the Attorney General may not receive less funding from the safety fund than in the previous fiscal year.~~]

[~~(6)~~] (5) (a) In addition to the funding provided by [~~the~~] other [~~provisions~~] sections of this chapter, [~~any funds~~] a percentage of the income earned by inmates working for correctional industries [~~under Title 64, Chapter 13a, for the purpose of victim reparations in Utah shall also be deposited in the reparation fund~~] in a federally certified private sector/prison industries enhancement program shall be deposited in the reparation fund.

(b) The percentage of income deducted from inmate pay under Subsection (a) shall be determined by the executive director of the Department of Corrections in accordance with the requirements of the private sector/prison industries enhancement program.

[~~(7)~~] (6) Proceeds received under Section 78-11-12.5 shall be deposited in the reparation fund.

[~~(8)~~] (7) (a) In addition to the money collected from the surcharge, judges are encouraged to, and may in their discretion, impose additional reparations to be paid into the reparation fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by the Criminal Code for that offense.

Section 6. Section Amended.

Section 63-63a-5, Utah Code Annotated 1953, as enacted by Chapter 268, Laws of Utah 1991, is amended to read:

63-63a-5. Substance abuse prevention account established — Funding — Uses.

(1) There is created a restricted account within the General Fund known as the Substance Abuse Prevention Account.

(2) (a) [~~The account shall be funded from the surcharge established under Section 63-63a-1. (b)~~] The Division of Finance shall allocate [~~3.18% of~~] to the Substance Abuse Prevention Account from the collected surcharge [~~to this account. Surcharge collections in this account shall be allocated one-half to~~] established in Section 63-63a-1:

(i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the Legislature; and [~~one-half to~~]

(ii) 2.5% for the State Office of Education[~~, not to exceed the appropriation by the Legislature~~], but not to exceed the amount appropriated by the Legislature.

[~~(c)~~] (b) The juvenile court shall use the allocation to pay for programs required by Subsection 78-3a-39 [~~(11)~~] (10).

[~~(d)~~] (c) The State Office of Education shall use the allocation in public school programs for:

(i) substance abuse prevention and education;

(ii) substance abuse prevention training for teachers and administrators; and

(iii) district and school programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

Section 7. Section Amended.

Section 63-63a-6, Utah Code Annotated 1953, as enacted by Chapter 268, Laws of Utah 1991, is amended to read:

63-63a-6. Victims of Domestic Violence Services Account established — Funding — Uses.

(1) There is created a restricted account in the General Fund known as the Victims of Domestic Violence Services Account.

(2) (a) [~~The account shall be funded from the surcharge established under Section 63-63a-1. (b)~~]

The Division of Finance shall allocate [~~2.12% of~~] to the Victims of Domestic Violence Services Account from the collected surcharge [~~to this account. Surcharge collections shall be allocated 90% to~~] established in Section 63-63a-1:

(i) 4% for the Division for Domestic Violence Services, but not to exceed the amount appropriated by the Legislature; and [~~10% to~~]

(ii) .5% for the Office of the Attorney General[~~, not to exceed the appropriation by the Legislature~~], but not to exceed the amount appropriated by the Legislature.

[~~(c)~~] (b) The attorney general shall use the allocation for training municipal and county attorneys in the prosecution of domestic violence offenses.

Section 8. Section Amended.

Section 63-63a-7, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.

The Division of Finance shall allocate [~~7.07% of the collected surcharge to the Crime Victim Reparation Trust Fund established by this chapter and 3.18%~~] 7.5% of the collected surcharge established in Section 63-63a-1, but not to exceed the amount appropriated by the Legislature, to the Intoxicated Driver Rehabilitation Account established by Section 62A-8-303.

Section 9. Section Amended.

Section 63-63a-9, Utah Code Annotated 1953, as enacted by Chapter 233, Laws of Utah 1992, is amended to read:

63-63a-9. Statewide Warrant Operations Account — Share of Surcharge — Use.

(1) There is created a restricted account within the General Fund known as the Statewide Warrant Operations Account.

(2) The Division of Finance shall allocate [~~1.88%~~] 2.5% of the collected surcharge established under Section 63-63a-1, but not to exceed the amount appropriated by the Legislature, to this account.

(3) The Legislature may appropriate money from the restricted account to the Department of Public Safety to pay for statewide warrant system costs [as] incurred under Subsection 77-26-9(2).

Section 10. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 157
S. B. No. 75
Passed February 17, 1993
Approved March 16, 1993
Effective May 3, 1993

WORKERS COMPENSATION FUND - MULTISTATE INSURANCE

By David H. Steele

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING THE CONDITIONS UNDER WHICH THE WORKERS COMPENSATION FUND OF UTAH MAY WRITE OUT-OF-STATE COVERAGE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-1-55, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 35-1-55, Utah Code Annotated 1953, is amended to read:

35-1-55. Exemptions on employees temporarily in state — Conditions — Evidence of insurance.

(1) Any employee who has been hired [~~outside of this~~] in another state and his employer [~~shall be exempted~~] are exempt from [~~the provisions of~~] this [~~act~~] chapter while [~~such~~] the employee is temporarily within this state doing work for his employer if [~~such~~]:

(a) the employer has furnished [~~workmen's~~] workers' compensation insurance coverage under the [~~workmen's~~] workers' compensation or similar laws of [a] the other state [~~other than Utah, so as to cover such~~];

(b) the coverage covers the employee's employment while in this state; [~~provided~~] and

(c) (i) the extraterritorial provisions of this [~~act~~] chapter are recognized in [~~such~~] the other state and [~~provided~~] employers and employees who are covered in this state are likewise exempted from the application of the [~~workmen's~~] workers' compensation or similar laws of [~~such~~] the other state; or

(ii) the Workers Compensation Fund of Utah is an admitted insurance carrier in the other state or has agreements with such a carrier and is able to furnish workers' compensation insurance or similar coverage to Utah employers and their subsidiaries or affiliates doing business in the other state.

(2) The benefits under the [~~Workmen's~~] workers' compensation [~~Act~~] or similar laws of [~~such~~] the other state [~~shall be~~] are the exclusive remedy against [such] an employer for any injury, whether resulting in death or not, received by [~~such~~] an employee while working for [such] the employer in this state.

(3) A certificate from [~~the duly~~] an authorized officer of the industrial commission or similar department of [~~another~~] the other state certifying that the employer [~~of such other state~~] is insured [therein] in the other state and has provided extraterritorial coverage insuring his employees while working [~~within~~] in this state [~~shall be~~] is prima facie evidence that [such] the employer carries [such] compensation insurance.

CHAPTER 158
S. B. No. 76
Passed March 1, 1993
Approved March 16, 1993
Effective July 1, 1993

UTAH UNIFORM SECURITIES ACT AMENDMENTS

By Ronald J. Ockey

AN ACT RELATING TO THE UTAH UNIFORM SECURITIES ACT; MAKING IT UNLAWFUL FOR AN INVESTMENT ADVISER TO DIVIDE OR SPLIT ANY CONSIDERATION WITH A PERSON NOT LICENSED AS AN INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE; PERMITTING THE DIVISION BY RULE TO ADOPT EXEMPTIONS TO PERFORMANCE FEE PROHIBITIONS; MODIFYING THE DEFINITION OF "INVESTMENT ADVISER REPRESENTATIVE"; MODIFYING THE TYPES OF SECURITIES AND TRANSACTIONS THAT ARE EXEMPT FROM REGISTRATION BEFORE SALE AND WOULD NOT REQUIRE THE FILING OF SALES LITERATURE; ALLOWING THE STAFF OF THE DIVISION, WITH THE CONCURRENCE OF THE ATTORNEY GENERAL, TO REPRESENT THE DIVISION IN HEARINGS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
61-1-2, AS LAST AMENDED BY CHAPTER 284, LAWS OF UTAH 1983
61-1-13, AS LAST AMENDED BY CHAPTER 216, LAWS OF UTAH 1992
61-1-14, AS LAST AMENDED BY CHAPTER 216, LAWS OF UTAH 1992
61-1-21.5, AS ENACTED BY CHAPTER 284, LAWS OF UTAH 1983

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

Section 1. Section Amended.

Section 61-1-2, Utah Code Annotated 1953, as last amended by Chapter 284, Laws of Utah 1983, is amended to read:

61-1-2. Investment adviser — Unlawful acts.

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

(a) Employ any device, scheme, or artifice to defraud the other person; [or]

(b) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person[.]; or

(c) Divide or otherwise split any consideration with any person not licensed under this chapter as an investment advisor or investment adviser representative.

(2) (a) [It] Except as may be permitted by rule of the division, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

[(a)] (i) The investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

[(b)] (ii) No assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

[(c)] (iii) The investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) Subsection 61-1-2(2)(a)(i) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(c) "Assignment," as used in Subsection 61-1-2(2)[(b)] (a)(ii), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

(d) If the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(a) The division by rule prohibits custody; or

(b) In the absence of a rule, the investment adviser fails to notify the division that he has or may have custody.

(4) The division may by rule adopt exemptions from Subsections 61-1-2(2)(a)(i), (ii), and (iii) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Section 2. Section Amended.

Section 61-1-13, Utah Code Annotated 1953, as last amended by Chapter 216, Laws of Utah 1992, is amended to read:

61-1-13. Definitions.

As used in this chapter:

(1) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

(2) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or is-

suer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who:

(a) effects transactions in securities exempted by Subsection 61-1-14 (1)(a), (b), (c), (i), or (j);

(b) effects transactions exempted by Subsection 61-1-14 (2); or

(c) effects transactions with existing employees, partners, officers, or directors of the issuer. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) an agent;

(b) an issuer;

(c) a bank, savings institution, or trust company;

(d) a person who has no place of business in this state if:

(i) the person effects transactions in this state exclusively with or through:

(A) the issuers of the securities involved in the transactions;

(B) other broker-dealers; or

(C) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(ii) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection (3)(d)(i), whether or not the offeror or any of the offerees is then present in this state;

(e) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

(f) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

(g) a person who is a real estate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed or trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(h) a person effecting transactions in commodity contracts or commodity options; or

(i) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this subsection.

(4) "Buy" or "purchase" means every contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

(5) "Commodity" means, except as otherwise specified by the division by rule:

(a) any agricultural, grain, or livestock product or byproduct, except real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

(b) any metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

(c) any gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(d) any fuel, whether liquid, gaseous, or otherwise;

(e) any foreign currency; and

(f) all other goods, articles, products, or items of any kind, except any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

(6) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

(a) Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

(b) (i) A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(ii) The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) It does not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission or on a board of trade designated as a contract market by the Commodity Futures Trading Commission.

(8) "Director" means the director of the Division of Securities charged with the administration and enforcement of this chapter.

(9) "Division" means the Division of Securities established by Section 61-1-18.

(10) "Executive director" means the executive director of the Department of Commerce.

(11) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(12) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(13) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) "Investment adviser" does not include:

(i) a bank, savings institution, or trust company;

(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;

(iv) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(v) a person whose advice, analyses, or reports relate only to securities exempted by Subsection 61-1-14(1)(a);

(vi) an investment advisor representative; or

(vii) such other persons not within the intent of this subsection as the division may by rule or order designate.

(14) "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(a) makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;

(b) manages accounts or portfolios of clients;

(c) determines which recommendation or advice regarding securities should be given if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice [(], but if there are more than five such persons, only the supervisors of these persons are considered to be investment adviser representatives[)];

(d) solicits, offers, or negotiates for the sale of or sells investment advisory services [~~unless that person is a broker-dealer licensed in this state or a licensed agent of a broker-dealer and the person would not be an investment adviser representative except for the performance of the activities described in this subsection~~]; or

(e) immediately supervises employees who perform any of the foregoing.

(15) (a) "Issuer" means any person who issues or proposes to issue any security or has outstanding a security that it has issued.

(b) With respect to a preorganization certificate or subscription, "issuer" means the promoter or the promoters of the person to be organized.

(c) With respect to:

(i) interests in trusts, including but not limited to collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(ii) shares in an investment company without a board of directors, "issuer" means the person or persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued.

(d) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(e) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

(f) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

(16) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(17) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a joint venture, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(18) "Precious metal" means the following, whether in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) such other substances as the division may specify by rule.

(19) "Promoter" means any person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

(20) (a) "Sale" or "sell" includes every contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) The following are examples of the definitions in Subsections (a) and (b):

(i) any security given or delivered with or as a bonus on account of any purchase of a security or any other thing, is part of the subject of the purchase, and has been offered and sold for value;

(ii) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

(iii) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

(iv) any conversion or exchange of one security for another shall constitute an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

(v) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or sale;

(vi) a dividend of a security of another issuer is an offer or sale; or

(vii) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the security issued as well as the offer to buy or the purchase of any security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

(d) The terms defined in Subsections (20)(a) and (b) do not include:

(i) a good faith gift;

(ii) a transfer by death;

(iii) a transfer by termination of a trust or of a beneficial interest in a trust;

(iv) a security dividend not within Subsection (20)(c)(v) or (vi);

(v) a securities split or reverse split; or

(vi) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(21) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(22) "Security" means any:

(a) note;

(b) stock;

(c) treasury stock;

(d) bond;

(e) debenture;

(f) evidence of indebtedness;

(g) certificate of interest or participation in any profit-sharing agreement;

(h) collateral-trust certificate;

(i) preorganization certificate or subscription;

(j) transferable share;

(k) investment contract;

(l) burial certificate or burial contract;

(m) voting-trust certificate;

(n) certificate of deposit for a security;

(o) certificate of interest [of] or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(p) commodity contract or commodity option; or

(q) in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a

lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(24) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63-13-2.

(25) A term not defined in Section 61-1-13 shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

Section 3. Section Amended.

Section 61-1-14, Utah Code Annotated 1953, as last amended by Chapter 216, Laws of Utah 1992, is amended to read:

61-1-14. Exemptions.

(1) The following securities are exempted from Sections 61-1-7 and 61-1-15:

(a) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;

(b) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company supervised under the laws of any state;

(d) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(e) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(f) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is subject to the jurisdiction of the interstate commerce commission, a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act, or any security regulated in respect of its rates or in its issuance by a governmental authority of the United States, any state, Canada, or any Canadian province;

(g) any security listed on the National Association of Securities Dealers Automated Quotation System, the New York Stock Exchange, the American Stock Exchange, or on any other stock exchange or medium approved by the division, except that the director may at any time suspend or revoke this exemption for any particular stock exchange, medium, security, or securities under Subsection 61-1-14 (4); any other security of the same issuer which is of senior or substantially equal rank to any security so listed and approved by the director, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing;

(h)(i) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; and

(ii) any security issued by a corporation organized under Title 3, Chapter 1, and any security issued by a corporation to which the provisions of that chapter are made applicable by compliance with the requirements of Section 3-1-21;

(i) [~~any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal, guarantee, or guarantee of renewal of the paper which is likewise limited~~] a promissory note, draft, bill of exchange, or banker's acceptance that evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation or of a renewal:

(i) issued in denominations of at least $50,000; and

(ii) either:

(A) receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization; or

(B) the issuer satisfies requirements established by rule or order of the division;

(j) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(k) a security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:

(i)(A) the issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Advisers Act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least three years next preceding an offer or sale of a security claimed to be exempt under this subsection; and

(B) the adviser has acted, or is affiliated with an investment adviser that has acted as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this subsection; or

(ii) the issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this subsection sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded $100,000,000;

(iii) in addition to Subsection (i) or (ii), the division has received prior to any sale exempted herein:

(A) a notice of intention to sell which has been executed by the issuer which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(B) a filing fee as determined under Section 61-1-18.4;

(iv) in the event any offer or sale of a security of an open-end management investment company is to be made more than 12 months after the date on which the notice and fee under Subsection (iii) is received by the director, another notice and payment of the applicable fee shall be required.

(v) For the purpose of this subsection, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

(l) any security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(2) The following transactions are exempted from Sections 61-1-7 and 61-1-15:

(a) any isolated transaction, whether effected through a broker-dealer or not;

(b) any nonissuer transaction in an outstanding security, if as provided by rule of the division:

(i) information about the issuer of the security as required by the division is currently listed in a securities manual [as] recognized by [~~rule of~~] the division, and the listing is based upon such information as required by rule of the division; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(c) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

(d) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(e) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(h) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) any offer or sale of a preorganization certificate or subscription if:

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(ii) the number of subscribers acquiring any legal or beneficial interest therein does not exceed ten; and

(iii) there is no general advertising or solicitation in connection with the offer or sale;

(j) any transaction pursuant to an offer by an issuer of its securities to its existing securities holders, if:

(i) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting any security holders in this state and the transaction constitutes either:

(A) the conversion of convertible securities;

(B) the exercise of nontransferable rights or warrants;

(C) the exercise of transferable rights or warrants if the rights or warrants are exercisable not more than 90 days after their issuance; or

(D) the purchase of securities under a preemptive right; and

(ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of securities to existing securities holders who have acquired their securities from the issuer in a transaction in violation of Section 61-1-7;

(k) any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending;

(l) a distribution of securities as a dividend if the person distributing the dividend is the issuer of the securities distributed;

(m) any nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in his records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed by the division under its rules;

(n) any transactions not involving a public offering;

(o) any offer or sale of "condominium units" or "time period units" as those terms are defined in the Condominium Ownership Act, whether or not to be sold by installment contract, if the provisions of the Condominium Ownership Act, or if the units are located in another state, the condominium act of that state, the Utah Uniform Land Sales Practices Act, the Utah Timeshare and Camp Resort Act, and the Utah Uniform Consumer Credit Code are complied with;

(p) any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which, in whole or in part, is the issuance of securities of a person or persons, and if:

(i) the transaction or series of transactions is incident to a vote of the securities holders of each person involved or by written consent or resolution of some or all of the securities holders of each person involved;

(ii) the vote, consent, or resolution is given under a provision in:

(A) the applicable corporate statute or other controlling statute;

(B) the controlling articles of incorporation, trust indenture, deed of trust, or partnership agreement; or

(C) the controlling agreement among securities holders;

(iii) (A) one person involved in the transaction is required to file proxy or informational materials under Section 14 (a) or (c) of the Securities Exchange Act of 1934 or Section 20 of the Investment Company Act of 1940 and has so filed;

(B) one person involved in the transaction is an insurance company which is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state; or

(C) all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or informational material as the division requires by rule;

(iv) the proxy or informational material is filed with the division and distributed to all securities holders entitled to vote in the transaction or series of transactions at least ten working days prior to any necessary vote by the securities holders or action on any necessary consent or resolution; and

(v) the division does not, by order, deny or revoke the exemption within ten working days after filing of the proxy or informational materials;

(q) any transaction pursuant to an offer to sell securities of an issuer if:

(i) the transaction is part of an issue in which there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

(ii) no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(iii) no commission or other similar compensation is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter, for soliciting a prospective purchaser in this state;

(iv) the seller reasonably believes that all the purchasers in this state are purchasing for investment;

(v) the transaction is part of an aggregate offering that does not exceed $500,000, or a greater amount as prescribed by a division rule, during any 12 consecutive months; and

(vi) the director, as to a security or transaction, or a type of security or transaction, may withdraw or further condition this exemption or waive one or more of the conditions in Subsection (q);

(r) any transaction involving a commodity contract or commodity option; and

(s) any transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.

(3) Every person filing an exemption notice or application shall pay a filing fee as determined under Section 61-1-18.4.

(4) Upon approval by a majority of the Securities Advisory Board, the director, by means of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, may deny or revoke any exemption specified in Subsection (1)(g), (h), or (j) or in Subsection (2) with respect to:

(a) a specific security, transaction, or series of transactions; or

(b) any person or issuer, any affiliate or successor to a person or issuer, or any entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if he finds that the order is in the public interest and that:

(i) the application for or notice of exemption filed with the division is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) any provision of this chapter, or any rule, order, or condition lawfully imposed under this chapter has been willfully violated in connection with the offering or exemption by:

(A) the person filing any application for or notice of exemption;

(B) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or

(C) any underwriter;

(iii) the security for which the exemption is sought is the subject of an administrative stop order or similar order, or a permanent or temporary injunction or any court of competent jurisdiction entered under any other federal or state act applicable to the offering or exemption; the division may not institute a proceeding against an effective exemption under this subsection more than one year from the date of the order or injunction relied on, and it may not enter an order under this subsection on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section;

(iv) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(v) the offering has worked, has tended to work, or would operate to work a fraud upon purchasers;

(vi) the offering has been or was made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(vii) an exemption is sought for a security or transaction which is not eligible for the exemption; or

(viii) the proper filing fee, if required, has not been paid.

(5) (a) No order under Subsection (4) may operate retroactively.

(b) No person may be considered to have violated Section 61-1-7 or 61-1-15 by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

Section 4. Section Amended.

Section 61-1-21.5, Utah Code Annotated 1953, as enacted by Chapter 284, Laws of Utah 1983, is amended to read:

61-1-21.5. Legal counsel — Prosecutions.

(1) The attorney general shall advise and represent the division and its staff in all civil matters, administrative or judicial, requiring legal counsel or services in the exercise or defense of the division's power or the performance of its duties.

(2) With the concurrence of the attorney general, the staff of the division may represent the division in hearings conducted during the course of adjudicative proceedings of the division.

(3) In the prosecution of all criminal actions under this chapter, the attorney general, or county attorney of the appropriate jurisdiction, shall provide all legal services for the division and its staff. The division may refer such evidence as is available concerning violations of this chapter to the attorney general or the appropriate county attorney for criminal prosecution.

Section 5. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 159
S. B. No. 80
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

COURT OPERATIONS AMENDMENTS

By Lyle W. Hillyard
Robert C. Steiner

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING PROVISIONS REGARDING THE OPERATION AND ADMINISTRATION OF THE COURTS; GRANTING COURT COMMISSIONERS THE AUTHORITY TO PERFORM MARRIAGE CEREMONIES; INCREASING THE PENALTY FOR CONTEMPT; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20A-1-505, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
21-1-5, AS ENACTED BY CHAPTER 290, LAWS OF UTAH 1992
21-5-15, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1977
26-2-25, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
30-1-6, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
77-20-9, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
78-3-11.5, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-3-21, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
78-3A-10, AS LAST AMENDED BY CHAPTER 248, LAWS OF UTAH 1988
78-3A-54, AS LAST AMENDED BY CHAPTERS 144 AND 219, LAWS OF UTAH 1992
78-5-104, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-5-134, AS LAST AMENDED BY CHAPTER 244, LAWS OF UTAH 1991
78-7-17.5, AS ENACTED BY CHAPTER 268, LAWS OF UTAH 1991
78-32-10, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
78-46-2, AS LAST AMENDED BY CHAPTER 318, LAWS OF UTAH 1990
78-46-4, AS LAST AMENDED BY CHAPTER 219, LAWS OF UTAH 1992
78-46-7, AS LAST AMENDED BY CHAPTER 219, LAWS OF UTAH 1992
78-46-19, AS ENACTED BY CHAPTER 130, LAWS OF UTAH 1979

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

Section 1. Section Amended.

Section 20A-1-505, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-505. Judicial vacancies — Courts of record.

(1)(a) When a vacancy occurs in a court of record, the governor shall, within 30 days after receiving the list of nominees, fill the vacancy by appointing a person who meets the qualifications for the office from a list of at least three nominees certified to the governor by the judicial nominating commission that has authority over the vacancy.

(b) If the governor fails to fill the vacancy within 30 days, the chief justice of the Supreme Court shall, within 20 days, appoint a person who meets the qualifications for the office from the list of nominees.

(2) (a) The Senate shall:

(i) consider and decide on each judicial appointment within [~~30~~] 60 days of the date of appointment; and

(ii) if necessary, convene itself in extraordinary session to consider a judicial appointment.

(b) If the Senate fails to approve the appointment, the office is considered vacant and a new nominating process begins.

(3) An appointment is effective upon approval of a majority of all members of the Senate.

(4) The judicial nominating commission, the governor, the chief justice, and the Senate shall nominate and select judges based solely upon consideration of their fitness for office without regard to any partisan political considerations.

Section 2. Section Amended.

Section 21-1-5, Utah Code Annotated 1953, as enacted by Chapter 290, Laws of Utah 1992, is amended to read:

21-1-5. Civil fees of the courts of record.

(1) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $80.

(2) The fee for filing a complaint, petition, or small claims affidavit is:

(a) $20 where the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(b) $40 where the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000; and

(c) $80 where the claim for damages or amount in interpleader is $10,000 or more.

(3) The fee for filing a counter claim, counter affidavit, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(a) $15 when the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(b) $30 when the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000; and

(c) $60 when the original petition is filed under Subsection (1) or when the claim for relief is $10,000 or more.

(4) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (2) based on the amount deposited.

(5) The fee for filing a petition for trial de novo of an adjudication of the justice court or of the small claims department is $50.

(6) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $160.

(7) The fee for filing a complaint filed alone under Title 30, Chapter 6, Cohabitant Abuse Act, is $25. If the complaint is filed in conjunction with a petition for divorce, a separate fee may not be charged for filing the complaint under the Cohabitant Abuse Act.

(8) The fee for filing a petition for expungement is $50.

(9) (a) Fifteen dollars of the fees established by Subsections (1) through (8) shall be allocated to the Judges' Retirement Trust Fund, under Title 49, Chapter 6, Judges' Retirement Act.

(b) Two dollars of the fees established by Subsections (1) through (8) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 63-63a-8.

(10) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $25.

(11) The fee for filing probate or child custody documents from another state is $25.

(12) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions is $10.

(13) The fee for filing a judgment by confession without action under Section 78-22-3 is $25.

(14) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is $25.

(15) The fee for filing a petition or counter-petition to modify a decree of divorce is $30.

(16) The fee for filing any accounting required by law is [~~$80~~]:

(a) $10 for an estate valued at $50,000 or less;

(b) $20 for an estate valued at $75,000 or less but more than $50,000;

(c) $40 for an estate valued at $112,000 or less but more than $75,000;

(d) $80 for an estate valued at $168,000 or less but more than $112,000; and

(e) $150 for an estate valued at more than $168,000.

(17) The fee for filing a demand for a civil jury is $50.

(18) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $25.

(19) The fee for filing documents that require judicial approval but are not part of an action before the court is $25.

(20) The fee for a petition to open a sealed record is $25.

(21) The fee for a writ of replevin, attachment, execution, or garnishment is $5 in addition to any fee for a complaint or petition.

(22) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(23) The fee for a certificate issued under Section 26-2-25 is $2.

[~~(22)~~] (24) The fee for a certified copy of a document is $2 per document plus 50 cents per page.

[~~(23)~~] (25) The fee for an exemplified copy of a document is $4 per document plus 50 cents per page.

[~~(24)~~] (26) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under the Government Records Access and Management Act. Fees under this subsection shall be credited to the court as a reimbursement of expenditures.

[~~(25)~~] (27) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

[~~(26)~~] (28) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

[~~(27)~~] (29) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

Section 3. Section Amended.

Section 21-5-15, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1977, is amended to read:

21-5-15. Officials subpoenaed not entitled to per diem — Exception.

No officer of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee or per diem when testifying in a criminal proceeding unless the officer is required to testify at a time other than during his or her normal working hours.

Section 4. Section Amended.

Section 26-2-25, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-2-25. Divorce or adoption — Duty of court clerk to file certificates or reports.

(1) For each adoption, annulment of adoption, divorce, and annulment of marriage ordered or decreed in this state, the clerk of the court shall prepare a divorce certificate or report of adoption on a form furnished by the state registrar. The information necessary to prepare the certificate or report shall be supplied to the clerk by the petitioner at the time the petition is filed. The clerk shall prepare the certificate or report and, immediately after the decree or order becomes final, shall complete the remaining entries. On or before the 15th day of each month, the clerk shall forward the divorce certificates and reports of adoption completed by him during the preceding month to the state registrar. [~~For each such certificate the clerk shall collect as court costs $2 from the petitioner.~~]

(2) If there is filed in an adoption proceeding a written consent to adoption by an agency licensed under the laws of the state to receive children for placement or adoption, such agency by its duly authorized representative shall prepare and complete the report of adoption and forward the same to the state registrar immediately after entry of the decree of adoption.

Section 5. Section Amended.

Section 30-1-6, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

30-1-6. Who may solemnize marriages — Certificate.

(1) Marriages may be solemnized by the following persons only:

(a) ministers, rabbis, or priests of any religious denomination in regular communion with any religious society, who are 18 years of age or older;

(b) the governor, mayors of municipalities, [~~judges of~~] a justice [~~court, circuit court, juvenile~~], judge, or commissioner of a court[~~, district~~] of record or a judge of a court[~~, the Court of Appeals, and the Supreme Court, who hold office in~~] not of record of the state of Utah;

(c) judges or magistrates of the United States; and

(d) the county clerk of any county in the state, if [~~he~~] the clerk chooses to solemnize marriages.

(2) A judge or magistrate who holds office in Utah may solemnize marriages when retired, under rules set by the Supreme Court.

(3) A certificate of marriage shall be given to the couple and shall show the name of the county from which the license is issued and date of its issuance.

(4) In this section, "judge or magistrate of the United States" means a justice of the United States Supreme Court, a judge of a court of appeals, a district court, or any court created by an act of Congress the judges of which are entitled to hold office during good behavior, a judge of a bankruptcy court or a tax court, or a United States magistrate.

Section 6. Section Amended.

Section 77-20-9, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-20-9. Disposition of forfeitures.

If by reason of the neglect of the defendant to appear, money deposited instead of bail or money paid by sureties on surety bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

(1) The forfeited bail cases in or appealed from district courts shall be distributed as provided in Section 77-18-3;

(2) The forfeited bail in cases in or appealed from circuit courts shall be distributed as provided in Section 78-4-22;

(3) The forfeited bail in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Section [~~78-5-39~~] 78-5-116 and 78-5-135;

(4) The forfeited bail in cases in circuit courts, precinct justice courts, or municipal justice courts where the offense is not triable in that court shall be distributed as provided by Section 77-18-3; and

(5) The forfeited bail in cases not provided for in this section shall be paid 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which the violation occurred or the forfeited bail is collected.

Section 7. Section Amended.

Section 78-3-11.5, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-3-11.5. State District Court Administrative System.

(1) There is established a State District Court Administrative System. The Judicial Council shall administer the operation of the system.

(2) In this chapter, "court system" means the State District Court Administrative System.

(3) The county seat of each county shall be [~~the~~] a location of the district court.

Section 8. Section Amended.

Section 78-3-21, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.

(1) The Judicial Council, established by Article VIII, Sec. 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) three members elected by the judges of the district courts;

(e) two members elected by the judges of the circuit courts;

(f) two members elected by the judges of the juvenile courts;

(g) two members elected by the justice court judges; and

(h) [~~the president~~] a member or ex officio member of the Board of Commissioners of the Utah State Bar [~~or a designee,~~] who is an [~~ex officio~~] active member of the [~~council and has no vote~~] Bar in good standing elected by the Board of Commissioners.

(2) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All [~~voting~~] members of the council shall serve for three-year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office. In courts having more than one member, the members shall be elected to staggered terms. The person elected to the Judicial Council by the Board of Commissioners shall be a member or ex officio member of the Board of Commissioners and an active member of the Bar in good standing at the time the person is elected. The person may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term on the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(3) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(4) (a) The Judicial Council shall by rule establish standards for judicial competence and by rule implement a formal program for the evaluation of judicial performance, the goal of which is to improve the performance of individual judges and court commissioners, and the judiciary as a whole.

(b) Not fewer than 90 days prior to retention election, the Judicial Council shall publish whether a judge standing for retention election has met the evaluation criteria during his term of office.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78-3-24 (10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of the district, juvenile, and circuit court. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the

obligation of the Administrative Office of the Courts or whether the Administrative Office of the Courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district or circuit court location be administered from another court location within the county.

Section 9. Section Amended.

Section 78-3a-10, Utah Code Annotated 1953, as last amended by Chapter 248, Laws of Utah 1988, is amended to read:

78-3a-10. Board of juvenile court judges — Presiding judge — Members — Organization — Powers and duties.

(1)(a) The Judicial Council shall by rule establish a Board of Juvenile Court Judges. [~~All juvenile court judges, except temporary judges, constitute the board. The board shall annually elect one of its members to serve as the chair.~~]

(b) The board shall establish general policies for the operation of the juvenile courts and uniform rules and forms governing practice, consistent with the provisions of this chapter, the [~~policies~~] rules of the Judicial Council, and rules of the Supreme Court.

(c) The board may receive and expend any funds that may become available from the federal government to carry out any of the purposes of this chapter. For this purpose, the board may meet any federal requirements that are conditions precedent to receiving the funds. The board may cooperate with the federal government in a program for training personnel employed or preparing for employment by the juvenile court, and may receive and expend funds from federal or state sources or from private donations for these purposes. The board may contract with public or nonprofit institutions of higher learning for the training of personnel, may conduct short-term training courses of its own and may hire experts on a temporary basis for this purpose, and may cooperate with the Division of Family Services and other state departments or agencies in personnel training programs.

(d) The board may contract, on behalf of the juvenile court, with the United States Forest Service or other agencies or departments of the federal government, or with agencies or departments of other states, for the care and placement of children adjudicated under this chapter.

(e) The powers to contract and expend funds are subject to budgetary control and procedures as provided by law.

(2) Under the direction of the presiding officer of the council, the chair shall supervise the juvenile courts to ensure uniform adherence to law and to the rules and forms adopted by the [~~board~~] Supreme Court and Judicial Council, and to promote the proper and efficient functioning of the juvenile courts.

(3) [~~In~~] The judges of districts having more than one judge[~~, the juvenile court judges of the district~~] shall elect [~~one of their number to the office of~~] a presiding judge. The presiding judge shall [~~act in that capacity for~~] serve a term of not fewer than two years. In districts comprised of five or more [~~of the following full-time positions:~~] judges[~~,~~] and court commissioners, [~~or hearing officers,~~] the presiding judge receives an additional $1,000 per annum as compensation.

(4) Consistent with policies of the Judicial Council, the presiding judge shall:

(a) implement policies of the Judicial Council;

(b) exercise powers and perform administrative duties as authorized by the Judicial Council;

(c) manage the judicial business of the district; and

(d) call and preside over meetings of judges of the district.

Section 10. Section Amended.

Section 78-3a-54, Utah Code Annotated 1953, as last amended by Chapters 144 and 219, Laws of Utah 1992, is amended to read:

78-3a-54. Fines — Paid to state treasurer and rehabilitative employment program — Court costs.

(1) (a) Except under Subsection (b) and as otherwise provided by law, all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state treasurer for deposit in the General Fund.

(b) Not more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for delinquent children that provides for employment of the child in the county of the child's residence, if:

(i) reimbursement for the child's labor is paid to the victim of the child's delinquent behavior;

(ii) the amount earned and paid is set by court order;

(iii) the child is not paid more than the hourly minimum wage; and

(iv) no payments to victims are made without the child's involvement in a rehabilitative work program.

(c) Fines withheld under Subsection (b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor. Funds withheld under Subsection (b) and private contributions are nonlapsing. The Board of Juvenile Court Judges shall establish policies for the use of the funds described in this subsection.

(2) No fee may be charged by any state or local public officer for the service of process in any proceedings initiated by a public agency.

(3) The fees and expenses, the cost of publication of summons, and the expense of a trial of an adult, when approved by the court, are paid by the state, except prosecution costs and public defender costs

are paid by the county where the hearing or trial is held.

(4) Upon request of the court, the sheriff of the county in which a hearing is held shall:

(a) aid the court in maintaining order during the hearing; and

(b) transport a child to and from youth corrections facilities, other institutions, or other designated places.

[~~(5) The filing fee for a petition for authorization for a juvenile to marry required by Section 30-1-9 shall be $5.~~]

Section 11. Section Amended.

Section 78-5-104, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-5-104. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except those offenses over which the juvenile court has exclusive jurisdiction.

[~~(2) County justice courts may not conduct preliminary examinations to determine probable cause of felony informations, except under rules of the Judicial Council.~~]

[~~(3)~~] (2) Justice courts have [~~concurrent~~] jurisdiction [~~with the circuit court~~] of small claims cases under Title 78, Chapter 6, if the defendant resides in or the debt arose within the territorial jurisdiction of the justice court. Prior to accepting small claims affidavits, a justice court shall be certified as competent to determine small claims pursuant to Section 78-5-139.

Section 12. Section Amended.

Section 78-5-134, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1991, is amended to read:

78-5-134. Justice court judges to be appointed — Procedure — Report to Judicial Council — Retention election — Vacancy.

(1) County justice court judges shall be appointed by the chairman of the county governing body and be confirmed by a majority vote of the county commissioners. Municipal justice court judges shall be appointed by the mayor and be confirmed by the city or town council or other municipal legislative body.

(2)(a) When a vacancy occurs in the office of a justice court judge, the governing body shall advertise the vacancy and solicit applications for the vacancy.

(b) The applications shall be reviewed and the mayor or county commission chairman shall appoint the best qualified candidate to office based solely upon fitness for office.

(c) Appointments of justice court judges by a county commissioner or mayor are governed by Title 52, Chapter 3, regarding employment of relatives.

(3) The name of the appointee shall be submitted to the local legislative body. If the local legislative body does not confirm the appointment within 30 days of submission, the mayor or county commission chairman may either appoint another of the applicants or reopen the vacancy by advertisement and solicitations of applications.

(4) After a newly appointed justice court judge has been confirmed by the legislative body of the county or municipality, the judge's name shall be reported to the Judicial Council.

(a) The Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program and upon the written opinion of the county or municipal attorney that the judge meets the statutory qualifications for office.

(b) A justice court judge may not perform judicial duties until so certified by the Judicial Council.

(5) Upon the expiration of a justice court judge's term of office:

(a) a county justice court judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section 20-1-7.7; and

(b) a municipal justice court judge may be considered for reappointment after the appointing authority has considered whether that judge has been certified as meeting the evaluation criteria for judicial performance established by the Judicial Council and any other factors deemed relevant by the appointing authority.

(6) Prior to reappointment or retention election, all justice court judges shall be evaluated in accordance with the performance evaluation program established in Subsection 78-3-21(4). Not fewer than 90 days prior to reappointment or retention election, the Judicial Council shall publish whether a justice court judge has met the evaluation criteria during the judge's term of office.

(7) At the conclusion of a term of office or when a vacancy occurs in the position of justice court judge, the appointing authority may contract with a justice court judge in the county or an adjacent county to serve as justice court judge. The contract shall be for the duration of the justice court judge's term of office.

[~~(8) Justice court judges serving under contract are exempt from the residency requirements of Section 78-5-1.~~]

Section 13. Section Amended.

Section 78-7-17.5, Utah Code Annotated 1953, as enacted by Chapter 268, Laws of Utah 1991, is amended to read:

78-7-17.5. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

(a) commit a person to incarceration prior to trial;

(b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;

(c) issue summonses and warrants of search and arrest;

(d) conduct an initial appearance in a felony;

(e) conduct arraignments;

(f) conduct a preliminary examination to determine probable cause; [and]

(g) appoint attorneys and order recoupment of attorney fees;

(h) order the preparation of presentence investigations and reports; and

[~~(g)~~] (i) issue [~~temporary~~] orders as provided by rule of the Judicial Council.

(2) [~~In a first degree or capital felony, only a~~] A judge of [a] the justice court [~~of record may set or deny bail or commit a person to imprisonment prior to trial. Except as provided in Subsection 78-5-104 (2), in felony cases only a judge or commissioner of a court of record~~] may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council; and

(b) a judge of the justice court may not set bail in a capital or first degree felony nor deny bail in any case.

Section 14. Section Amended.

Section 78-32-10, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

78-32-10. Contempt — Action by court.

Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding [~~$200~~] $1,000, order the person [~~imprisoned~~] incarcerated in the county jail not exceeding 30 days, or [~~order~~] both [~~fine and imprisonment~~]. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed [~~$100~~] $500 or by [~~imprisonment~~] incarceration for [~~one day,~~] five days or [~~by~~] both [~~the fine and imprisonment~~].

Section 15. Section Amended.

Section 78-46-2, Utah Code Annotated 1953, as last amended by Chapter 318, Laws of Utah 1990, is amended to read:

78-46-2. Jurors and grand jurors selected from random cross section — Opportunity and obligation to serve.

It is the policy of this state that persons selected for jury [~~or grand jury~~] service be selected at random from a fair cross section of the population of the [~~area served by the court~~] county, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for service and have the obligation to serve when summoned for that purpose.

Section 16. Section Amended.

Section 78-46-4, Utah Code Annotated 1953, as last amended by Chapter 219, Laws of Utah 1992, is amended to read:

78-46-4. Definitions.

(1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.

(2) "Court" means trial courts[~~, and includes, when the context requires, any judge or justice of the court~~].

[~~(3) "Grand jury" means a body of seven persons selected from the citizens of a particular county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county.~~]

[~~(4)~~] (3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with power to present and indict a person for a public offense[;] or to try a question of fact.

[~~(5)~~] (4) "Master jury list" means the [~~primary and secondary~~] source lists as prescribed by the Judicial Council under Section 78-46-10.

[~~(6)~~] (5) "Qualified jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.

[~~(7)~~] (6) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction[;] and sworn to try and determine by verdict a question of fact.

Section 17. Section Amended.

Section 78-46-7, Utah Code Annotated 1953, as last amended by Chapter 219, Laws of Utah 1992, is amended to read:

78-46-7. Persons competent to serve as jurors — Persons not competent to serve as jurors.

(1) A person is competent to serve as a juror if the person is:

(a) a citizen of the United States;

(b) over the age of 18 years;

(c) a resident of the county; and

(d) able to read, speak, and understand the English language.

(2) A person who has been convicted of a felony is not competent to serve as a juror.

[~~(3) In municipalities which are not primary or secondary locations for the circuit court, a person is not competent to serve as a juror in cases involving the violation of a municipal ordinance unless the~~

~~person, in addition to meeting the requirements listed in Subsection (1), resides within the municipality whose ordinance is alleged to have been violated or, in the case of a municipality with a population of fewer than 3,000 persons, resides within 15 miles of the municipality.~~]

Section 18. Section Amended.

Section 78–46–19, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1979, is amended to read:

78–46–19. Limitations on jury service.

In any two-year period, a person shall not be required:

(1) to serve on more than one grand jury;

(2) to serve as both a grand [~~or~~] and trial juror; or

(3) to attend court for prospective jury service as a trial juror more than [~~10~~] five court days, except if necessary to complete service in a particular case.

CHAPTER 160
S. B. No. 84
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

AMENDMENTS TO CRIMINAL BACKGROUND CHECKS ON PERSONS PROVIDING SERVICES TO CHILDREN

By LeRay McAllister

AN ACT RELATING TO HUMAN SERVICES; AMENDING PROVISIONS RELATING TO FINGERPRINTING OF PERSONS LICENSED BY THE DEPARTMENT OF HUMAN SERVICES WHO PROVIDE SERVICES TO CHILDREN.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-4-514, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 62A-4-514, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1992, is amended to read:

62A-4-514. Placement of children — Criminal background checks — Determination of no report of child abuse.

(1) As of July 1, 1990, each public or private agency or individual licensed by the department to provide day care services, child placing services, youth programs, substitute, foster, or institutionalized care to children shall, in order to obtain or renew a license under Section 62A-2-108, submit to the department the name and other identifying information, [~~including~~] which may include fingerprints, of new and proposed:

(a) employees;

(b) providers of care; and

(c) volunteers, except parents of children enrolled in the programs.

The Bureau of Criminal Identification shall process that information to determine whether the individual has been convicted of any crime.

(2) An employee, provider of care, or volunteer who has a felony conviction may not provide child care, child placing services, foster care, substitute care, or institutionalized care for children in facilities or programs licensed by the department.

(3) With regard to an employee or provider of care who has a misdemeanor conviction, the executive director has discretion to determine whether or not that person may be employed by any child care, child placing, foster care, substitute care, or institutionalized care for children in a facility or program licensed by the department.

CHAPTER 161
S. B. No. 85
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

DUI AMENDMENTS

By Lane Beattie

AN ACT RELATING TO DRUGS AND ALCOHOL; CLARIFYING USE OF CHEMICAL TESTS AND ADMISSIBILITY OF CHEMICAL TEST RESULTS; DELETING A REQUIREMENT THAT ONLY A BLOOD OR URINE TEST BE ADMINISTERED IN AN AUTOMOBILE HOMICIDE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-44.5, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1987
41-6-44.10, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1992
76-5-207, AS LAST AMENDED BY CHAPTER 148, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 41-6-44.5, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1987, is amended to read:

41-6-44.5. Admissibility of chemical test results in actions for driving under the influence — Weight of evidence.

(1) (a) In any civil or criminal action or proceeding in which it is material to prove that a person was operating or in actual physical control of a vehicle while under the influence of alcohol or drugs or with a blood or breath alcohol content statutorily prohibited, the results of a chemical test or tests as authorized in Section 41-6-44.10 are admissible as evidence.

(b) In a criminal proceeding, noncompliance with Section 41-6-44.10 does not render the results of a chemical test inadmissible. Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(2) If the chemical test was taken more than two hours after the alleged driving or actual physical control, the test result is admissible as evidence of the person's blood or breath alcohol level at the time of the alleged operating or actual physical control, but the trier of fact shall determine what weight is given to the result of the test.

(3) This section does not prevent a court from receiving otherwise admissible evidence as to a defendant's blood or breath alcohol level or drug level at the time of the alleged operating or actual physical control.

Section 2. Section Amended.

Section 41-6-44.10, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.10. Implied consent to chemical tests for alcohol or drug — Number of tests — Refusal — Warning, report — Hearing, revocation of license — Appeal — Person incapable of refusal — Results of test available — Who may give test — Evidence.

(1) (a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered[~~, except the officer shall request that either the blood or urine test be administered under Section 76-5-207~~].

(ii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle.

(b) Following [~~this~~] the warning under Subsection (a), [~~unless~~] if the person does not immediately [~~requests~~] request that the chemical test or tests as offered by a peace officer be administered[~~, no test may be given. (b)~~ A] a peace officer shall serve on the person, on behalf of the division, immediate notice of the division's intention to revoke the person's privi-

lege or license to operate a motor vehicle. When the officer serves the immediate notice on behalf of the division, he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only 30 days; and

(iii) supply to the operator, on a form approved by the division, basic information regarding how to obtain a hearing before the division.

(c) A citation issued by a peace officer may, if approved as to form by the division, serve also as the temporary license.

(d) The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4 or while under the influence of alcohol [or], any drug, or combination of alcohol and any drug under Section 41-6-44 and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e) A person who has been notified of the division's intention to revoke his license under this section is entitled to a hearing. A request for the hearing shall be made in writing within ten days after the date of the arrest. Within 20 days after receiving a written request, the division shall notify the person of his opportunity to be heard as early as practicable. If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in Utah shall be revoked for a period of one year beginning on the 31st day after the date of arrest.

(f) If a hearing is requested by the person and conducted by the division, and the division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the division as required in the notice, the division shall revoke his license or permit to operate a motor vehicle in Utah for one year, beginning on the date the hearing is held. The division shall also assess against the person, in addition to any fee imposed under Subsection 41-2-112 (15), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

(g) (i) Any person whose license has been revoked by the division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol [or], any, drug or combination of alcohol and any drug.

Section 3. Section Amended.

Section 76-5-207, Utah Code Annotated 1953, as last amended by Chapter 148, Laws of Utah 1988, is amended to read:

76-5-207. Automobile homicide.

(1) (a) Criminal homicide is automobile homicide, a third degree felony, if the actor operates a motor vehicle while having a blood alcohol content of .08% or greater by weight, or while under the influence of alcohol [or], any drug, or the combined influence of alcohol and any drug, to a degree that renders the actor incapable of safely operating the vehicle, and

causes the death of another by operating the vehicle in a negligent manner.

(b) For the purpose of this subsection, "negligent" means simple negligence, the failure to exercise that degree of care [~~which~~] that reasonable and prudent persons exercise under like or similar circumstances.

(2)(a) Criminal homicide is automobile homicide, a second degree felony, if the actor operates a motor vehicle while having a blood alcohol content of .08% or greater by weight, or while under the influence of alcohol [~~or~~], any drug, or the combined influence of alcohol and any drug, to a degree [~~which~~] that renders the actor incapable of safely operating the vehicle, and causes the death of another by operating the motor vehicle in a criminally negligent manner.

(b) For the purpose of this subsection, "criminally negligent" means criminal negligence as defined by Subsection 76-2-103 (4).

(3) The standards for chemical breath analysis as provided by Section 41-6-44.3 and the provisions for the admissibility of chemical test results as provided by Section 41-6-44.5 apply to determination and proof of blood alcohol content under this section.

(4) Percent by weight of alcohol in the blood [~~shall be~~] is based upon grams of alcohol per one hundred cubic centimeters of blood.

(5) The fact that a person charged with violating this section is on or has been legally entitled to use alcohol or a drug is not a defense to any charge of violating this section.

(6) [~~Any chemical test is admissible in accordance with the Rules of Evidence if administered on a defendant:~~] Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

[~~(a) with his consent; or~~]

[~~(b) without his consent after his arrest either under this section or under Section 41-6-44, when the officer has reason to believe that the victim may die.~~]

[~~(7)(a) After a defendant is placed under arrest for a violation of this section, the peace officer shall require that the defendant submit to a chemical test of his blood or urine. This test may be required without the consent of the defendant, as provided in Subsection (6)(b).~~]

[~~(b) The test required under this subsection does not prohibit the administration of other additional chemical tests under this section.~~]

[~~(8)~~] (7) For purposes of this section, "motor vehicle" means any self-propelled vehicle and includes[~~, but is not limited to,~~] any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

CHAPTER 162
S. B. No. 86
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

APPRAISER LICENSURE

By Haven J. Barlow

AN ACT RELATING TO REAL ESTATE APPRAISERS; AMENDING QUALIFICATIONS FOR APPRAISER REGISTRATION AND CERTIFICATION; AMENDING INVESTIGATIVE AND ENFORCEMENT POWERS; AMENDING THE DISCIPLINARY HEARING PROCESS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
61-2B-10, AS LAST AMENDED BY CHAPTER 245, LAWS OF UTAH 1991
61-2B-16, AS LAST AMENDED BY CHAPTER 245, LAWS OF UTAH 1991
61-2B-28, AS LAST AMENDED BY CHAPTER 245, LAWS OF UTAH 1991
61-2B-31, AS LAST AMENDED BY CHAPTER 245, LAWS OF UTAH 1991
61-2B-37, AS LAST AMENDED BY CHAPTER 245, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 61-2b-10, Utah Code Annotated 1953, as last amended by Chapter 245, Laws of Utah 1991, is amended to read:

61-2b-10. State-registered appraiser — Authority and qualifications.

(1)[~~(a)~~] A state-registered appraiser is authorized to appraise all types of real property in this state if the appraisal [~~either~~]:

[~~(i)~~] (a) is not performed in conjunction with a federally related transaction; or

[~~(ii)~~] (b) does not exceed the dollar amount permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

[~~(b)~~] (2) A state-registered appraiser may not issue a certified appraisal report.

[~~(2)~~] (3) To qualify as a state-registered appraiser, an applicant must:

(a) be of good moral character; and

(b) successfully complete not less than 75 classroom hours in courses of study approved by the board [which] that relate to:

(i) real estate appraisal[~~,~~];

(ii) the Uniform Standards of Professional Appraisal Practice[~~,~~]; and

(iii) ethical rules to be observed by a real estate appraiser as required by Section 61-2b-27[~~, which~~].

(4) The courses of study under Subsection (3) shall be conducted by:

[~~(i)~~] (a) an accredited university, college, or junior college;

[~~(ii)~~] (b) an approved appraisal society, institute, or association; or

[~~(iii)~~] (c) such other school as [~~may be approved by~~] the board[~~;~~] may approve.

[~~(b) have no prior conviction for a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser.~~]

(5) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 2. Section Amended.

Section 61-2b-16, Utah Code Annotated 1953, as last amended by Chapter 245, Laws of Utah 1991, is amended to read:

61-2b-16. Certification requirements.

(1) Except as provided in Section 61-2b-15.5, an original certification may [~~not~~] only be issued to [~~any~~] a person who is of good moral character and has [~~not~~] demonstrated through a written examination process that he possesses:

(a) knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate;

(b) an understanding of the basic principles of land economics, the basic principles of the real estate appraisal process, and the problems likely to be encountered in gathering, interpreting, and processing the data that is required in the real estate appraisal process;

(c) an understanding of the standards for the development and communication of real estate appraisals as provided in this chapter;

(d) an understanding of the ethical rules that a real estate appraiser is required to observe;

(e) knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for the classification of certification for which the applicant has applied [~~for~~];

(f) knowledge of other principles and procedures appropriate for the classification of certification for which the applicant has applied [~~for~~];

(g) an understanding of basic real estate law; and

(h) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a person certified under this chapter.

[~~(2) An applicant for certification may not have a prior conviction for a criminal offense involving moral turpitude related to his ability to provide services as an appraiser.~~]

(2) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 3. Section Amended.

Section 61-2b-28, Utah Code Annotated 1953, as last amended by Chapter 245, Laws of Utah 1991, is amended to read:

61-2b-28. Enforcement — Investigation — Orders — Hearings.

(1) The division may investigate the actions of any person registered or certified under this chapter, or an applicant for registration, certification, or renewal, and may initiate an agency action in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to revoke, suspend, place on probation, or deny the registration or certification, order remedial education, or impose a penalty not to exceed $1,000 for any of the acts or omissions set forth in Section 61-2b-29.

(2) The division may subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond to a subpoena by a person registered or certified under this chapter is considered to be a separate violation of this chapter.

(3)(a) If the director has reason to believe that any person has been or is engaging in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop these acts, he shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(4)(a) After the hearing, if the board agrees that the acts of the person violate this chapter, the board shall issue an order making the cease and desist order permanent.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, the executive director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(5) The remedies and action provided in this section do not limit, interfere with, or prevent the prosecution of any other remedies or actions including criminal proceedings.

Section 4. Section Amended.

Section 61-2b-31, Utah Code Annotated 1953, as last amended by Chapter 245, Laws of Utah 1991, is amended to read:

61-2b-31. Disciplinary hearing process.

(1) Before disciplinary action may be taken by the board against a registrant or certificate holder, the division shall notify the registrant or certificate holder and schedule an adjudicative proceeding.

(2) If, after the hearing, the board determines that the registrant or certificate holder has violated this chapter, his registration or certificate may be suspended, revoked, or denied reissuance by written order of the board.

(3) The board may conduct hearings with the assistance of an administrative law judge or may delegate hearings to an administrative law judge. If the hearing is delegated by the board to an administrative law judge [~~and a ruling has been issued by the judge, the registrant or certificate holder may request reconsideration by the board~~], the judge shall submit written findings of fact, conclusions of law, and a recommended order to the board for its consideration.

(4) (a) Any applicant, registrant, certificate holder, or person aggrieved, including the complainant, may obtain judicial review of any adverse ruling, order, or decision of the board. Any appeal shall be governed by the Utah Rules of Appellate Procedure.

(b) If the applicant, registrant, or certificate holder prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, registrant, or certificate holder as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

Section 5. Section Amended.

Section 61-2b-37, Utah Code Annotated 1953, as last amended by Chapter 245, Laws of Utah 1991, is amended to read:

61-2b-37. Division service fees — Federal registry fees.

(1) The division, with the concurrence of the board, shall establish and collect fees in accordance with Section 63-38-3 for its services under this chapter.

(2) The division shall collect the annual registry fee established by the Federal Financial Institutions Examinations Council from those certificate holders who seek to perform appraisals in federally related transactions. The division shall transmit the fees to the federal [~~Financial Institutions Examinations Council~~] Appraisal Subcommittee at least annually.

CHAPTER 163
S. B. No. 112
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

MOTOR VEHICLE BUYBACK DISCLOSURE ACT

By Scott N. Howell
Winn L. Richards
Wilford R. Black, Jr.
Robert C. Steiner
Millie M. Peterson
Joseph L. Hull

AN ACT RELATING TO MOTOR VEHICLES; REQUIRING THE BRANDING OF CERTAIN MOTOR VEHICLE TITLES; REQUIRING CERTAIN DISCLOSURES RELATING TO THE RESALE OF NONCONFORMING MOTOR VEHICLES; PROVIDING FOR ENFORCEMENT; PROVIDING PENALTIES; ALLOWING PRIVATE ACTION; SPECIFYING APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
41-1A-522, UTAH CODE ANNOTATED 1953
41-3-406, UTAH CODE ANNOTATED 1953
41-3-407, UTAH CODE ANNOTATED 1953
41-3-408, UTAH CODE ANNOTATED 1953
41-3-409, UTAH CODE ANNOTATED 1953
41-3-410, UTAH CODE ANNOTATED 1953
41-3-411, UTAH CODE ANNOTATED 1953
41-3-412, UTAH CODE ANNOTATED 1953
41-3-413, UTAH CODE ANNOTATED 1953
41-3-414, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 41-1a-522, Utah Code Annotated 1953, is enacted to read:

41-1a-522. Record of nonconforming vehicle — Access — Brand.

(1) The definitions in Section 41-3-407 apply to this section.

(2) Upon receipt of a copy of an original certificate of title, Manufacturer's Statement of Origin, or other evidence of ownership of a nonconforming vehicle in accordance with Section 41-3-409, the division shall:

(a) establish a record of the reported nonconforming vehicle;

(b) allow access to the record upon written application to the division; and

(c) upon request for a new certificate of title for a nonconforming vehicle, brand the certificate of title with the words "MANUFACTURER BUYBACK NONCONFORMING VEHICLE" clearly and conspicuously on the face of the new certificate of title.

Section 2. Section Enacted.

Section 41-3-406, Utah Code Annotated 1953, is enacted to read:

41-3-406. Short title.

Sections 41-3-406 through 41-3-414 are known as the "Motor Vehicle Buyback Disclosure Act."

Section 3. Section Enacted.

Section 41-3-407, Utah Code Annotated 1953, is enacted to read:

41-3-407. Definitions.

As used in Sections 41-3-406 through 41-3-414:

(1) "Buyback vehicle" means a motor vehicle with an alleged nonconformity that has been replaced or repurchased by a manufacturer as the result of a court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer.

(2) "Consumer" means an individual who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle other than for the purposes of resale, or sublease, during the duration of the period defined under Section 13-20-5.

(3) "Manufacturer" means any manufacturer, importer, distributor, or anyone who is named as the warrantor on an express written warranty on a motor vehicle.

(4) (a) "Motor vehicle" includes:

(i) a motor home, as defined in Section 41-20-1, but only the self-propelled vehicle and chassis; and

(ii) a motor vehicle, as defined in Section 41-1a-102.

(b) "Motor vehicle" does not include:

(i) those portions of a motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space;

(ii) farm tractor, motorcycle, road tractor, or truck tractor as defined in Section 41-1a-102;

(iii) mobile home as defined in Section 41-1a-102; or

(iv) any motor vehicle with a gross laden weight of over 12,000 pounds.

(5) "Nonconforming vehicle" means a buyback vehicle that has been investigated and evaluated pursuant to Title 13, Chapter 20, New Motor Vehicles Warranties Act, or a similar law of another state or federal government.

(6) (a) "Nonconformity" means a defect, malfunction, or condition that fails to conform to the express warranty, or substantially impairs the use, safety, or value of a motor vehicle.

(b) "Nonconformity" does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of a motor vehicle by a person other than the manufacturer, its authorized agent, or a dealer.

(7) "Seller" means any person selling, auctioning, leasing, or exchanging a motor vehicle.

(8) "Violation" means each failure to comply with the obligations imposed by Sections 41-3-406 through 41-3-413. In the case of multiple failures to comply resulting from a single transaction, each failure to comply is a separate violation.

Section 4. Section Enacted.

Section 41-3-408, Utah Code Annotated 1953, is enacted to read:

41-3-408. Disclosure Statements.

(1) (a) A motor vehicle may not be offered, auctioned, sold, leased, transferred, or exchanged by a manufacturer or dealer with the knowledge that it is a buyback vehicle or a nonconforming vehicle without prior written disclosure in a clear and conspicuous manner, in accordance with this section.

(b) This section also applies to buyback vehicles or nonconforming vehicles originally returned to a manufacturer or its agent in another state and subsequently resold, leased, or offered or displayed for resale or lease in this state.

(c) An owner of a motor vehicle who is not a manufacturer or dealer, but who has been given information as required by Subsection (a) or (b) shall give the information, in writing, to any prospective purchaser of the vehicle.

(2) (a) The following disclosure language shall be contained in each contract for the sale or lease of a buyback vehicle or a nonconforming vehicle to a consumer or shall be contained in a form affixed to the contract:

"DISCLOSURE STATEMENT

This is a used motor vehicle. It was previously returned to the manufacturer or its agent in exchange for a replacement motor vehicle or a refund because it was alleged or found to have the following nonconformities:

1. _____

2. _____

3. _____

4. _____

5. _____

_____ (Buyer's Signature) _____ Date"

(b) The text of the disclosure shall be printed in 12 point boldface type except the heading, which shall be in 16 point extra boldface type.

(c) The entire notice shall be boxed.

(d) Each nonconformity shall be listed separately on a numbered line.

(e) A seller must obtain the consumer's acknowledgment of this written disclosure at the time of sale or lease as evidenced by the consumer's signature within the box containing the disclosure.

(3) (a) There shall be affixed to the lower corner of the windshield furthest removed from the driver's side of a nonconforming vehicle, a disclosure statement form which shall be readily visible from the exterior of the vehicle. The form shall be in the following configuration and shall state:

"DISCLOSURE STATEMENT

Vehicle Identification Number (VIN):

Year: _____ Make: _____ Model:

Prior Title Number: ___ State of Title:

Odometer Reading:

Warning: This motor vehicle was previously sold as new. It was subsequently alleged or found to have the following defect(s), malfunction(s), or conditions:

1. _____

2. _____

3. _____

4. _____

5. _____ "

(b) The disclosure statement shall be at least 4-1/2 inches wide and 5 inches long.

(c) The heading shall be boldface type in capital letters not smaller than 18 point in size and the body copy shall be regular or medium face type not smaller than 12 point in size.

(d) Each nonconformity shall be listed separately on a numbered line.

(e) The motor vehicle and title identification information must be inserted in the spaces provided.

Section 5. Section Enacted.

Section 41-3-409, Utah Code Annotated 1953, is enacted to read:

41-3-409. Certificate of title — Brand — Reporting requirements.

A manufacturer, its agent, or a dealer who accepts the return of a nonconforming vehicle, shall:

(1) immediately upon receipt, cause the words "MANUFACTURER BUYBACK NONCONFORMING VEHICLE" to be clearly and conspicuously stamped on the face of the original certificate of title, the Manufacturer's Statement of Origin, or other evidence of ownership; and

(2) within ten days of receipt of the certificate of title, Manufacturer's Statement of Origin, or other evidence of ownership, submit a copy of the face of that stamped document to the Motor Vehicle Division of the Tax Commission.

Section 6. Section Enacted.

Section 41-3-410, Utah Code Annotated 1953, is enacted to read:

41-3-410. State civil enforcement.

(1) If a person violates Sections 41-3-406 through 41-3-409, the attorney general may bring an action to:

(a) temporarily or permanently restrain or enjoin the violation;

(b) recover any amounts for the benefit of injured consumers for which the violator is liable under Section 41-3-411;

(c) recover a civil penalty of up to $10,000 for each violation that is committed; and

(d) obtain any other equitable relief the court determines to be proper, in addition to damages and civil penalties.

(2) An action under Subsection (1) must be brought within two years from the date on which the violation is discovered and disclosed to the attorney general.

Section 7. Section Enacted.

Section 41-3-411, Utah Code Annotated 1953, is enacted to read:

41-3-411. Private remedy.

(1) Any seller who violates Sections 41-3-406 through 41-3-409 is liable to the purchaser for:

(a) actual damages if the purchaser elects to retain the buyback vehicle, or the value of the consideration paid for the buyback vehicle if the purchaser elects rescission;

(b) the costs of the action and reasonable attorney fees;

(c) up to three times the value of the actual damages or the consideration as exemplary damages; and

(d) other equitable relief, including rescission and restitution, the court determines to be proper in addition to damages and costs.

(2) Actual damages include the difference between the actual market value of the buyback vehicle or nonconforming vehicle at the time of purchase and the contract price, towing, repair, and storage expenses, rental of substitute transportation, food and lodging expenses, lost wages, finance charges, sales or use tax, other governmental fees, lease charges, and other incidental and consequential damages.

(3) Lack of privity is not a bar to any action under this section.

(4) (a) A permanent injunction, final judgment, or final order of the court obtained by the attorney general under Section 41-3-410 is prima facie evidence, in an action brought under this section, that the defendant has violated Sections 41-3-406 through 41-3-409.

(b) This section does not apply to consent orders or stipulated judgments in which there is no admission of liability by the defendant.

(5) Any action to enforce liability under this section must be brought within two years from the date of discovery by the consumer of the facts underlying the cause of action.

Section 8. Section Enacted.

Section 41-3-412, Utah Code Annotated 1953, is enacted to read:

41-3-412. Unfair trade practices.

A violation of Sections 41-3-406 through 41-3-409 is an unfair or deceptive practice under Title 13, Chapter 11, Utah Consumer Sales Practices Act.

Section 9. Section Enacted.

Section 41-3-413, Utah Code Annotated 1953, is enacted to read:

41-3-413. Criminal Penalties — Nonexclusive.

(1) Knowing or intentional concealment, removal, destruction, or alteration of a disclosure statement or of a certificate of title branded under Section 41-1a-522 is a second degree felony.

(2) Criminal penalties under this chapter are not exclusive, but are in addition to those under Section 76-10-1801.

(3) The remedies provided in Sections 41-3-410 through this section are not exclusive but are in addition to any other remedies provided by law.

Section 10. Section Enacted.

Section 41-3-414, Utah Code Annotated 1953, is enacted to read:

41-3-414. Application.

Sections 41-3-406 through 41-3-414 apply to automobiles repurchased on or after July 1, 1993.

Section 11. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 164
S. B. No. 113
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1994

STATE EMPLOYEE FAMILY DEATH BENEFITS

By Blaze D. Wharton

AN ACT RELATING TO STATE EMPLOYEES; CONTINUING HEALTH AND DEATH BENEFITS TO THE SURVIVING SPOUSE AND FAMILY OF STATE EMPLOYEES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
67-19-14, AS LAST AMENDED BY CHAPTER 46, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 67-19-14, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1988, is amended to read:

67-19-14. Sick leave — Unused sick days — Early retirement program.

(1) The director shall, as an incentive to reduce sick leave abuse, [~~promulgate~~] make rules governing procedures whereby, after an employee has accumulated 18 unused sick leave days, any sick days accumulated during any calendar year in excess of eight, at the option of that employee, may be carried as "converted sick leave" which the employee may use at a later date as annual leave, regular sick leave, or as paid-up health and medical insurance at the time of retirement on the basis of the payment by the employing department of one month's premium for each day of accumulated sick leave.

(2) (a) (i) The director shall [~~promulgate~~] make rules [~~and regulations~~] for the governance of an early retirement program.

(ii) Employing departments may offer an early retirement option to an employee.

(iii) Employee participation in the early retirement program shall be entirely voluntary.

(iv) An employee must be eligible for retirement benefits to qualify for the program.

(b) (i) The program shall provide for an employee to be paid for 25% of unused accumulated sick leave at the employee's preretirement rate of pay.

(ii) The employing department shall also provide health and life insurance benefits until the employee [~~reaches age 65~~] becomes eligible for Medicare, but not to exceed five years' coverage from the date of retirement. [~~An employee's health and life insurance benefits under the program terminate at death.~~]

(c) An employee under the age of 60, whose unused sick leave, after the 25% cashout has been paid, exceeds the 60 days maximum for five-year coverage under Subsection (b), may continue health and life insurance at the rate of one month's coverage for each day of unused sick leave above the 60 days, but not to exceed coverage beyond the age [65] eligible for Medicare.

(d) Any costs or savings for this act shall be borne by the agency and shall not be appropriated by the Legislature.

(3) (a) The director shall [~~promulgate~~] make rules to provide a continuation of health and dental insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty. The insurance coverage shall continue for a period of five years or until the surviving spouse [~~realizes age 65~~] becomes eligible for Medicare, whichever comes first.

(b) The rules shall also provide for a cashout of 25% of accumulated sick leave in the same manner as provided under Subsection (2)(b).

(c) The costs of paying for the benefits under Subsections (3)(a) and (b) shall be included in the agency's budget request each year following the date of death of the employee.

Section 2. Effective Date.

This act takes effect on July 1, 1994.

CHAPTER 165
S. B. No. 115
Passed February 26, 1993
Approved March 16, 1993
Effective March 16, 1993

MOTOR VEHICLE PENALTY PROVISIONS

By George Mantes

AN ACT RELATING TO MOTOR VEHICLES; AMENDING PENALTY PROVISIONS FOR THE MOTOR VEHICLE BUSINESS REGULATION ACT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-3-701, AS RENUMBERED AND AMENDED BY CHAPTER 234, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-3-701, Utah Code Annotated 1953, as renumbered and amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-3-701. Violations as misdemeanors.

(1) Except as otherwise provided in this chapter, any person who violates this chapter or any rule made by the administrator is guilty of a class [G] B misdemeanor.

(2) A person who violates Section 41-3-201 is guilty of a class [B] A misdemeanor.

(3) A person who violates Section 41-3-301 is guilty of a class [B] A misdemeanor unless the selling dealer complies with the requirements of Section 41-3-402.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 166
S. B. No. 172
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

SALES TAX AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; CLARIFYING THE EXEMPTION OF AVIATION FUEL FROM THE SALES TAX; PROVIDING THAT SALES TAXES ARE HELD IN TRUST FOR THE STATE; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-12-104, AS LAST AMENDED BY CHAPTERS 66 AND 298, LAWS OF UTAH 1992
59-12-107, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 59-12-104, Utah Code Annotated 1953, as last amended by Chapters 66 and 298, Laws of Utah 1992, is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor [~~fuels~~] fuel, and special [~~fuels~~] fuel subject to a Utah state excise tax under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 120% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales made through coin-operated laundry machines, coin-operated dry cleaning machines, or coin-operated car washes;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities and, after July 1, 1993, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) sales or use of property which the state is prohibited from taxing under the Constitution or laws of the United States or under the laws of this state;

(13) sales of meals served by:

(a) public elementary and secondary schools;

(b) churches, charitable institutions, and institutions of higher education, if the meals are not available to the general public; and

(c) inpatient meals provided at medical or nursing facilities;

(14) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state;

(15) sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements, which includes replacement machinery and equipment even though they may increase plant production or capacity, as determined by the commission) in any manufacturing facility in Utah. Manufacturing facility means an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget. For purposes of this subsection, the commission shall by rule define "new or expanding operations" and "establishment." By October 1, 1991, and every five years thereafter, the commission shall review this exemption and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemption should be continued, modified, or repealed. In its report to the Revenue and Taxation Interim Committee, the tax commission review shall include at least:

(a) the cost of the exemption;

(b) the purpose and effectiveness of the exemption; and

(c) the benefits of the exemption to the state;

(16) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that

contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(17) intrastate movements of freight and express or street railway fares;

(18) sales of newspapers or newspaper subscriptions;

(19) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(20) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products;

(21) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(a) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $100, and maintenance and janitorial equipment and supplies;

(b) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(c) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(22) seasonal sales of crops, seedling plants, or garden, farm, or other agricultural produce if sold by the producer;

(23) purchases of food made with food stamps;

(24) any container, label, shipping case, or, in the case of meat or meat products, any casing;

(25) property stored in the state for resale;

(26) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(27) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(28) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;

(29) any sale of a service described in Subsections 59-12-103 (1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(30) purchases of food made under the WIC program of the United States Department of Agriculture;

(31) sales or leases made after July 1, 1987. and before June 30, 1994, of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget, but only if the steel mill was a nonproducing Utah facility purchased and reopened for the production of steel;

(32) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(33) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(34) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah; and

(35) until July 1, 1999, amounts paid for purchase of telephone service for purposes of providing telephone service.

Section 2. Section Amended.

Section 59-12-107, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

59-12-107. Collection, remittance, and payment of tax by vendors and consumers — Returns — Direct payment by purchaser or dealer of vehicle — Other liability for collection — Credits — Deposit and sale of security — Penalties.

(1) (a) Each vendor shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the vendor:

(i) has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business;

(ii) maintains a stock of goods;

(iii) engages in regular or systematic solicitation of sale of tangible personal property, whether or not accepted in this state, by the distribution of catalogs, periodicals, advertising flyers, or other advertising by means of print, radio, or television, or by mail, telegraphy, telephone, computer data base, optic, microwave, or other communication system for the purpose of selling, at retail, tangible personal property;

(iv) regularly engages in the delivery of property in this state other than by common carrier or United States mail; or

(v) regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(b) If none of the conditions listed under Subsection (a) exist, the vendor is not responsible for the collection of the use tax but each person storing, using, or consuming tangible personal property is responsible for remitting the use tax.

(2)(a) Each vendor shall collect the sales or use tax from the purchaser.

(b) A vendor may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.

(c) (i) Each vendor shall:

(A) give the purchaser a receipt for the use tax collected; or

(B) bill the use tax as a separate item and declare the name of this state and the vendor's use tax license number on the invoice for the sale.

(ii) The receipt or invoice is prima facie evidence that the vendor has collected the use tax and relieves the purchaser of the liability for reporting the use tax to the [~~state~~] commission as a consumer.

(d) A vendor [~~need not~~] is not required to maintain a separate account for the tax collected, but is deemed to be a person charged with receipt, safekeeping, and transfer of public moneys.

(e) Taxes collected by a vendor pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

[~~(e)~~] (f) If any vendor, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this part and Part 2, the vendor shall remit to the commission the full amount of the tax imposed under this part and Part 2 plus any excess.

[~~(f)~~] (g) If the accounting methods regularly employed by the vendor in the transaction of the vendor's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that will, in its opinion, better suit the convenience of the taxpayer or vendor and will not jeopardize collection of the tax.

(3) Each person storing, using, or consuming tangible personal property under Subsection 59-12-103(1) is liable for the use tax imposed under this chapter.

(4)(a) Except as provided in Subsection (5) and in Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(b) Each vendor shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period. The vendor shall remit with the return the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Each return shall contain information and be in a form the commission prescribes by rule.

(d) The sales tax as computed in the return shall be based upon the total nonexempt sales made during the period, including both cash and charge sales.

(e) The use tax as computed in the return shall be based upon the total amount of sales or purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge.

(f) The commission may by rule extend the time for making returns and paying the taxes. No extension may be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if it deems it necessary in order to ensure the payment of the tax imposed by this chapter.

(5) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state. The commission shall collect the tax when the vehicle is titled or registered.

(b) Upon application for title or registration of each vehicle sold by a regular licensed vehicle dealer, the dealer shall certify to the commission whether or not the dealer is current in the payment and reporting of sales or use tax, as required by Subsection (4). Each vehicle dealer not in compliance with Subsection (4) shall remit the sales or use tax to the commission upon application for title or registration of the vehicle. Any violation of this subsection, or the falsification of any required information, is a class A misdemeanor.

(6) If any sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale if the retailer represents that the personal property is purchased by the retailer for resale and the personal property thereafter is not resold. Instead, the retailer is solely liable for the tax.

(7) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63, Chapter 51, Resource Development, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission. Instead, the person prepaying the sales or use tax is solely liable for the tax.

(8) Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

(9) (a) The commission may require any person subject to the tax imposed under this chapter to deposit with it security as the commission determines, if the commission deems it necessary to ensure compliance with this chapter.

(b) The commission may sell the security at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due.

(c) The commission shall serve notice of the sale upon the person who deposited the securities either personally or by mail. If notice is by mail, notice sent to the last known address as it appears in the records of the commission is sufficient for the purposes of this requirement.

(d) The commission shall return to the person who deposited the security any amount of the sale proceeds that exceed the amounts due under this chapter.

(10) (a) It is unlawful for a vendor, with intent to evade any tax, to fail to timely remit the full amount of tax required by this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(b) Each person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts determined to be due by the commission under Sections 59-12-110 and 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Section 59-12-110.

(c) For purposes of prosecution under this section, each quarterly tax period in which a vendor, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.

CHAPTER 167
S. B. No. 175
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

REGULATION OF SALE OF MOTOR VEHICLES ON CONSIGNMENT

By George Mantes

AN ACT RELATING TO MOTOR VEHICLES; SPECIFYING RIGHTS AND DUTIES OF CONSIGNEES AND CONSIGNORS FOR CONSIGNMENT SALES; AND INCLUDING A COORDINATING CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
41-3-801, UTAH CODE ANNOTATED 1953
41-3-802, UTAH CODE ANNOTATED 1953
41-3-803, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 41-3-801, Utah Code Annotated 1953, is enacted to read:

Part 8. Consignment Sales

41-3-801. Short title.

This part shall be known as the "Consignment Sales Act."

Section 2. Section Enacted.

Section 41-3-802, Utah Code Annotated 1953, is enacted to read:

41-3-802. Definitions.

As used in this part:

(1) "Consignee" means a dealer who accepts vehicles for sale under an agreement that the dealer will pay the consignor for any sold vehicle and will return any unsold vehicles.

(2) "Consignor" means a person who places a vehicle with a consignee for consignment sale.

Section 3. Section Enacted.

Section 41-3-803, Utah Code Annotated 1953, is enacted to read:

41-3-803. Consignment sales.

(1) A consignor may take possession of his consigned vehicle at any time the consigned vehicle is in the possession of a consignee, provided that the consignor:

(a) has notified the consignee in writing that he will take possession of the consigned vehicle; and

(b) has paid all outstanding charges owing to the consignee that have been agreed to by the consignor in accordance with Subsection (2).

(2) The agreed upon charges under Subsection (1)(b) shall be:

(a) in writing;

(b) on a form designed by the department; and

(c) attached to the written consignment agreement.

(3) A consignee who sells a consigned vehicle shall report to the consignor in writing the exact selling price of the consigned vehicle under either of the following circumstances:

(a) the consignor and consignee agree in writing that the consignor shall receive a percentage of the selling price upon the sale of the vehicle; or

(b) the consignor and consignee renegotiate in writing the selling price of the vehicle.

(4) When a consignee sells a consigned vehicle:

(a) the consignee, within seven calendar days of the date of sale, must give written notice to the consignor that the consigned vehicle has been sold; and

(b) the consignee, within 21 calendar days of the date of sale, or within 15 calendar days of receiving payment in full for the consigned vehicle, whichever date is earlier, shall remit the payment received to the consignor, unless the agreement to purchase the consigned vehicle has been rescinded before expiration of the 21 days.

(5) If the agreement to purchase the consigned vehicle has for any reason been rescinded before the expiration of 21 calendar days of the date of sale, the consignee shall within five calendar days thereafter give written notice to the consignor that the agreement to purchase has been rescinded.

(6) Vehicles on consignment shall be driven with the consignee's dealer plates. All other license plates or registration indicia must be removed from the vehicle.

(7) Prior to driving a consigned vehicle on the consignee's dealer plates, the consignee and the consignor shall execute a written consignment agreement that states:

(a) the party responsible for damage or misuse to a consigned vehicle; and

(b) the permitted uses a consignee may make of a consigned vehicle.

(8) The consignee shall keep the written consignment agreement on file at his principal place of business.

Section 4. Coordinating Clause.

If this bill and S.B. 153, Wholesale Motor Vehicle Auctions, both pass in the 1993 General Session, it is the intent of the Legislature that Subsection 41-3-802(1) of this bill be amended as follows:

(a) after "(1)" insert "(a)"; and

(b) after "unsold vehicles." insert "(b) "Consignee" does not include a wholesale motor vehicle auction."

CHAPTER 168
S. B. No. 178
Passed March 2, 1993
Approved March 16, 1993
Effective May 3, 1993

AUTOMOBILE HOMICIDE WITH DUI

By Winn L. Richards

AN ACT RELATING TO MOTOR VEHICLES; ADDING AUTOMOBILE HOMICIDE TO THE LIST OF PRIOR OFFENSES OF DRIVING UNDER THE INFLUENCE FOR ENHANCEMENT OF PENALTIES; INCREASING A PENALTY OPTION; EXPANDING TREATMENT OPTIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-44, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 41-6-44, Utah Code Annotated 1953, as last amended by Chapter 147, Laws of Utah 1991, is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license — Enhanced penalties.

(1) (a) [~~It is unlawful and punishable as provided in this section for any~~] A person [~~to~~] may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control[~~,~~]; or [~~if the person~~]

(ii) is under the influence of alcohol [~~or~~], any drug, or the combined influence of alcohol and any drug to a degree [~~which~~] that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a:

(i) class B misdemeanor[~~. But~~]; or

(ii) a class A misdemeanor if the person has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner[~~, he is guilty of a class A misdemeanor~~].

(b) In this section[~~,~~]:

(i) the standard of negligence is that of simple negligence, the failure to exercise that degree of care [~~which~~] that an ordinarily reasonable and prudent person exercises under like or similar circumstances;

(ii) a reference to this section includes any similar local ordinance adopted in compliance with this section; and

(iii) a conviction under Section 76-5-207, automobile homicide, for a violation committed after May 3, 1993, is considered a violation of Subsection (1) when determining whether an offense under Subsection (1) is a second, third, fourth, or subsequent offense.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours nor more than 240 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 24 hours nor more than 50 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate.

(5) (a) Upon a second conviction for a violation committed within six years of a prior violation under this section [~~or under a local ordinance similar to this section adopted in compliance with Section 41-6-43~~] the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours nor more than 720 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 80 hours nor more than 240 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate. The court may, in its discretion, order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6) (a) A third conviction for a violation committed within six years of two prior violations under this section [~~or under a local ordinance similar to this section adopted in compliance with Section 41-6-43~~] is a:

(i) class B misdemeanor except as provided in Subsections [~~(6)(a)~~](ii) and (7); and

(ii) class A misdemeanor if both of the prior convictions are for violations of Subsection (1) committed after April 23, 1990.

(b)(i) Under Subsection [~~(6)~~] (a)(i) the court shall as part of any sentence impose a mandatory jail sentence of not less than 720 nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility, as appropriate.

(c)(i) Under Subsection [~~(6)~~] (a)(ii) the court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of [~~a chemical~~] an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(7)(a) A fourth or subsequent conviction for a violation committed within six years of the prior violations under this section is a third degree felony if at least three prior convictions are for violations of Subsection (1) committed after April 23, 1990. [~~The prior convictions may be under this section or under a local ordinance similar to this section adopted in compliance with Section 41-6-43.~~]

(b)(i) The court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(ii) If at least three prior convictions are for violations committed after May 3, 1993, the court may as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours.

(c) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of [~~a chemical~~] an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(d) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(8)(a) [~~No~~] The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation [~~of~~] under this section [~~or a local ordinance similar to this section adopted in compliance with Subsection 41-6-43(1)~~] may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, if it is a second or subsequent conviction for a violation committed within six years of a prior violation, until the convicted person has furnished evidence satisfactory to the department that all fines and fees, including fees for restitution and rehabilitation costs, assessed against the person have been paid.

(9) (a) The [~~provisions~~] requirements in Subsections (4), (5), (6), and (7) that [~~require~~] a sentencing court [~~to~~] order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do any combination of those things, apply to a conviction for a violation of Section 41-6-45 that qualifies as a prior conviction under Subsection (10). The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-45 that qualifies as a prior conviction under Subsection (10), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections [~~41-6-44~~] (4), (5), (6), and (7).

(b) For purposes of determining whether a conviction under Section 41-6-45 [~~which~~] that qualified as a prior conviction under Subsection (10), is a first, second, or subsequent conviction under this subsection, a previous conviction under either this section or Section 41-6-45 is considered a prior conviction.

(c) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(10)(a) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45 or of an ordinance enacted under Section 41-6-43 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol or drugs, or a combination of both, by the defendant in connection with the violation. The statement is an offer of proof of the facts which shows whether there was consumption

of alcohol or drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-45 as follows. If the court accepts the defendant's plea of guilty or no contest to a charge of violating Section 41-6-45, and the prosecutor states for the record that there was consumption of alcohol or drugs, or a combination of both, by the defendant in connection with the violation, the resulting conviction is a prior conviction for the purposes of Subsections (5), (6), and (7).

(c) The court shall notify the department of each conviction of Section 41-6-45 [~~which~~] that is a prior offense for the purposes of Subsections (5), (6), and (7).

(11) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(12) The Department of Public Safety shall suspend for 90 days the operator's license of any person convicted for the first time under Subsection (1), and shall revoke for one year the license of any person convicted of any subsequent offense under Subsection (1) if the violation is committed within a period of six years from the date of the prior violation. The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 41-2-130, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

CHAPTER 169
S. B. No. 179
Passed March 2, 1993
Approved March 16, 1993
Effective January 1, 1994

CORPORATE TAX REVISIONS

By Lyle W. Hillyard
Mike Dmitrich

AN ACT RELATING TO REVENUE AND TAXATION; ADOPTING FEDERAL TAXABLE INCOME BEFORE NET OPERATING LOSS AND SPECIAL DEDUCTIONS AS STARTING POINT FOR CORPORATE FRANCHISE AND CORPORATE INCOME TAXES; ADOPTING ADDITIONS AND SUBTRACTION SECTIONS; DELETING EXEMPTION FROM CORPORATE FRANCHISE AND CORPORATE INCOME TAXES FOR HOLDING COMPANIES; MODIFYING TREATMENT OF NET LOSSES; CLARIFYING TREATMENT OF FOREIGN OPERATING COMPANIES AND FOREIGN SALES CORPORATIONS; MODIFYING DEDUCTION FOR MEALS AND ENTERTAINMENT EXPENSES; ELIMINATING THE OPTIONAL TAX; ALLOWING CORPORATIONS PREVIOUSLY FILING A CONSOLIDATED REPORT TO FILE A COMBINED REPORT; MAKING OTHER TECHNICAL CORRECTIONS; PROVIDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
16-6-99.1, AS LAST AMENDED BY CHAPTER 108, LAWS OF UTAH 1990
59-1-402, AS ENACTED BY CHAPTER 3, LAWS OF UTAH 1987
59-1-703, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-7-201, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-203, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-204, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-205, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-206, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-207, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-208, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-302, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
59-7-318, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-10-404, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-13-209, AS ENACTED BY CHAPTER 6, LAWS OF UTAH 1987
59-14-405, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

ENACTS:
59-7-401, UTAH CODE ANNOTATED 1953
59-7-402, UTAH CODE ANNOTATED 1953
59-7-403, UTAH CODE ANNOTATED 1953
59-7-404, UTAH CODE ANNOTATED 1953
59-7-405, UTAH CODE ANNOTATED 1953
59-7-601, UTAH CODE ANNOTATED 1953
59-7-602, UTAH CODE ANNOTATED 1953
59-7-603, UTAH CODE ANNOTATED 1953
59-7-701, UTAH CODE ANNOTATED 1953
59-7-702, UTAH CODE ANNOTATED 1953
59-7-703, UTAH CODE ANNOTATED 1953
59-7-704, UTAH CODE ANNOTATED 1953
59-7-705, UTAH CODE ANNOTATED 1953
59-7-706, UTAH CODE ANNOTATED 1953
59-7-707, UTAH CODE ANNOTATED 1953
59-10-108.5, UTAH CODE ANNOTATED 1953 (CODIFIED AS 59-10-108.2)

REPEALS AND REENACTS:
59-7-101, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-102, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-103, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-104, AS LAST AMENDED BY CHAPTER 236, LAWS OF UTAH 1991
59-7-105, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-106, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-107, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-108, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-109, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990
59-7-110, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-111, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-112, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-113, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-114, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-115, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-116, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-117, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-303, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

RENUMBERS AND AMENDS:
59-7-501,(RENUMBERED FROM 59-7-118, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-502,(RENUMBERED FROM 59-7-121, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-503,(RENUMBERED FROM 59-7-122, AS RENUMBERED AND AMENDED BY

CHAPTER 2, LAWS OF UTAH 1987)
59-7-504,(RENUMBERED FROM 59-7-122.5, AS ENACTED BY CHAPTER 236, LAWS OF UTAH 1987)
59-7-505,(RENUMBERED FROM 59-7-123, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992)
59-7-506,(RENUMBERED FROM 59-7-125, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-507,(RENUMBERED FROM 59-7-126, AS LAST AMENDED BY CHAPTER 66, LAWS OF UTAH 1992)
59-7-508,(RENUMBERED FROM 59-7-127, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-509,(RENUMBERED FROM 59-7-128, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH 1987)
59-7-510,(RENUMBERED FROM 59-7-129, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-511,(RENUMBERED FROM 59-7-130, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-512,(RENUMBERED FROM 59-7-131, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-513,(RENUMBERED FROM 59-7-132, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-514,(RENUMBERED FROM 59-7-133, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-515,(RENUMBERED FROM 59-7-134, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-516,(RENUMBERED FROM 59-7-135, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-517,(RENUMBERED FROM 59-7-136, AS RENUMBERED AND AMENDED BY CHAPTER 2 AND AS AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
59-7-518,(RENUMBERED FROM 59-7-137, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-519,(RENUMBERED FROM 59-7-138, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-520,(RENUMBERED FROM 59-7-139, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-521,(RENUMBERED FROM 59-7-140, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-522,(RENUMBERED FROM 59-7-141, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-523,(RENUMBERED FROM 59-7-142, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-524,(RENUMBERED FROM 59-7-145, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-525,(RENUMBERED FROM 59-7-146, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-526,(RENUMBERED FROM 59-7-147, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-527,(RENUMBERED FROM 59-7-148, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-528,(RENUMBERED FROM 59-7-149, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH 1987)
59-7-529,(RENUMBERED FROM 59-7-150, AS RENUMBERED AND AMENDED BY CHAPTERS 2 AND 3, LAWS OF UTAH 1987)
59-7-530,(RENUMBERED FROM 59-7-151, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-531,(RENUMBERED FROM 59-7-152, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-532,(RENUMBERED FROM 59-7-153, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-533,(RENUMBERED FROM 59-7-154, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-534,(RENUMBERED FROM 59-7-155, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-535,(RENUMBERED FROM 59-7-156, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-536,(RENUMBERED FROM 59-7-157, AS LAST AMENDED BY CHAPTER 148, LAWS OF UTAH 1987)
59-7-537,(RENUMBERED FROM 59-7-158, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987)
59-7-604,(RENUMBERED FROM 59-7-110.5, AS LAST AMENDED BY CHAPTER 242, LAWS OF UTAH 1992)
59-7-605,(RENUMBERED FROM 59-7-110.7, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1992, THIRD SPECIAL SESSION)
59-7-606,(RENUMBERED FROM 59-7-110.8, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1992)

REPEALS:
59-1-802, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-7-119, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-120, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-124, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-143, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-202, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
59-7-301, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

59-7-304, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 16-6-99.1, Utah Code Annotated 1953, as last amended by Chapter 108, Laws of Utah 1990, is amended to read:

16-6-99.1. Suspension — Notice — Failure to remove suspension.

(1) A domestic corporation that remains delinquent for more than 30 days after the mailing of the notice of delinquency under Section 16-6-99 shall be suspended. If a corporation is suspended under this section or under Section [~~59-7-155~~] 59-7-534, the division shall mail a notice of suspension to the corporation, unless the corporation's certificate of incorporation is already suspended for any reason. A corporation that is suspended continues its corporate existence and may carry on any business [~~so long as~~] if it also takes the necessary steps to remedy its suspended status and restore the corporation to good standing.

(2) A notice of suspension shall state:

(a) that the certificate of incorporation of the corporation has been suspended;

(b) the reason for the suspension;

(c) the date of the suspension;

(d) that the corporation may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division pursuant to Subsection 63-38-3 (2), in addition to any fees required by Section 16-6-100, or, if its certificate of incorporation has been suspended under Section [~~59-7-155~~] 59-7-534, by complying with the provisions of Section [~~59-7-157~~] 59-7-536; and

(e) that the corporation will be dissolved 120 days after the date of mailing the notice of suspension unless the corporation has removed the suspension before that time.

(3) The division shall include an annual report form with any notice of suspension under this section for failure to file an annual report.

(4) If the corporation does not remove the suspension within 120 days after the date of mailing the notice of suspension, the corporation shall be dissolved[~~; the~~]. The division shall mail a certificate of dissolution to the corporation. [~~No~~] A dissolved corporation [~~so dissolved~~] may not be revived under this chapter or Section [~~59-7-157~~] 59-7-536, except as [~~set forth~~] provided in Subsection (5). The dissolution of any corporation precludes that corporation from doing business in its corporate character under any name or assumed names filed on behalf of the dissolved corporation under Section 42-2-5. On the date of dissolution, the corporation's right in any assumed names it may use is suspended. The name of the dissolved corporation and any assumed names filed on its behalf are not available for one year from the date of dissolution for use by any other domestic corporation, foreign corporation transacting business in this state, or person doing business under an assumed name under Section 42-2-5.

(5) Any corporation which has been dissolved under this section may, within one year from the date of dissolution, be reinstated upon application and payment of all past due taxes, penalties, and reinstatement fees.

(6) All notices and certificates under this section shall be mailed first-class, postage prepaid, and shall be addressed separately to the registered agent and at least one officer of the corporation who is not the registered agent or to two officers if there is no registered agent of record at their most current mailing addresses appearing on the records of the division.

Section 2. Section Amended.

Section 59-1-402, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1987, is amended to read:

59-1-402. Interest.

[~~The~~] (1) Except as provided in Subsection (2), the rate of interest applicable to any tax provision administered directly by the commission is 12% annually.

(2) The rate of interest applicable to certain installment sales for the purposes of the corporate franchise tax shall be determined pursuant to Section 453 A, Internal Revenue Code as provided in Section 59-7-112.

Section 3. Section Amended.

Section 59-1-703, Utah Code Annotated 1953, as renumbered and amended by Chapter 3, Laws of Utah 1987, is amended to read:

59-1-703. Collection procedure — Review — Bond for stay — Sale of seized property.

(1) If any liability which is due and payable under Sections 59-1-701 and 59-1-702 is not paid, the collection shall be made in the same manner as is provided for the collection of delinquent taxes in Sections [~~59-7-147~~] 59-7-526 and [~~59-7-148~~] 59-7-527. In addition, the commission may issue a warrant of like terms, force, and effect directed to any legally authorized representative of the commission. In the execution of the warrant the authorized representative shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) The appropriateness of any termination or jeopardy assessment shall be reviewable under the procedures prescribed by the commission by rule. The amount of any termination or jeopardy assessment is reviewable only in the manner prescribed in Title 59, Chapter 1, Parts 5 and 6.

(3) In any proceeding brought to enforce payment of any liability made due and payable by virtue of this section or Section 59-1-701 or 59-1-702, the finding of the commission, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(4) After a petition has been filed with the commission and when the amount which the commission

has determined to be assessable has become final, any unpaid portion which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commission, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount which should have been assessed, the excess shall be credited or refunded to the taxpayer without the filing of claim. If the amount the commission has determined to be assessable is greater than the amount actually assessed, the difference shall be assessed, and collected as part of the tax, upon notice and demand by the commission.

(5) The commission may abate the jeopardy assessment if it finds that jeopardy does not exist. The abatement may not be made after a decision of the commission in respect of the deficiency has been rendered or, if no petition is filed with the commission, after the expiration of the period for filing petition. The period of limitation on making assessments and levies or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made. The running of the period of limitation shall be suspended from the date of such jeopardy assessments until the expiration of the 10th day after the assessment is abated.

(6) The collection of all or any part of any jeopardy assessment may be stayed by filing with the commission a bond in the amount and under conditions established by the commission. The taxpayer has the right to waive the stay at any time in respect of all or part of the amount covered by the bond. If, as a result of the waiver, any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(7) If a bond is given before the taxpayer has filed his petition pursuant to Chapter 1, Part 5, the bond shall contain a condition that the amount of the deficiency assessment, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand until the date of notice and demand under this subsection. The bond shall be conditioned upon the payment of that part of the assessment (collection of which is stayed by the bond) which is not abated by a decision of the commission and has become final. If the commission determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the commission is rendered.

(8) When a jeopardy assessment is made, the property seized for the collection of the tax may not be sold until a notice of deficiency is issued and the time for filing a petition for redetermination has expired. If a petition for redetermination is filed (whether before or after the making of the jeopardy assessment) the property may not be sold until the commission's decision on the petition becomes final[~~, except that the property may be sold if~~] unless the taxpayer consents to the sale, the commission determines that the expenses of conservation and maintenance would greatly reduce the net proceeds, or the property is perishable.

Section 4. Section Repealed and Reenacted.

Section 59-7-101, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2)(a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this subsection, "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" means income as defined in Subsection 59-7-302(1).

(6) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue Code except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code except that 50% shall be substituted for 80%; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(7) "Corporation" includes entities defined as corporations under Sections 7701 (a) and 7704, Internal Revenue Code.

(8) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(9) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state, and includes the right to do business through incorporation or qualification, the owning, renting, or leasing of real or personal property within this state, and the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

(10) "Domestic corporation" means a corporation which is incorporated or organized under the laws of this state.

(11) "Foreign corporation" means a corporation which is not incorporated or organized under the laws of this state.

(12)(a) "Foreign operating company" means a corporation which is incorporated in the United States, 80% or more of whose business activity, as determined under Section 59-7-401, is conducted outside the United States.

(b) "Foreign operating company" does not include a corporation which qualifies for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

(13) "Foreign sales corporation" means a corporation as defined in Section 922, Internal Revenue Code.

(14) "Income" includes losses.

(15) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

(16) "Nonbusiness income" means income as defined in Subsection 59-7-302(4).

(17) "Nonresident shareholder" means any shareholder of an S corporation who on the last day of the taxable year of the S corporation, is an individual not domiciled in Utah or a nonresident trust or nonresident estate, as defined in Section 59-10-103.

(18) "Resident shareholder" means any shareholder of an S corporation who is not a nonresident shareholder.

(19) "S corporation" means a small business corporation as defined in Section 1361, Internal Revenue Code.

(20) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code of 1981.

(21) "State of the United States" includes any of the 50 states or the District of Columbia and "United States" includes the 50 states and the District of Columbia.

(22) "Tax haven corporation" means any corporation:

(a) which is incorporated in a foreign country or United States' possession or commonwealth that either does not impose a corporation tax based upon income, or imposes a corporation tax based upon income at an effective rate lower than 65% of the maximum marginal federal tax rate applied to the taxable income of the corporation determined under federal law as if it were a domestic corporation; and

(b) which does not perform substantial business activity independent of that involving affiliates which are members of a unitary group which files a combined report.

(23) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed, and also includes, in the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, the period for which such return is made.

(24) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(25) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(26) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(27) "Unitary group" means a group of corporations that:

(a) are related through common ownership; and

(b) are economically interdependent with one another as demonstrated by the following factors:

(i) centralized management;

(ii) functional integration;

(iii) economies of scale.

(28) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

(29) "Utah net loss deduction" means the amount of Utah net losses from other taxable years which may be carried back or carried forward to the current taxable year in accordance with Section 59-7-110.

(30) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(31) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah.

(32) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group which are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code in accordance with Subsection (b);

(B) tax haven corporations; and

(C) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code is part of a unitary group.

(c) There is a rebuttable presumption that a foreign sales corporation is a tax haven corporation.

(33) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

Section 5. Section Repealed and Reenacted.

Section 59-7-102, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-102. Exemptions.

(1) The following corporations are exempt from this chapter:

(a) organizations meeting the requirements of Sections 501(c) or (d), Internal Revenue Code;

(b) insurance companies which are otherwise taxed on their premiums under Title 59, Chapter 9;

(c) homeowner associations not organized for profit, which are organized to maintain or operate common area or facilities in a subdivision, planned unit development, or condominium, and a majority of the membership of which is living within the subdivision, planned unit development, or condominium as a primary place of residence;

(d) credit unions qualifying under Section 7-9-34; and

(e) farmers', fruit growers', or like associations organized and operated on a cooperative basis:

(i) for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them; or

(ii) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) (a) The exemption under Subsection (1)(e) may not be denied any association identified in that subsection because it has capital stock, if the dividend rate of that stock is fixed at a rate which does not exceed the legal rate of interest in the state of incorporation or 8% per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all the stock, other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise beyond the fixed dividends, is owned by producers who market their products or purchase their supplies and equipment through the association.

(b) The exemption under Subsection (1)(e) may not be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve or surplus for any necessary purpose. Such association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, if the value of the purchases made for persons who are neither members nor agricultural producers does not exceed 15% of the value of all its purchases.

(c) Corporations organized by an association exempt under Subsection (1)(e) or its members, for the purpose of financing the ordinary crop operations of those members or other producers, and operated in conjunction with the association, are also exempt.

(d) The exemption under Subsection (1)(e) may not be denied any such corporation because it has capital stock, if the dividend rate of the stock is fixed at a rate which does not exceed the legal rate of interest in the state of incorporation or 8% per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock, other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise beyond the fixed dividends, is owned by such association or its members.

(e) The exemption under Subsection (1)(e) may not be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

Section 6. Section Repealed and Reenacted.

Section 59-7-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-103. Chapter applicable to receivers, trustees in bankruptcy and assignees.

Unless otherwise provided in this chapter, receivers, trustees in bankruptcy, and assignees for creditors required to make returns under this chapter shall be subject to the provisions of this chapter.

Section 7. Section Repealed and Reenacted.

Section 59-7-104, Utah Code Annotated 1953, as last amended by Chapter 236, Laws of Utah 1991, is repealed and reenacted to read:

59-7-104. Tax — Minimum tax.

(1) Each domestic and foreign corporation, except those exempted under Section 59-7-102, shall pay an annual tax to the state based on its Utah taxable income for the taxable year for the privilege of exercising its corporate franchise or for the privilege of doing business in the state.

(2) The tax shall be 5% of a corporation's Utah taxable income.

(3) The minimum tax a corporation shall pay under this chapter is $100.

Section 8. Section Repealed and Reenacted.

Section 59-7-105, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-105. Additions to unadjusted income.

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

(3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

(7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated technological equipment;

(8) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(9) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(10) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation; and

(11) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107; and

(12) (a) interest or other expense which has been deducted and which is allocable to income not subject to apportionment under Part 3; and

(b) if an interest or other expense is indirectly allocable to both nonapportionable and apportionable income, the amount of that interest and other expense allocable to nonapportionable income shall be an amount which bears the same ratio to the aggregate amount otherwise allowable (determined without regard to this subsection) as the average amount of the asset producing the nonapportionable income bears to the average amount of all assets of the taxpayer within the taxable year.

Section 9. Section Repealed and Reenacted.

Section 59-7-106, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-106. Subtractions from unadjusted income.

In computing adjusted income the following amounts shall be subtracted from unadjusted income:

(1) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;

(2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the loss on the current Utah return. The deduction shall be made by claiming the deduction on the current Utah return which shall be filed by the due date of the return, including extensions. For the purposes of this subsection all capital losses in a given year must be:

(a) deducted in the year incurred; or

(b) carried forward as provided in Section 1212(a)(1)(c), Internal Revenue Code;

(3) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51, Internal Revenue Code;

(4) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal research and development credit under Section 41, Internal Revenue Code;

(5) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue Code;

(6) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;

(7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

(8) any income on the federal corporate return that has been previously taxed by Utah;

(9) amounts included in federal taxable income that are due to refunds of taxes imposed for the privilege of doing business, or exercising a corporate franchise, including income, franchise, corporate stock and business and occupation taxes paid by the corporation to Utah, another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income under Section 59-7-105;

(10) charitable contributions, to the extent allowed as a subtraction under Section 59-7-109;

(11) (a) 50% of the dividends deemed received or received from subsidiaries which are members of the unitary group and are organized or incorporated outside of the United States unless such subsidiaries are included in a combined report under Section 59-7-402 or Section 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the dividends deemed received or received, the expense directly attributable to those dividends. Interest expense attributable to excluded dividends shall be determined by multiplying interest expense by a fraction, the numerator of which is the taxpayer's average investment in such dividend paying subsidiaries, and the denominator of which is the taxpayer's average total investment in assets;

(b) in determining income apportionable to this state, a portion of the factors of a foreign subsidiary whose dividends are partially excluded under this Subsection (11)(a) shall be included in the combined report factors. The portion to be included shall be determined by multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the numerator of which is the amount of the dividend paid by the foreign subsidiary which is included in adjusted income, and the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code;

(12) (a) 50% of the adjusted income of a foreign operating company unless the taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For purposes of this subsection, when calculating the adjusted income of a foreign operating company, a foreign operating company may not deduct the subtractions allowable under Subsections 59-7-106(11) and (12)(a);

(b) in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentage its adjusted income is included in the combined adjusted income;

(13) the amount of gain or loss which is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made pursuant to Section 338(h)(10), Internal Revenue Code;

(14) the amount of gain or loss which is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(15) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107; and

(16) any interest expense not deducted on the federal corporate return under Section 265(b) or 291(e), Internal Revenue Code.

Section 10. Section Repealed and Reenacted.

Section 59-7-107, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-107. Basis.

(1) (a) For property acquired after December 31, 1993, basis shall be determined pursuant to the Internal Revenue Code without reference to Section 1502, Internal Revenue Code, or regulations promulgated under that section.

(b) Notwithstanding Subsection (1)(a), adjustments for basis in a combined report may be established by rules promulgated by the tax commission.

(2) For property acquired after December 31, 1930, but before January 1, 1994, basis shall be determined under Utah law in effect at the time the property was acquired.

(3) (a) Except as provided in Subsection (3)(c), the basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1931, shall be:

(i) the cost of such property or in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition; or

(ii) the fair market value of such property as of January 1, 1931, whichever is greater.

(b) In determining the fair market value of stock in a corporation as of January 1, 1931, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(c) (i) In determining the basis for inventory acquired before January 1, 1931, if the property

should have been included in the last inventory, the basis shall be the value of that property at the last inventory.

(ii) In determining the basis for bequests and devises acquired before January 1, 1931, if personal property was acquired by specific bequest, or if real property was acquired by general or specific devise, the basis shall be the fair market value of the property at the time of the death of the decedent. In all other cases if the property was acquired by will, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer.

(iii) In determining the basis for property acquired before January 1, 1931, during affiliation in which a combined report is filed under either Section 59-7-402 or 59-7-403, the basis shall be determined in accordance with rules prescribed by the commission.

(4) If any property subject to taxation under this chapter was acquired before January 1, 1931, the basis of such property, if other than the fair market value as of January 1, 1931, shall be diminished in the amount of exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date.

Section 11. Section Repealed and Reenacted.

Section 59-7-108, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is repealed and reenacted to read:

59-7-108. Distributions by corporations.

(1) For the purpose of this chapter, each distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated or increase in value of property accrued before January 1, 1931, may be excluded from taxable income after the earnings and profits accumulated after December 31, 1930 have been distributed, but any such distribution shall be applied against and reduce the basis of the stock.

(2) If any distribution which is not in partial or complete liquidation is made by a corporation to its shareholders, is not out of increase in value of property accrued before January 1, 1931, and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock. If the distribution is in excess of such basis, the excess shall be treated as a gain from the sale or exchange of property. The provisions of this subsection also apply to distributions from depletion reserves based on percentage depletion allowed by this chapter.

Section 12. Section Repealed and Reenacted.

Section 59-7-109, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is repealed and reenacted to read:

59-7-109. Charitable contributions.

(1) Except as provided in Subsection (2), a subtraction is allowed for contributions or gifts made within the taxable year to organizations described in Section 170(c), Internal Revenue Code.

(2) The aggregate amount of contributions and gifts deductible under this section may not exceed 10% of the taxpayer's apportionable income. The limitation imposed in this subsection shall be calculated on a separate return basis.

Section 13. Section Repealed and Reenacted.

Section 59-7-110, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-110. Utah net losses — Carryovers and carrybacks.

(1) The amount of Utah net loss which shall be carried back or forward to offset income of another taxable year shall be determined as provided in this section.

(2) (a) A Utah net loss from a taxable year ending before January 1, 1993, shall be carried back three taxable years preceding the taxable year of the loss and any remaining loss shall be carried forward five taxable years following the taxable year of the loss, subject to the limitations of this section.

(b) A Utah net loss from a taxable year ending after December 31, 1992, may be carried back three taxable years preceding the taxable year of the loss and carried forward 15 taxable years following the taxable year of the loss, subject to the limitations of this section. If an election is made to forego the federal net operating loss carryback, the Utah net loss is not eligible to be carried back unless an election is made for state purposes.

(3) The Utah net loss shall be carried to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years which were applied or required to be applied to offset income, is not less than zero.

(4) (a) Except as provided in Subsection (4)(a)(iii), the amount of Utah net loss which shall be carried to the year identified in Subsection (3) shall be the lesser of:

(i) the remaining Utah net loss after deduction of any amounts of such loss which were carried to previous years; or

(ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years which were carried or required to be carried to such year; and

(iii) in any event, the amount carried back may not exceed $1,000,000 in Utah taxable income for each corporate return filed in a taxable year. Any losses in excess of $1,000,000 may be carried forward; and

(b) any remaining Utah net loss shall be available to be carried to one or more taxable years in accordance with this section.

(5) (a) Corporations acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the

date of acquisition. This subsection does not apply if the only change in the corporation is that of the state of incorporation.

(b) An acquired corporation may deduct its net losses incurred before the date of acquisition against its separate income if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before such acquisition.

Section 14. Section Repealed and Reenacted.

Section 59-7-111, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-111. Safe harbor lease provisions.

(1) (a) For purchasers or lessors of safe harbor leases, the following additions shall be made to unadjusted income:

(i) interest expense; and

(ii) depreciation claimed on safe harbor lease property.

(b) For purchasers or lessors of safe harbor leases, the following subtractions shall be made from unadjusted income:

(i) rental income; and

(ii) amortization of the purchase price of tax benefits.

(2) (a) For sellers or lessees of safe harbor leases the following additions shall be made from unadjusted income:

(i) the amount of gain on the sale of federal tax benefits; and

(ii) rental expense on safe harbor lease property.

(b) For sellers or lessees of safe harbor leases the following subtractions shall be made to unadjusted income:

(i) interest income; and

(ii) depreciation on safe harbor lease property.

Section 15. Section Repealed and Reenacted.

Section 59-7-112, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-112. Installment sales.

(1) Except as provided in Subsections (2) and (3), installment sales shall be governed by Sections 453, 453A, and 453B, Internal Revenue Code.

(2) Installment sales entered into prior to January 1, 1994, shall be recognized as originally reported.

(3) If a corporation is no longer required to file a Utah corporate return, any taxes owed by that corporation on installment sales entered into by that corporation shall accelerate and be due on the corporation's last return filed in Utah.

Section 16. Section Repealed and Reenacted.

Section 59-7-113, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-113. Allocation of income and deductions between several corporations controlled by same interests.

If two or more corporations (whether or not organized or doing business in this state, and whether or not affiliated) are owned or controlled directly or indirectly by the same interests, the commission is authorized to distribute, apportion, or allocate gross income or deductions between or among such corporations, if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such corporations.

Section 17. Section Repealed and Reenacted.

Section 59-7-114, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-114. Section 338, Internal Revenue Code — Elections.

(1) Transactions for which an election has been made or considered to be made for federal purposes under Section 338, Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made or considered to be made for federal purposes.

(2) If an election is made or considered to be made for federal purposes under Section 338, Internal Revenue Code, other than under Subsection 338(h)(10):

(a) the target corporation shall file a separate entity one-day tax return for state purposes, as is required for federal purposes, and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income;

(b) the gain or loss on the deemed sale of assets shall be apportioned to this state using the apportionment fraction of the target corporation calculated on a separate entity basis for the most recent preceding taxable year consisting of 180 days or more; and

(c) the due date of the one-day return shall be the same as the due date of the return which includes the taxable period of the target corporation which immediately precedes the one-day return.

(3) If an election is made for federal purposes under Subsection 338(h)(10), Internal Revenue Code, the following shall apply:

(a) if the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined return to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group;

(b) if the target corporation is not a member of a unitary group immediately preceding the acquisi-

tion date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income; and

(c) any gain or loss which is not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, may not be included in the adjusted income of the selling corporation.

(4) There is rebuttable presumption that the gain or loss on the deemed sale of assets constitutes business income.

(5) The new basis of the target corporation's assets shall be determined under Section 338, Internal Revenue Code.

(6) The target corporation shall be treated as a new corporation as of the day after the acquisition date.

(7) The commission may prescribe such rules as necessary to provide for the equitable treatment of any transaction subject to Section 338, Internal Revenue Code.

Section 18. Section Repealed and Reenacted.

Section 59-7-115, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-115. Section 336(e), Internal Revenue Code — Elections.

(1) Transactions for which an election has been made for federal purposes under Section 336(e), Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made for federal purposes.

(2) If an election is made under Section 336(e), Internal Revenue Code, the following shall apply:

(a) if the corporation is treated for federal purposes as having disposed of all of its assets and is a member of a unitary group immediately preceding the date of sale, the corporation shall be included in a combined return to the extent of its income through the date of sale, and the gain or loss on the deemed disposal of assets shall be included in the combined income of the unitary group;

(b) if the corporation is treated for federal purposes as having disposed of all of its assets and is not a member of a unitary group immediately preceding the date of sale, the corporation shall file a short period return for the period ending on the date of sale and shall include in such return the gain or loss on the deemed disposal of assets in its adjusted income; and

(c) any gain or loss which is not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation pursuant to Section 336(e), Internal Revenue Code, may not be included in adjusted income.

(3) There is a rebuttable presumption that the gain or loss on the deemed disposition of assets constitutes business income.

(4) The new basis of assets of the corporation which is treated as having disposed of its assets shall be the same as determined for federal purposes.

(5) The corporation which is treated as having disposed of its assets shall be treated as a new corporation as of the day after the date of sale.

(6) The commission may prescribe such rules as necessary to provide for the equitable treatment of any transaction subject to Section 336(e), Internal Revenue Code.

Section 19. Section Repealed and Reenacted.

Section 59-7-116, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-116. Taxation of regulated investment companies.

Notwithstanding any other provision of this chapter, in case of regulated investment company or a fund thereof, as defined in Sections 851(a) or 851(h), Internal Revenue code, Utah taxable income means federal taxable income of the regulated investment company or fund plus municipal interest plus the exclusion of net capital gain provided in Section 852(b)(2)(A), Internal Revenue Code, minus the deduction for capital gain dividends and exempt interest dividends as defined in Sections 852(b)(3)(C) and 852(b)(5), Internal Revenue Code.

Section 20. Section Repealed and Reenacted.

Section 59-7-117, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-117. Equitable adjustments.

The commission shall by rule prescribe for adjustments to Utah taxable income when, solely by reason of the enactment of this chapter, a taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. However, the commission may not make any adjustment pursuant to this section which will result in an increase or decrease of tax liability that is less than $25.

Section 21. Section Amended.

Section 59-7-201, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

Part 2. The Corporate Income Tax

59-7-201. Tax — Minimum tax.

(1) There is imposed upon [~~every bank or~~] each corporation except those exempt under Section [~~59-7-105~~] 59-7-102 for each taxable year, a tax upon its [~~net~~] Utah taxable income derived from sources within this state [~~on or after January 1, 1977,~~] other than income for any period which the [~~bank or~~] corporation is required to include in its tax base under Section [~~59-7-102~~] 59-7-104.

(2) The tax [~~rate on the net income~~] imposed by Subsection (1) shall be[: ~~(a) 4% for tax years beginning prior to January 1, 1983; (b) 4.65% for tax years beginning on or after January 1, 1983; and (c)~~] 5% [~~thereafter for tax years beginning on or after January 1, 1984~~] of a corporation's Utah taxable income.

(3) In no case shall the tax be less than $100.

Section 22. Section Amended.

Section 59-7-203, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-203. Computation of Utah taxable income.

For purposes of the tax imposed by [~~Section 59-7-201~~] this part, [~~net~~] Utah taxable income shall be determined in accordance with [~~the provisions of Sections 59-7-106 through 59-7-122,~~] Part 1 of this chapter except that wherever the date December 31, 1930 appears, the date December 31, 1958 shall be substituted, and wherever the date January 1, 1931 appears, the date January 1, 1959 shall be substituted.

Section 23. Section Amended.

Section 59-7-204, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-204. Income attributed to sources within the state.

For the purposes of the tax imposed by [~~Section 59-7-201~~] this part, the portion of [~~net~~] Utah taxable income derived from or attributable to sources within this state, shall be determined in accordance with [~~the rules set forth in the Uniform Division of Income for Tax Purposes Act~~] Parts 3 and 4 of this chapter.

Section 24. Section Amended.

Section 59-7-205, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-205. Sections applicable for purposes of tax imposed.

For purposes of the tax imposed by [~~Section 59-7-201, all of the provisions of the following sections~~] this part, Parts 5 and 6 of this chapter shall [~~be fully applicable: Section 59-7-101, Sections 59-7-123 through 59-7-152, Section 59-7-154, Section 59-7-158, and Sections 59-7-301 through 59-7-321~~] apply.

Section 25. Section Amended.

Section 59-7-206, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-206. Offsets against tax.

There shall be offset against the tax imposed by [~~Section 59-7-201~~] this part for any period the amount of any tax imposed on the taxpayer under Section [~~59-7-102~~] 59-7-104 for the same period. In the event that taxes, interest, and penalties have been or shall be assessed against, paid by, or collected from a taxpayer under Section 59-7-201, which assessment, payment, or collection should have been made under Section [~~59-7-102~~] 59-7-104, such taxes, interest, and penalties shall be considered as having been assessed, paid, or collected under Section [~~59-7-102~~] 59-7-104 as of the dates they were made.

Section 26. Section Amended.

Section 59-7-207, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-207. Corporations becoming subject to tax — Assessment under other sections.

[~~Where~~] If a corporation formerly subject to tax under Section [~~59-7-102~~] 59-7-104 becomes subject to tax under [~~Section 59-7-201~~] this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under Section [~~59-7-102~~] 59-7-104 and not under Section 59-7-201. For years subsequent to the year in which the change occurs, the tax will be assessed under Section 59-7-201.

Section 27. Section Amended.

Section 59-7-208, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-208. Provisions followed for purposes of tax collected.

For the purposes of the taxes collected under [~~Section 59-7-201~~] this part, and interest and penalties arising in connection therewith, the provisions of Section [~~59-7-153~~] 59-7-532 shall be followed.

Section 28. Section Amended.

Section 59-7-302, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

Part 3. Allocation and Apportionment of Income - Utah UDITPA Provisions

59-7-302. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

[~~(3) "Common ownership" in the case of corporations means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the corporation carrying on unitary business activity. Unitary business activity can ordinarily be illustrated where the activities of the corporations are:~~]

[~~(a) in the same general line of business, such as insurance, transportation, or finance, or the manufacturing, wholesaling, or retailing of similar products;~~]

[~~(b) steps in a vertically integrated enterprise or process; or~~]

[~~(c) horizontally integrated; and the corporations are economically interdependent as demonstrated by the exercise of strong centralized management, functional integration, and attainment of operational economies of scale. Tax haven corporations shall be included in the unitary group.~~]

[~~(4)~~] (3) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

[~~(5) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.~~]

[~~(6) "Foreign operating company" means a corporation incorporated in the United States, 80% or more of whose business activity as measured according to Subsection 59-7-303(2) is conducted outside the United States.~~]

[~~(7)~~] (4) "Nonbusiness income" means all income other than business income.

[~~(8) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.~~]

[~~(9)~~] (5) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.

[~~(10) "Separate and distinct" means two or more corporations related through common ownership whose business activities are unrelated by product, service, or industry and are not vertically or horizontally integrated. Corporations required, by statute or administrative determination, to determine income derived from or attributable to this taxing jurisdiction by apportionment formulas which are materially different, either with regard to composition of the factors or with respect to the methods used to determine the factors, shall be deemed to be engaged in separate and distinct lines of business unless vertically or horizontally integrated.~~]

[~~(11)~~] (6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

[~~(12) "State of the United States" includes any of the 50 states or the District of Columbia and "United States" includes the 50 states and the District of Columbia.~~]

[~~(13) "Tax haven corporation" means any corporation:~~]

[~~(a) which is incorporated in a foreign country or United States' possession or commonwealth that either does not impose a corporation tax based upon income, or imposes a corporation tax based upon income at an effective rate lower than 65% of the maximum marginal federal tax rate applied to the taxable income of the corporation determined under federal law as if it were a domestic corporation; and~~]

[~~(b) which does not perform substantial business activity independent of that involving affiliates which are members of a unitary group which files a combined report.~~]

[~~(14) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Subsection 59-7-303(2).~~]

[~~(15)(a) "Unitary business" and "unitary group" are interchangeable and mean two or more corporations related through common ownership whose business activities are integrated with, dependent upon, and contribute to each other.~~]

[~~(b) "Unitary business" or "unitary group" does not include any corporation related by stock ownership or otherwise to any corporation liable to report under Sections 59-7-301 through 59-7-321 whose principal business activities relate to a separate and distinct line of business.~~]

[~~(16) "Worldwide report" or "worldwide combined report" means the combination of the income and activities of all affiliated corporations engaged in a unitary business irrespective of the country or countries in which the corporations are incorporated or conduct business activity.~~]

Section 29. Section Repealed and Reenacted.

Section 59-7-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is repealed and reenacted to read:

59-7-303. Apportionable income.

(1) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion its adjusted income as provided in this part.

(2) Any taxpayer having income solely from business activity taxable within this state shall allocate or apportion its entire adjusted income to this state.

Section 30. Section Amended.

Section 59-7-318, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-7-318. Sales of tangible personal property.

[~~(1)~~] Sales of tangible personal property are in this state if:

[~~(a)~~] (1) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

[~~(b)~~] (2) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state, and:

[~~(i)~~] (a) the purchaser is the United States Government; or

[~~(ii)~~] (b) the taxpayer is not taxable in the state of the purchaser.

[~~(2)~~] (3) Sales of tangible personal property are not in this state if the seller and the purchaser would be members of the same unitary business group but for the fact that either the seller or the purchaser is a foreign operating company, and the property is purchased for resale outside the United States.

Section 31. Section Enacted.

Section 59-7-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Combined Reporting

59-7-401. Determining threshold level of business activity for corporations organized or incorporated outside of the United States.

(1) Except as provided in Subsection (2), in determining whether a corporation is a foreign operating company or has met the threshold level of business activity, business activity within and without the United States shall be measured by means of the factors ordinarily applicable under Sections 59-7-312 through 59-7-319.

(2) (a) Any taxpayer who would ordinarily be required to apportion business income by means of the three-factor formula in accordance with Part 3 shall use a two-factor formula of property and payroll.

(b) The results of the property and payroll factor computation shall be divided by two, or by one if either the property or payroll factor has a denominator of zero.

Section 32. Section Enacted.

Section 59-7-402, Utah Code Annotated 1953, is enacted to read:

59-7-402. Water's edge combined report.

(1) Except as provided in Section 59-7-403, if any corporation listed in Subsection 59-7-101(32) is doing business in Utah, the unitary group shall file a water's edge combined report.

(2) (a) A group of corporations that are not otherwise a unitary group may elect to file a water's edge combined report if the corporations in the group filing the return are:

(i) doing business in Utah;

(ii) part of the same affiliated group; and

(iii) qualify, under Section 1501, Internal Revenue Code, to file a federal consolidated return.

(b) Each corporation within the affiliated group that is doing business in Utah must consent to filing a combined report. If an affiliated group elects to file a combined report, each corporation within the affiliated group that is doing business in Utah must file a combined report.

(c) Corporations that elect to file a water's edge combined report under this section may not thereafter elect to file a separate return without the consent of the commission.

Section 33. Section Enacted.

Section 59-7-403, Utah Code Annotated 1953, is enacted to read:

59-7-403. Worldwide combined report.

(1) A unitary group may elect to file a worldwide combined report.

(2) Corporations electing to file a worldwide combined report may not thereafter elect to file a return on a basis other than a worldwide combined report without the consent of the commission.

Section 34. Section Enacted.

Section 59-7-404, Utah Code Annotated 1953, is enacted to read:

59-7-404. Recalculation of federal taxable income for combined reporting.

Corporations includable in a combined report under Section 59-7-402 or Section 59-7-403 shall recalculate federal taxable income by:

(1) computing federal taxable income on a separate return basis;

(2) making appropriate eliminations and adjustments between members included and those required to be included in the group; and

(3) combining income or loss of the group.

Section 35. Section Enacted.

Section 59-7-405, Utah Code Annotated 1953, is enacted to read:

59-7-405. Commission empowered to make rules.

The commission shall prescribe such rules as necessary to reflect a corporation's tax liability and to prevent avoidance of corporate tax liability in accordance with the provisions of this part.

Section 36. Section Renumbered and Amended.

Section 59-7-501, Utah Code Annotated 1953, which is renumbered from Section 59-7-118, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

Part 5. Procedures and Administration

[~~59-7-118~~] 59-7-501. Accounting periods — Methods of accounting.

[~~Accounting Periods.~~]

(1) [Net] Utah taxable income shall he computed upon the basis of:

(a) the same taxable period used for federal income tax purposes;

(b) the corporation's annual accounting period if the corporation did not file a federal income tax return; or

(c) the calendar year if the corporation has an annual accounting period other than a fiscal year, has no annual accounting period, or does not keep books, and does not file a federal income tax return.

(2) (a) [Net] Utah taxable income shall be computed under the method of accounting on the basis of which the corporation computes:

(i) its income for federal income tax purposes; or

(ii) its income in keeping its books if the corporation did not file a federal income tax return.

(b) If no method of accounting has been regularly used by the corporation or if the method employed does not clearly reflect [net] Utah taxable income computed and apportioned to this state for the taxable year, [net] Utah taxable income shall be computed in accordance with a method which in the opinion of the commission clearly reflects [net] Utah taxable income.

(3) If a corporation is required under Public Law 99-514, or successor statute, to change its method of accounting from the cash receipts and disbursements method to an accrual method or other permissible method, the transition period provision of Public Law 99-514, or successor statute, for taking into account the adjustments required by reasons of such change shall be followed.

(4) The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted under this section, any such amounts are to be properly accounted for as of a different period.

(5) The [deductions] subtractions provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which [the net] Utah taxable income is computed, unless in order to clearly reflect the income the [deductions] subtractions ought to be taken as of a different period.

(6) For purposes of Subsections (4) and (5), transition periods for reporting income or deductions permitted or required by Public Law 99-514, or successor statute, shall be followed.

Section 37. Section Renumbered and Amended.

Section 59-7-502, Utah Code Annotated 1953, which is renumbered from Section 59-7-121, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-121] 59-7-502. Change of taxable year or accounting period.

(1) If a corporation changes its taxable year for federal income tax purposes, the new taxable year shall become the corporation's taxable year for Utah corporate franchise or income tax purposes.

(2) If a corporation which does not file a federal tax return changes its accounting period, the new accounting period shall become the corporation's taxable year for Utah corporate franchise or income tax purposes if the change is approved by the commission.

Section 38. Section Renumbered and Amended.

Section 59-7-503, Utah Code Annotated 1953, which is renumbered from Section 59-7-122, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-122] 59-7-503. Return where period changed.

(1) If a corporation changes its taxable year in accordance with Section [59-7-121] 59-7-502, a [separate] short period return shall be made for the period of less than 12 months between the close of the last taxable year for which a return was made and the close of the new taxable year.

(2) Where a [separate] short period return is made under Subsection (1) on account of a change in the accounting period, and in [all] any other [cases] case where a [separate] short period return is required or permitted by rules prescribed by the commission to be made for a fractional part of a year, the tax shall be calculated at the rate provided in Section [59-7-102] 59-7-104 for the period covered by the return assignable to business done in Utah.

Section 39. Section Renumbered and Amended.

Section 59-7-504, Utah Code Annotated 1953, which is renumbered from Section 59-7-122.5, Utah Code Annotated 1953, as enacted by Chapter 236, Laws of Utah 1987, is amended to read:

[59-7-122.5] 59-7-504. Estimated tax payments — Penalty — Waiver.

(1) [Every] Each corporation subject to taxation under this chapter expecting to have a tax liability of $3,000 or more in the current tax year, or which had a tax liability of $3,000 or more in the previous tax year, shall make payments of estimated tax in the same manner as is provided for corporations in the Internal Revenue Code [of 1954, or successor statutes].

(2) [If] Except as provided in Subsection (3), if a quarterly estimated tax payment is not made or is underpaid, [except as provided in Subsection (3), there shall be added] a penalty shall be added as provided in Section 59-1-401 and interest shall be added as provided in Section 59-1-402.

(3) The penalty or interest may be waived under Subsection (2), if:

(a) the total estimated tax payments for the tax year equal or exceed the tax liability for the previous tax year;

(b) the total estimated tax payments for the tax year are equal to 90% of the current year tax liability; or

(c) the total estimated tax payments equal 90% of the tax liability computed on the current year's income using the previous year's tax law.

Section 40. Section Renumbered and Amended.

Section 59-7-505, Utah Code Annotated 1953, which is renumbered from Section 59-7-123, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

[~~59-7-123~~] 59-7-505. Returns required — When due — Extension of time — Exemption from filing.

(1) Each corporation subject to taxation under this chapter shall make a return [~~stating specifically the items of its gross income and the deductions allowed by this chapter~~].

(a) The return shall be signed by a responsible officer of the corporation, the signature of whom need not be notarized but when signed shall be [~~deemed~~] considered as made under oath.

(b) (i) In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, [such] those receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

(ii) Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

(2) Returns shall be made on or before the 15th day of the fourth month following the close of the taxable year.

(3) The commission shall allow an extension of time, not exceeding six months, for filing returns if on or before the due date of the return an extension prepayment required by Section [~~59-7-126~~] 59-7-507 is made to the commission.

(4) [~~All returns~~] Each return shall be made to the commission.

(5) A corporation incorporated or qualified to do business in this state prior to January 1, 1973, is not liable for filing a return or paying tax measured by income for the taxable year in which it legally terminates its existence.

(6) A corporation incorporated or qualified to do business or which had its authority to do business reinstated on or after January 1, 1973, shall file a return and pay the tax measured by income for each period during which it had the right to do business in this state, and the return shall be filed and the tax paid within three months and 15 days after the close of this period.

(7) If a corporation terminates its existence under Section 16-10a-1401, no returns are required to be filed if a statement is furnished to the commission that no business has been conducted during that period.

(8) (a) A corporation commencing to do business in Utah after qualification or incorporation with the [~~Department~~] Division of [~~Commerce~~] Corporations and Commercial Code is not required to file a return for the period commencing with the date of incorporation or qualification and ending on the last day of the same month, if that corporation was not doing business in and received no income from sources in the state during such period.

(b) In determining whether a corporation comes within the provisions of this chapter, affidavits on behalf of the corporation that it did no business in and received no income from sources in Utah during such period shall be filed with the commission.

Section 41. Section Renumbered and Amended.

Section 59-7-506, Utah Code Annotated 1953, which is renumbered from Section 59-7-125, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-125~~] 59-7-506. Corporations to keep records — Special returns.

[~~Every~~] Each corporation doing business or entitled to do business in this state shall keep such records, render under oath such statements, make such returns, and comply with [~~such~~] the rules [~~as~~] of the commission [~~may from time to time prescribe~~]. Whenever [~~deemed necessary by~~] the commission considers it necessary, it may require any corporation, by serving a notice [~~served~~] upon it, to make a return, render under oath such statements, or keep such records as the tax commissioner [~~deems~~] considers sufficient to show whether or not such corporation is liable to tax under this chapter.

Section 42. Section Renumbered and Amended.

Section 59-7-507, Utah Code Annotated 1953, which is renumbered from Section 59-7-126, Utah Code Annotated 1953, as last amended by Chapter 66, Laws of Utah 1992, is amended to read:

[~~59-7-126~~] 59-7-507. Payment of tax.

(1) (a) If quarterly estimated payments are not made as provided in Section [~~59-7-122.5~~] 59-7-504, the amount of tax imposed by this chapter shall be paid [~~when the return is filed~~] no later than the original due date of the return.

(b) If an extension of time is necessary for filing a return, as provided in Subsection [~~59-7-123~~] 59-7-505 (3), payment must be made in an amount equal to:

(i) 90% of the total amount of tax due with the return when filed[~~; (ii)~~] or 100% of the minimum tax due under Section [~~59-7-102~~] 59-7-104, whichever is greater; or

[~~(iii)~~] (ii) 100% of the amount of tax paid for the previous year.

(c) If payment is [~~less than 90% of the total amount of the tax determined to be due with the return filed by the taxpayer, or 100% of the minimum tax due, whichever is greater, or less than the amount of tax~~

paid for the previous year, there] not made as provided in Subsection (1)(b) the commission, shall [be added an underestimate] add a penalty as provided in Section 59-1-401, until the tax is paid, as if no extension of time for filing a return had been granted.

(2) At the request of the taxpayer, the commission may extend the time for payment of the amount determined as the tax by the taxpayer, or any part thereof, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

Section 43. Section Renumbered and Amended.

Section 59-7-508, Utah Code Annotated 1953, which is renumbered from Section 59-7-127, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-127] 59-7-508. Audit of returns.

As soon as practicable after the return is filed the commission shall examine it and shall determine the correct amount of the tax.

Section 44. Section Renumbered and Amended.

Section 59-7-509, Utah Code Annotated 1953, which is renumbered from Section 59-7-128, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

[59-7-128] 59-7-509. Failure to file return — Penalty.

In case of any failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the commission in pursuance of law, there shall be added to the amount required to be shown as tax on the return a penalty as provided in Section 59-1-401. The amounts so added to any tax shall be collected at the same time and in the same manner and as a part of the tax, unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

Section 45. Section Renumbered and Amended.

Section 59-7-510, Utah Code Annotated 1953, which is renumbered from Section 59-7-129, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-129] 59-7-510. Deficiency — Interest.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the commission, and shall be collected as a part of the tax at the rate prescribed in Section 59-1-402 from the date prescribed for the payment of the tax to the date the deficiency is assessed.

Section 46. Section Renumbered and Amended.

Section 59-7-511, Utah Code Annotated 1953, which is renumbered from Section 59-7-130, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-130] 59-7-511. Addition to tax in case of underpayment.

[When Due to Negligence.]

(1) If any part of any deficiency is due to negligence, or intentional disregard of rules, but without intent to defraud, [5%] 10% of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency as provided in Section 59-1-401, except that the provisions of Section [59-7-129] 59-7-510 relating to interest on deficiencies shall not be applicable. [When Due to Fraud.]

(2) If any part of any deficiency is due to fraud with intent to evade tax, [50%] the greater of $500 or 100% of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid as provided in Section 59-1-401.

Section 47. Section Renumbered and Amended.

Section 59-7-512, Utah Code Annotated 1953, which is renumbered from Section 59-7-131, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-131] 59-7-512. Addition to tax in case of nonpayment.

[Interest on Unpaid Amount.]

(1)(a) Where the entire amount determined by the taxpayer as the tax imposed by this chapter[, or any part of such amount,] is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate prescribed in Section 59-1-402 from the date prescribed for payment until paid. [In Case Extension Is Granted.]

(b) Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any part thereof, has been granted, and the amount (the time for payment of which has been extended) and the interest thereon determined under Section [59-7-132] 59-7-513 is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in Subsection (1)(a), interest at the rate prescribed in Section 59-1-402 shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. [Interest on Deficiency and Additional Amounts, if Unpaid.]

(2) When a deficiency, or any interest or additional amounts assessed in connection therewith under Section [59-7-129] 59-7-510, or under Section [59-7-130] 59-7-511, or any addition to the tax in case of delinquency provided for in Section [59-7-128] 59-7-509, is not paid in full within ten

days from the date of notice and demand from the commission, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate prescribed in Section 59-1-402 from the date of such notice and demand until paid.

Section 48. Section Renumbered and Amended.

Section 59-7-513, Utah Code Annotated 1953, which is renumbered from Section 59-7-132, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-132~~] 59-7-513. Interest when time for payment extended.

If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of [~~Section 59-7-126~~] Subsection 59-7-507 (2), there shall be collected as a part of such amount interest at the rate prescribed in Section 59-1-402 from the date when such payment should have been made, if no extension had been granted, until the expiration of the period of the extension.

Section 49. Section Renumbered and Amended.

Section 59-7-514, Utah Code Annotated 1953, which is renumbered from Section 59-7-133, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-133~~] 59-7-514. Extension of time to pay deficiency.

(1) Where it is shown to the satisfaction of the commission that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer, the commission (except where the deficiency is due to negligence, to intentional disregard of rules, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of six months.

(2) If an extension is granted, the commission may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the commission deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

Section 50. Section Renumbered and Amended.

Section 59-7-515, Utah Code Annotated 1953, which is renumbered from Section 59-7-134, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-134~~] 59-7-515. Interest when deficiency extended.

(1) If the time for the payment of any part of a deficiency is extended, [there] the commission shall [be collected] collect as a part of the tax interest on the part of the deficiency (the time for payment of which is so extended) at the rate prescribed in Section 59-1-402 for the period of the extension, and shall collect no other interest [~~shall be collected~~] on such part of the deficiency for such period.

(2) If the part of the deficiency (the time for payment of which is so extended) is not paid in accordance with the terms of the extension, [there] the commission shall [~~be collected~~] collect as a part of the tax interest on such unpaid amount at the rate prescribed in Section 59-1-402 for the period from the time fixed by the terms of the extension for its payment until it is paid, and shall collect no other interest [~~shall be collected~~] on such unpaid amount for such period.

Section 51. Section Renumbered and Amended.

Section 59-7-516, Utah Code Annotated 1953, which is renumbered from Section 59-7-135, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-135~~] 59-7-516. "Deficiency" defined.

In respect of a tax imposed by this chapter "deficiency" means:

(1) the amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon its return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) if no amount is shown as the tax by the taxpayer upon its return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed (or collected without assessment) shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

Section 52. Section Renumbered and Amended.

Section 59-7-517, Utah Code Annotated 1953, which is renumbered from Section 59-7-136, Utah Code Annotated 1953, as renumbered and amended by Chapter 2 and as amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~59-7-136~~] 59-7-517. Notice of deficiency — Petition for redetermination.

(1) (a) If the [tax] commission determines that there is a deficiency in any tax imposed by this chapter, the commission may send notice of the deficiency to the taxpayer by registered mail, postage prepaid.

(b) The notice shall set forth the details of the deficiency and the manner of computing the tax.

(c) Within 30 days after the notice is mailed, the taxpayer may file a petition with the commission for a redetermination of the deficiency.

(2) Except with the consent of the taxpayer, no assessment of a tax deficiency, and no levy or proceeding in court for its collection, shall be made, begun, or prosecuted until:

(a) notice has been mailed to the taxpayer; and

(b) the 30-day period has expired[;] or [~~(c)~~], if a petition has been filed with the commission, [~~until its~~] the decision of the commission has become final.

Section 53. Section Renumbered and Amended.

Section 59-7-518, Utah Code Annotated 1953, which is renumbered from Section 59-7-137, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-137~~] 59-7-518. Sufficiency of notice.

[~~All notices~~] Any notice required to be mailed to a taxpayer under the provisions of this chapter, if mailed to it at its last known address as shown on the records of the commission, shall be sufficient for the purposes of this chapter.

Section 54. Section Renumbered and Amended.

Section 59-7-519, Utah Code Annotated 1953, which is renumbered from Section 59-7-138, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-138~~] 59-7-519. Period of limitation for making assessments — Change, correction, or amendment of federal income tax — Duty of corporation to notify state.

(1) Except as provided in Section [~~59-7-139~~] 59-7-520, the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in the court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) In the case of a deficiency attributable to the application of a net loss carryback, this deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net loss which results in the carryback may be assessed.

(3) If the amount of [~~net~~] federal taxable income for any year of any corporation as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change of [~~net~~] federal taxable income, [~~such~~] that taxpayer shall report such change or corrected net income within 90 days after the final determination of such change or correction as required to the commission and shall concede the accuracy of such determination or state wherein it is erroneous. Any corporation filing an amended return with such department shall also file, within 90 days thereafter, an amended return with the commission which shall contain such information as it shall require.

(4) If a corporation [~~shall fail~~] fails to report a change or correction by the commissioner of internal revenue [~~or~~], other officer of the United States, or other competent authority or [~~shall fail~~] fails to file an amended return, any deficiency resulting from such adjustments may be assessed and collected within three years after said change, correction, or amended return is reported to or filed with the federal government.

(5) If any corporation agrees with the [~~United States~~] commissioner of internal revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period for mailing notices of proposed [~~deficiency tax~~] Utah tax deficiencies for such year shall be three years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later.

Section 55. Section Renumbered and Amended.

Section 59-7-520, Utah Code Annotated 1953, which is renumbered from Section 59-7-139, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-139~~] 59-7-520. Limitation for enforcing collection.

[~~In Case of Fraudulent Return or Failure to File Return.~~]

(1) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.
[~~Period of Limitation for Enforcing Collection.~~]

(2) Where the assessment of any tax imposed by this chapter has been made within the period of limitation provided in Section [~~59-7-138~~] 59-7-519, such tax may be collected by warrant and levy as provided in Sections [~~59-7-147~~] 59-7-526 and [~~59-7-148~~] 59-7-527, or by a proceeding in court, but only if begun within three years after the assessment of the tax.

Section 56. Section Renumbered and Amended.

Section 59-7-521, Utah Code Annotated 1953, which is renumbered from Section 59-7-140, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-140~~] 59-7-521. Suspension of running of statue of limitations.

The running of the statute of limitations provided in Section [~~59-7-138~~] 59-7-519 or [~~59-7-139~~] 59-7-520, on the making of assessments and the beginning of a proceeding for collection by warrant and levy, or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under Section [~~59-7-136~~] 59-7-517) be suspended for the period during which the commission is prohibited from making the assessment or begin-

ning proceedings for collection and for 60 days thereafter.

Section 57. Section Renumbered and Amended.

Section 59-7-522, Utah Code Annotated 1953, which is renumbered from Section 59-7-141, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-141~~] 59-7-522. Overpayments.

[~~Credits and Refunds.~~]

(1) Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any tax then due from the taxpayer under this chapter, and any balance shall be refunded immediately to the taxpayer.
[~~Limitations on Time.~~]

(2)(a) [~~No such~~] A credit or refund [~~shall~~] may not be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim [~~therefor~~] is filed with the commission by the taxpayer.

(b) If the claim for credit or refund relates to an overpayment attributable to a net loss carryback adjustment as provided in [~~Subsection 59-7-108 (14)~~] Section 59-7-110, in lieu of the three-year period provided for in Subsection (2)(a), the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net loss which results in the carryback.

(c) Where an overpayment relates to adjustments to [~~net~~] federal taxable income referred to in Section [~~59-7-138~~] 59-7-519, credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed. [Amount.]

(d) The amount of the credit or refund [~~shall~~] may not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund. [~~Overpayment Found on Appeal.~~]

(3) Except as provided in Subsections (2)(b) and (2)(c), if on appeal [~~the tax division of the district~~] a court [~~and/or the Supreme Court~~] finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect to which the commission determined the deficiency, the [~~tax division of the district~~] court [~~and/or the Supreme Court~~] shall have jurisdiction to determine the amount of [~~such~~] the overpayment and [~~such~~] that amount shall, when the court's decision [~~of the tax division of the district court and/or the Supreme Court~~] has become final, be credited or refunded to the taxpayer. [~~No such~~] A credit or refund [~~shall~~] may not be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the appeal or petition, whichever is earlier.

Section 58. Section Renumbered and Amended.

Section 59-7-523, Utah Code Annotated 1953, which is renumbered from Section 59-7-142, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-142~~] 59-7-523. Period of limitation for claiming refund.

Any taxpayer claiming to be entitled to a refund or credit under [~~the provisions of~~] Section [~~59-7-141~~] 59-7-522 may file a claim [~~therefor~~] with the commission within the time provided in said section[~~; provided, that~~]. However, no such claim may be filed for refund or credit on account of any tax in respect of which a review by appeal to [~~the tax division of the district court and/or the Utah Supreme Court~~] a court has been [~~had~~] made. Notice and an opportunity to be heard shall be given to the taxpayer, and after hearing a decision shall be made as quickly as possible.

Section 59. Section Renumbered and Amended.

Section 59-7-524, Utah Code Annotated 1953, which is renumbered from Section 59-7-145, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-145~~] 59-7-524. Collection agents — Bond.

The commission is authorized [~~at its discretion~~] to designate agents [~~for the purpose of collecting~~] to collect taxes [~~hereunder~~] as provided in this chapter, and shall require from each [~~of them~~] agent an adequate bond.

Section 60. Section Renumbered and Amended.

Section 59-7-525, Utah Code Annotated 1953, which is renumbered from Section 59-7-146, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-146~~] 59-7-525. Further powers of commission.

[~~If Taxpayer Fails to Make Return.~~]

(1) If any taxpayer fails to make return as [~~herein~~] required, the commission is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.
[~~Examination of Taxpayers' Records.~~]

(2) The commission, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of [~~net~~] Utah taxable income of any corporation where information has been obtained, shall [~~also~~] have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the atten-

dance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

Section 61. Section Renumbered and Amended.

Section 59-7-526, Utah Code Annotated 1953, which is renumbered from Section 59-7-147, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-147~~] 59-7-526. Collection of tax by warrant.

If the entire tax imposed by this chapter [~~or any portion thereof~~] is not paid when [~~the same becomes~~] due, the commission may issue a warrant, in duplicate under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount [~~thereof~~] due, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant.

Section 62. Section Renumbered and Amended.

Section 59-7-527, Utah Code Annotated 1953, which is renumbered from Section 59-7-148, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-148~~] 59-7-527. Duties of sheriff.

(1) Immediately upon receipt of [~~said~~] the warrant in duplicate the sheriff shall file the duplicate with the clerk of the district court in his county, and [~~thereupon~~] the clerk shall then enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax [~~or portion thereof~~] and penalties for which the warrant is issued, and the date when such duplicate is filed[~~, and thereupon the~~].

(2) (a) The amount of such warrant [~~so~~] docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the corporation against whom it is issued in the same manner as a judgment [~~duly~~] rendered by any district court and docketed in the office of the clerk [~~thereof~~] of the court.

(b) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

Section 63. Section Renumbered and Amended.

Section 59-7-528, Utah Code Annotated 1953, which is renumbered from Section 59-7-149, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

[~~59-7-149~~] 59-7-528. Failure to make return or supply information — Penalty.

[~~Every~~] Each officer or employee of any corporation, who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, shall be liable [~~to~~] for a penalty as provided in Section 59-1-401, assessed and collected by the commission in the same manner as is provided in this chapter with regard to delinquent taxes.

Section 64. Section Renumbered and Amended.

Section 59-7-529, Utah Code Annotated 1953, which is renumbered from Section 59-7-150, Utah Code Annotated 1953, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987, is amended to read:

[~~59-7-150~~] 59-7-529. General violations and penalties.

(1) [~~Every~~] Each person who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, is liable for a civil penalty as provided in Section 59-1-401 imposed, assessed, and collected by the commission in the same manner as provided by this chapter for delinquent taxes.

(2) It is unlawful for any person, with intent to evade any tax, to fail to timely remit the full amount of tax required by the provisions of this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(3) [~~Every~~] Each person who knowingly or intentionally makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information is guilty of a criminal violation as provided in Section 59-1-401.

(4) [~~Every~~] Each person who, with intent to evade any tax or any requirement of this chapter, fails to make, render, sign, or verify any return, or supply any information within the time required under the provisions of this chapter, is guilty of a criminal violation as provided in Section 59-1-401.

Section 65. Section Renumbered and Amended.

Section 59-7-530, Utah Code Annotated 1953, which is renumbered from Section 59-7-151, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-151~~] 59-7-530. Power to waive penalties or interest.

The commission may waive penalties or interest as provided in Section 59-1-401.

Section 66. Section Renumbered and Amended.

Section 59-7-531, Utah Code Annotated 1953, which is renumbered from Section 59-7-152, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-152~~] 59-7-531. Venue of offenses — Evidence.

(1) The failure to do any act required by [~~or under~~] the provisions of this chapter shall be [~~deemed~~] considered an act committed in part at the office of the commission.

(2) The certificate of the commission [~~to the effect~~] that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

Section 67. Section Renumbered and Amended.

Section 59-7-532, Utah Code Annotated 1953, which is renumbered from Section 59-7-153, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-153~~] 59-7-532. Revenue received by commission — Deposit with state treasurer — Distribution or crediting to Uniform School Fund — Refund claim payments.

(1) All revenue collected or received by the commission under this chapter shall be deposited daily with the state treasurer. Such revenue, subject to the refund provisions of this section, shall be periodically distributed or credited to the Uniform School Fund.

(2) The commission shall from time to time certify to the state auditor the amount of any refund authorized by it, the amount of interest computed [~~thereon~~] on it under the provisions of Section [~~59-7-154~~] 59-7-533, from whom the tax to be refunded was collected, or by whom it was paid, and such refund claims shall be paid in order out of the funds first accruing to the Uniform School Fund from the provisions of this section.

Section 68. Section Renumbered and Amended.

Section 59-7-533, Utah Code Annotated 1953, which is renumbered from Section 59-7-154, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-154~~] 59-7-533. Interest on overpayments and refunds.

Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this chapter at the rate prescribed in Section 59-1-402, as follows:

(1) in the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken; and

(2) in the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the commission.

Section 69. Section Renumbered and Amended.

Section 59-7-534, Utah Code Annotated 1953, which is renumbered from Section 59-7-155, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-155~~] 59-7-534. Failure to pay tax — Suspension or forfeiture of corporate rights.

(1) If a tax computed and levied under this chapter is not paid before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it is a domestic corporation, shall be suspended, and if a foreign corporation, it shall forfeit its rights to do intrastate business in this state.

(2) The commission shall transmit the name of each such corporation to the Division of Corporations and Commercial Code, which shall immediately record the same in such manner that it may be available to the public. This suspension or forfeiture shall become effective from the time such record is made, and the certificate of the Division of Corporations and Commercial Code shall be prima facie evidence of such suspension or forfeiture.

Section 70. Section Renumbered and Amended.

Section 59-7-535, Utah Code Annotated 1953, which is renumbered from Section 59-7-156, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~59-7-156~~] 59-7-535. Doing business thereafter — Penalty.

(1) Pursuant to any suspension or forfeiture under Section [~~59-7-155~~] 59-7-534, any person who attempts or purports to exercise any of the rights, privileges, or powers of any suspended domestic corporation, or who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, is guilty of a class B misdemeanor[~~;~~ a]. A fine shall be imposed [~~shall be~~] of not less than $250, and a penalty of imprisonment shall be imposed of not less than 50 days in the county jail.

(2) Jurisdiction of the offense shall be in any county in which any part of the attempted exercise of the powers, or any part of the transaction of business occurred. [Every]

(3) Any contract made in violation of this section is unenforceable by the corporation or person.

Section 71. Section Renumbered and Amended.

Section 59-7-536, Utah Code Annotated 1953, which is renumbered from Section 59-7-157, Utah Code Annotated 1953, as last amended by Chapter 148, Laws of Utah 1987, is amended to read:

[59-7-157] 59-7-536. Relief in case of suspension or forfeiture.

(1)(a) Any corporation which has suffered the suspension or forfeiture referred to in Section [59-7-155]59-7-534 may be relieved from that suspension or forfeiture by applying for that relief in writing, paying the tax and the interest and penalties for nonpayment of which the suspension or forfeiture occurred, and paying a reinstatement fee of $100. If the corporation has done business in this state during the period of such suspension, a tax shall be computed according to this chapter for each year in which the business was done, and the tax shall be added to the delinquency and penalties provided in this section. If the due date of any return required in this section has not passed, a return need not be filed until that due date.

(b) Application for revivor may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the Division of Corporations and Commercial Code. Upon payment to the commission of the taxes, penalties, and reinstatement fee provided for in this section, the Division of Corporations and Commercial Code shall issue a certificate of revivor, and the applicant shall be revived. The revivor shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of revivor is prima facie evidence of the revivor.

(2) If any corporation has adopted, subsequent to such suspension or forfeiture, any name so closely resembling the name of the reviving corporation as will tend to deceive, then the reviving corporation is entitled to a certificate of revivor pursuant to the terms of this section only upon adopting a new name, and in such case nothing in this section may be construed as permitting the reviving corporation to carry on any business under its former name. The reviving corporation may use its former name or may take the new name only upon filing an application for it with the Division of Corporations and Commercial Code, and upon the issuing of a certificate to such corporation by the Division of Corporations and Commercial Code, setting forth the right of such corporation to take such new name or use its former name as the case may be. The Division of Corporations and Commercial Code may not issue any certificate permitting any corporation to take or use the name of any corporation already organized in this state and which has not suffered a forfeiture, or take or use a name so closely resembling the name of any corporation already organized in this state as will tend to deceive.

Section 72. Section Renumbered and Amended.

Section 59-7-537, Utah Code Annotated 1953, which is renumbered from Section 59-7-158, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

[59-7-158] 59-7-537. Confidentiality of information.

The confidentiality of returns and other information filed with the commission shall be governed by Section 59-1-403.

Section 73. Section Enacted.

Section 59-7-601, Utah Code Annotated 1953, is enacted to read:

Part 6. Credits

59-7-601. Credit of interest income from state and federal securities.

(1) There shall be allowed as a credit against the tax an amount equal to 1% of the gross interest income included in state taxable income from:

(a) bonds, notes, or other evidences of indebtedness issued by the state and its agencies and instrumentalities, and bonds, notes, or other evidences of indebtedness of any political subdivision as described in Section 11-14-14.5; and

(b) stocks, notes, or obligations issued by, or guaranteed by the United States Government, or any of its agencies and instrumentalities as defined under federal law.

(2) Amounts otherwise qualifying for the credit, but not allowable because the credit exceeds the tax, may be carried back three years or may be carried forward five years as a credit against the tax. Such carryover credits shall be applied against the tax before the application of the credits earned in the current year and on a first-earned first-used basis.

Section 74. Section Enacted.

Section 59-7-602, Utah Code Annotated 1953, is enacted to read:

59-7-602. Credit for cash contributions to sheltered workshops.

(1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state of Utah pursuant to Section 59-7-104, there shall be a tax credit allowed for cash contributions made within the taxable year to nonprofit rehabilitation sheltered workshop facilities for the disabled operating in Utah which are certified by the Department of Human Services as a qualifying facility. The allowable credit is an amount equal to 50% of the aggregate amount of the cash contributions to qualifying rehabilitation facilities, but in no case shall the credit allowed exceed $1,000.

(2) If a taxpayer has subtracted an amount for cash contributions to a sheltered workshop when determining federal taxable income, that amount shall be added back under Section 59-7-105 before a credit may be taken under this section.

Section 75. Section Enacted.

Section 59-7-603, Utah Code Annotated 1953, is enacted to read:

59-7-603. Credit for sophisticated technological equipment donated to schools.

(1) A taxpayer subject to the corporate franchise provisions of Section 59-7-104 is entitled to a tax credit in an amount equal to 25% of the fair market value of high technology contributions to public education, not to exceed the basis of the property contributed. Fair market value shall not exceed the original cost of the property.

(2) As used in this section, "high technology contribution" means a contribution of tangible personal property subject to the following requirements:

(a) the property is a computer, sophisticated technological equipment, or other apparatus intended for use with a computer to be used directly in the education of students;

(b) the contribution is to a public elementary, secondary, or accredited post-secondary school located in the state;

(c) the contribution is made not later than two years after the date its construction is substantially completed;

(d) the property is used exclusively by the donee;

(e) the property is not transferred by the donee in exchange for money, other property, or services; and

(f) the taxpayer receives a written statement from the donee signifying approval of the property and representing that its use and disposition will be in accordance with the provisions of this section.

(3) If a taxpayer has subtracted an amount for sophisticated technological equipment donated to schools when determining federal taxable income, that amount shall be added back under Section 59-7-105 before a credit may be taken under this section.

Section 76. Section Renumbered and Amended.

Section 59-7-604, Utah Code Annotated 1953, which is renumbered from Section 59-7-110.5, Utah Code Annotated 1953, as last amended by Chapter 242, Laws of Utah 1992, is amended to read:

[~~59-7-110.5~~] 59-7-604. **Utah steam coal tax credit.**

(1) For taxable years beginning on or after January 1, 1990, and until December 31, 1992, there is allowed, as a credit against any taxes imposed by this chapter or Chapter 8, an amount equal to $1 per ton for each ton of Utah steam coal sold from a permitted mine by the taxpayer to a purchaser outside of the United States in excess of the number of tons of Utah steam coal sold from a permitted mine by the taxpayer to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1989.

(2) For taxable years beginning on or after January 1, 1993, there is allowed, as a credit against any taxes imposed by this chapter or Chapter 8, an amount equal to $1 per ton for each ton of Utah steam coal sold from a permitted mine by the taxpayer to a purchaser outside of the United States in excess of the number of tons of Utah steam coal sold from a permitted mine by the taxpayer to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992.

(3) For purposes of this section, "Utah steam coal" means coal mined in Utah, as certified by the producer of such coal.

(4) The credit allowed by this section is repealed effective for tax years beginning on or after January 1, 1997.

Section 77. Section Renumbered and Amended.

Section 59-7-605, Utah Code Annotated 1953, which is renumbered from Section 59-7-110.7, as enacted by Chapter 2, Laws of Utah 1992, Third Special Session, is renumbered and amended to read:

[~~59-7-110.7~~] 59-7-605. **Credit — Cleaner burning fuels.**

(1) As used in this section, "board" means the Air Quality Board created under Title 19, Chapter 2.

(2) For tax years beginning January 1, 1992, and ending December 31, 1996, there is a credit against tax otherwise due under this chapter or Chapter 8, Gross Receipts Tax Act, in an amount equal to:

(a) 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that:

(i) are fueled by propane, compressed natural gas, or electricity;

(ii) are fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i) in reducing air pollution; or

(iii) meet the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II; and

(b) 20%, up to a maximum of $400, of the cost of equipment for conversion of a motor vehicle registered in Utah to:

(i) be fueled by propane, compressed natural gas, or electricity;

(ii) be fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i); or

(iii) meet the federal clean fuel vehicle standards under Subsection (2)(a)(iii).

(3) Proof of the purchase of an item for which a credit is allowed under this section shall be made by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 78. Section Renumbered and Amended.

Section 59-7-606, Utah Code Annotated 1953, which is renumbered from Section 59-7-110.8, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1992, is amended to read:

[~~59-7-110.8~~] 59-7-606. Credit — Items using cleaner burning fuels.

(1) As used in this section, "board" means the Air Quality Board created under Title 19, Chapter 2.

(2) For tax years beginning January 1, 1992, and ending December 31, 1997, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of both the purchase cost and installation services cost of each pellet burning stove, high mass wood stove, and solid fuel burning device purchased and installed that is certified by the federal Environmental Protection Agency in accordance with test procedures prescribed in 40 C.F.R. Sec. 60.534, including purchase cost and installation service cost of natural gas or propane free-standing fireplaces or inserts, but not including fireplace logs.

(3) Proof of the purchase of an item for which a credit is allowed under this section shall be made by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 79. Section Enacted.

Section 59-7-701, Utah Code Annotated 1953, is enacted to read:

Part 7. S Corporations

59-7-701. Taxation of S corporations.

An S corporation shall be taxed for state purposes in the same manner as taxed for federal purposes as provided in Subtitle A, Chapter 1S, Internal Revenue Code, and as modified by this chapter. The tax rate for S corporations shall be the rate provided for corporations under Section 59-7-104. Taxes owed under this section shall be subject to the estimated tax payments as provided in Section 59-7-504.

Section 80. Section Enacted.

Section 59-7-702, Utah Code Annotated 1953, is enacted to read:

59-7-702. Taxation of shareholders.

(1) Except as provided in Subsection (2), items of Utah taxable income, expenses, losses, and credits shall be passed through to the shareholders and be taxed as provided in Subtitle A, Chapter 1S, Part 2, Internal Revenue Code.

(2) (a) A resident shareholder shall recognize his proportionate share of an S corporation's Utah taxable income.

(b) A nonresident shareholder shall recognize that portion of an S corporation's Utah taxable income derived from Utah sources as provided in Sections 59-10-117 and 59-10-118.

Section 81. Section Enacted.

Section 59-7-703, Utah Code Annotated 1953, is enacted to read:

59-7-703. Payment or withholding of tax on behalf of nonresident shareholders — Rate.

(1) (a) An S corporation shall pay or withhold a tax on behalf of any nonresident shareholder. The amount remitted by an S corporation shall be determined by:

(i) calculating the items of income or loss from Schedule K of the 1120S federal form;

(ii) applying the apportionment formula to determine the amount apportioned to Utah;

(iii) reducing the amount apportioned to Utah by the percentage of ownership attributable to resident shareholders; and

(iv) applying the rate to the remaining balance.

(b) A nonresident shareholder is entitled to a credit on the Utah individual return for the amount of tax paid by the S corporation on behalf of the nonresident shareholder.

(c) A nonresident shareholder who is an individual and has no other Utah source income may forego the credit provided under Subsection (b) and not file a Utah individual income tax return for the taxable year. If the individual is entitled to credits under Utah law, an individual income tax return must be filed to claim those credits.

(2) The commission, by rule, shall determine the rate that an S corporation shall withhold for nonresident shareholders. The rate shall be consistent with the composite tax rate paid by partnerships.

(3) If the S corporation fails to pay or withhold the tax as provided in this section, and thereafter the in-

come subject to payment or withholding is reported and the resulting tax is paid by the shareholder, any tax required to be paid or withheld shall not be collected from the S corporation. However, the shareholder's payment does not relieve the S corporation from liability for penalties or interest associated with failure to pay or withhold the tax as provided in this section.

(4) Penalties, refunds, assessments, and required records for S corporations shall be governed by Title 59, Chapter 10.

(5) The corporation shall furnish each nonresident shareholder a statement showing the amount of the shareholder's share of the corporate earnings from Utah sources and of the withholding from it and shall pay the commission the amount withheld, by the due date of the corporation's return, not including extensions, on forms furnished by the commission.

Section 82. Section Enacted.

Section 59-7-704, Utah Code Annotated 1953, is enacted to read:

59-7-704. Amount taxable.

Any amounts of income, loss, or deductions passing through to the shareholders for federal tax purposes shall be apportioned to Utah and shall be the amount taxable to shareholders of an S corporation.

Section 83. Section Enacted.

Section 59-7-705, Utah Code Annotated 1953, is enacted to read:

59-7-705. Application of minimum tax.

The minimum tax provided in Section 59-7-104 does not apply to S corporations taxed under this part.

Section 84. Section Enacted.

Section 59-7-706, Utah Code Annotated 1953, is enacted to read:

59-7-706. Distribution of revenues received.

Any revenues collected or received by the commission under this part shall be deposited daily with the state treasurer and distributed as provided in Section 59-10-544.

Section 85. Section Enacted.

Section 59-7-707, Utah Code Annotated 1953, is enacted to read:

59-7-707. Commission empowered to make rules.

The commission may adopt rules to implement this part.

Section 86. Section Enacted.

Section 59-10-108.5, Utah Code Annotated 1953, is enacted to read:

59-10-108.5. Credit for nonresident shareholders of S corporations.

(1) A nonresident shareholder who is an individual shall be allowed a credit against the tax otherwise due under this chapter equal to the amount paid or withheld by the S corporation on behalf of the individual as provided in Section 59-7-703.

(2) A nonresident shareholder who is an individual of an S corporation and who has no other Utah source income may forego the credit provided in Subsection (1) and not file a Utah individual income tax return for that year. If the individual is entitled to credits under Utah law, an individual income tax return must be filed to claim those credits.

Section 87. Section Amended.

Section 59-10-404, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-10-404. Extension of withholding to payments other than wages.

(1) For purposes of this part, any supplemental unemployment compensation benefit paid to an individual, and any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this part is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

[~~(2) Any nonresident shareholder's share of the corporate earnings from Utah sources treated under option (ii) of Subsection 59-7-105 (3) (e) shall have a percentage, equal to the current corporation tax rate, of such share withheld from it. The withholding is to be reported and paid to the commission in the manner prescribed for withholding by an employer from wages.~~]

[~~(3)~~] (2) For purposes of Subsection (1), "supplemental unemployment compensation benefits" means amounts which are paid to an employee pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includable in the employee's gross income.

[~~(4)~~] (3) For purposes of this section, "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includable in the gross income of such individual.

[~~(5)~~] (4) A request that an annuity be subject to withholding under this part shall be made by the payee in writing to the person making the annuity payments. Such a request may be terminated by furnishing to the person making the payments a written statement of termination which shall be treated as a withholding exemption certificate for purposes of Section 59-10-403.

Section 88. Section Amended.

Section 59-13-209, Utah Code Annotated 1953, as enacted by Chapter 6, Laws of Utah 1987, is amended to read:

59-13-209. Due date — Delinquency — Penalties — Interest — License withheld.

(1) The motor fuel tax is due and payable by the distributor on or before the last day of each month to the commission for the number of gallons of motor fuel sold, used, or received for sale or use by the distributor during the preceding calendar month. The commission shall receipt the distributor for taxes paid and shall promptly deposit all revenue with the state treasurer.

(2) If any distributor fails or refuses to pay any tax when it becomes due and payable, the tax is delinquent. If a distributor is delinquent in tax payments, the commission shall revoke the distributor's license and impose a penalty as provided under Section 59-1-401. The amount of the tax shall bear interest at the rate prescribed in Section 59-1-402 from the date of delinquency until the delinquent tax is paid.

(3) No report or payment of tax is considered delinquent if the envelope in which the report or remittance is enclosed bears a post office cancellation mark dated on or before the date on which the report or payment was due. The commission, upon receipt of the report or remittance, shall treat the report or payment as if it had been received on the date it was due.

(4) If any part of the tax due is deficient or delinquent because of negligence or disregard of this part, or in the case of false or fraudulent monthly reports, or intent to evade the tax, a penalty shall be added to the tax due as provided in Section 59-1-401.

(5) A tax due and unpaid under this part constitutes a debt due the state and may be collected, together with interest, penalty, and costs, by appropriate judicial proceeding. This remedy is in addition to all other remedies. If the tax imposed by this part is not paid when it is due, collection may be made as provided in Sections [~~59-7-147~~] 59-7-526 and [~~59-7-148~~] 59-7-527.

(6) No license may be issued to any distributor who has permitted any tax levied and imposed by this part to become delinquent until the tax, penalty, and interest have been fully paid.

Section 89. Section Amended.

Section 59-14-405, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, is amended to read:

59-14-405. Collection of delinquent taxes.

If the taxes or penalties imposed by this chapter are not paid when due, collection shall be made in the manner provided in Sections [~~59-7-147~~] 59-7-526 and [~~59-7-148~~] 59-7-527, except as otherwise provided by this chapter.

Section 90. Repealer.

Section 59-1-802, Taxpayers who may elect to be covered, Utah Code Annotated 1953, as renumbered and amended by Chapter 3, Laws of Utah 1987;

Section 59-7-119, Basis in case of installment sales, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987;

Section 59-7-120, Allocation of income and deductions between several corporations controlled by same interests, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987;

Section 59-7-124, Consolidated returns, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987;

Section 59-7-143, Chapter applicable to receivers, trustees in bankruptcy and assignees, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987;

Section 59-7-202, "Net income" defined, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987;

Section 59-7-301, Short title, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987; and

Section 59-7-304, Combined report, Utah Code Annotated 1953, as renumbered and amended by Chapter 2, Laws of Utah 1987, are repealed.

Section 91. Coordinating clause.

If this act and S.B. 159 both pass in the 1993 Annual General Session, it is the intent of the Legislature that on the effective date of this act, January 1, 1994, Section 59-7-401 of S.B. 159 shall supercede Section 59-7-116 of this bill and that the term "net income" used in S.B. 159 shall be replaced with the term "Utah taxable income" to coordinate with the language modifications made in S.B. 159.

Section 92. Effective Date.

This act takes effect on January 1, 1994.

CHAPTER 170
S. B. No. 180
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

TAX AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; INCREASING THE WITHHOLDING FOR MINERAL PRODUCTION TAX; CONFORMING THE TREATMENT OF CERTAIN TAXABLE INTEREST INCOME TO THE TREATMENT OF FEDERAL INTEREST INCOME FOR PURPOSES OF DETERMINING RETIREMENT INCOME; CLARIFYING THE INDIVIDUAL AND CORPORATE INCOME TAX CREDIT FOR CLEAN BURNING FUELS; CONFORMING AMOUNT SUBTRACTED FROM INCOME OF A TRUST FOR FEDERAL TAXES PAID TO AMOUNT SUBTRACTED FOR INDIVIDUALS; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

59-6-102, AS LAST AMENDED BY CHAPTER 6, LAWS OF UTAH 1988 SECOND SPECIAL SESSION
59-7-110.7, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1992, THIRD SPECIAL SESSION
59-7-110.8, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1992
59-10-114, AS LAST AMENDED BY CHAPTER 93, LAWS OF UTAH 1990
59-10-127, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1992, THIRD SPECIAL SESSION
59-10-128, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1992
59-10-202, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1989

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

Section 1. Section Amended.

Section 59-6-102, Utah Code Annotated 1953, as last amended by Chapter 6, Laws of Utah 1988 Second Special Session, is amended to read:

59-6-102. Producer's obligation to deduct and withhold payments — Amount — Exempt payments — Credit against tax.

(1) [Every] Each producer, except as otherwise provided in Subsection (2), shall deduct and withhold from [every] each payment being made to any person in respect to production of minerals in this state [(], but not including that to which the producer is entitled[)], an amount equal to [4%] 5% of the amount which would have otherwise been payable to the person entitled to the payment.

(2) The obligation to deduct and withhold from payments as provided in Subsection (1) does not apply to those payments which are due to:

(a) the United States, this state, or any of their agencies or political subdivisions;

(b) any charitable institution; or

(c) any Indian or Indian tribe if the amounts accruing are subject to the supervision of the United States or any of its agencies.

(3) Any person who files an income, franchise, or gross receipts tax return with the state is entitled to a credit against the tax reflected on the return for the amount withheld by the producer under Subsection (1). If the amount withheld is greater than the tax due on the return, the person making the return is entitled to a refund in the amount of the overpayment.

Section 2. Section Amended.

Section 59-7-110.7, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1992, Third Special Session, is amended to read:

59-7-110.7. Credit — Cleaner burning fuels.

(1) As used in this section, "board" means the Air Quality Board created under Title 19, Chapter 2, Environmental Quality Code.

(2) For tax years beginning January 1, 1992, and ending December 31, 1996, there is a credit against tax otherwise due under this chapter or Chapter 8, Gross Receipts Tax Act, in an amount equal to:

(a) 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that:

(i) are fueled by propane, compressed natural gas, or electricity;

(ii) are fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i) in reducing air pollution; or

(iii) meet the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II; and

(b) 20%, up to a maximum of $400, of the cost of equipment for conversion of a motor vehicle registered in Utah to:

(i) be fueled by propane, compressed natural gas, or electricity;

(ii) be fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i); or

(iii) meet the federal clean fuel vehicle standards under Subsection (2)(a)(iii).

(3) [Proof] A taxpayer shall provide proof of the purchase of an item for which a credit is allowed under this section [shall be made] by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 3. Section Amended.

Section 59-7-110.8, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1992, is amended to read:

59-7-110.8. Credit — Items using cleaner burning fuels.

(1) As used in this section, "board" means the Air Quality Board created under Title 19, Chapter 2, Environmental Quality Code.

(2) For tax years beginning January 1, 1992, and ending December 31, 1997, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of both the purchase cost and installation services cost of each pellet burning stove, high mass wood stove, and solid fuel burning device purchased and installed that is certified by the federal Environmental Protection Agency in accordance with test procedures prescribed in 40 C.F.R. Sec. 60.534, including purchase cost and installation service cost of natural gas or propane free standing fireplaces or inserts, but not including fireplace logs.

(3) [~~Proof~~] A taxpayer shall provide proof of the purchase of an item for which a credit is allowed under this section [~~shall be made~~] by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 4. Section Amended.

Section 59-10-114, Utah Code Annotated 1953, as last amended by Chapter 93, Laws of Utah 1990, is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62 of the Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(e)(3) [~~of the~~], Internal Revenue Code, to the extent deductible under Section 62 (a)(8) of the Internal Revenue Code in determining federal adjusted gross income; and

(c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code of 1986.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection [~~(a)~~] shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection [~~(a)~~], and by any expenses incurred in the production of interest or dividend income described in this subsection [~~(a)~~] to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as per the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this subsection [~~(c)~~], means any medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption, not exceeding $1,000 for a husband and wife who file a joint return, or $500 for an individual who files a separate return;

(d) amounts received by taxpayers under age 65 as [~~"~~]retirement income[~~"~~] which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404 (a)(2) [~~of the~~], Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408 [~~of the~~], Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code of 1986, for each handicapped child and handicapped adult who is claimed as a dependent on a taxpayer's return; and

(g) any amount included in federal taxable income that was received pursuant to any federal law en-

acted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II.

(3) (a) For purposes of Subsection (2)(d), the amount of [2]retirement income[2] subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

[~~(c)~~] (d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

Section 5. Section Amended.

Section 59-10-127, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1992, Third Special Session, is amended to read:

59-10-127. Credit — Cleaner burning fuels.

(1) As used in this section, "board" means the Air Quality Board created in Title 19, Chapter 2, Environmental Quality Code.

(2) For tax years beginning January 1, 1992, and ending December 31, 1996, there is allowed a credit against tax otherwise due under this chapter in an amount equal to:

(a) 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that:

(i) are fueled by propane, compressed natural gas, or electricity;

(ii) are fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i); or

(iii) meet the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II; and

(b) 20%, up to a maximum of $400, of the cost of equipment for conversion of a motor vehicle registered in Utah to:

(i) be fueled by propane, compressed natural gas, or electricity;

(ii) be fueled by other fuel the board determines annually on or before July 1 to be at least as effective as fuels under Subsection (2)(a)(i); or

(iii) meet the federal clean fuel vehicle standards under Subsection (2)(a)(iii).

(3) [~~Proof~~] An individual shall provide proof of the purchase of an item for which a credit is allowed under this section [~~shall be made~~] by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 6. Section Amended.

Section 59-10-128, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1992, is amended to read:

59-10-128. Credit — Items using cleaner burning fuels.

(1) As used in this section, "board" means the Air Quality Board created under Title 19, Chapter 2, Environmental Quality Code.

(2) For tax years beginning January 1, 1992, and ending December 31, 1997, there is allowed a credit against tax otherwise due under this chapter in an

amount equal to 10%, up to a maximum of $50, of the total of both the purchase cost of and installation services cost of each pellet burning stove, high mass wood stove, and solid fuel burning device that is certified by the federal Environmental Protection Agency in accordance with test procedures prescribed in 40 C.F.R. Sec. 60.534, including purchase cost and installation service cost of natural gas or propane free standing fireplaces or inserts, but not including fireplace logs.

(3) [~~Proof~~] An individual shall provide proof of the purchase of an item for which a credit is allowed under this section [~~shall be made~~] by:

(a) providing proof to the board in the form it requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) attaching the written statement obtained from the board to the tax return in which the credit is claimed.

(4) This credit is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer; and

(b) in the taxable year in which the item is purchased for which the credit is claimed.

Section 7. Section Amended.

Section 59-10-202, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1989, is amended to read:

59-10-202. Additions to and subtractions from state taxable income of resident estate or trust.

(1) The state taxable income of a resident estate or trust means its federal taxable income as defined in Subsections (a), (b), and (c), Section 641, Internal Revenue Code, as adjusted by Subsection (2).

(2) (a) There shall be added to federal taxable income of a resident or nonresident estate or trust the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal taxable income.

(b) There shall be subtracted from federal taxable income of a resident or nonresident trust or estate:

(i) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income; and

(ii) [~~1/3~~] 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the same taxable year.

CHAPTER 171
S. B. No. 185
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

MEMBERSHIP ON ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS

By Craig A. Peterson

AN ACT RELATING TO THE ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS; AMENDING THE APPOINTMENT OF COUNCIL MEMBERS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
11-33-3, AS LAST AMENDED BY CHAPTER 112, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 11-33-3, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

11-33-3. Composition of council — Appointment — Terms — Officers — Vacancies — Quorum.

(1) As used in this section:

(a) "cabinet level officials" means executive directors of departments and others who serve on the governor's cabinet; and

(b) "cabinet level officials" includes the state superintendent of public instruction.

[~~(1)~~] (2) The council comprises 21 members as follows:

(a) two members of the Senate appointed by the president of the Senate;

(b) four members of the House of Representatives appointed by the speaker of the House of Representatives;

[~~(c) the chairman of the State Tax Commission or his designee;~~]

[~~(d) the executive director of the Utah Department of Human Services or his designee;~~]

[~~(e) the state planning coordinator or his designee;~~]

(c) six cabinet level officials appointed by the governor, or the cabinet level officials' designees;

[~~(f)~~] (d) four municipal officials [~~to be~~] appointed by the governor;

[~~(g)~~] (e) four county officials [~~to be~~] appointed by the governor; and

[~~(h) the Utah superintendent of public instruction or his designee;~~]

[~~(i)~~] (f) one citizen [~~to be~~] appointed by the governor[~~;~~].

[~~(j) the executive director of the Department of Health or his designee; and~~]

[~~(k) the executive director of the Department of Environmental Quality or his designee.~~]

[~~(2)~~] (3) Each member of the council who is a public officer shall perform the duties of a member of the council as additional duties required of him in his other official capacity.

[~~(3) Legislative~~] (4) (a) The president and speaker shall appoint legislative members [~~shall be appointed~~] to [a] two-year [~~term which corresponds~~] terms that correspond to their terms of office. [~~All~~]

(b) The governor shall appoint all other members [~~shall be appointed~~] to staggered four-year terms.

(c) Members may [~~be reappointed only once~~] not serve longer than eight years.

[~~(4)~~] (5) (a) Not more than half of the local government members appointed by the governor may be from any one political party.

(b) Not more than half of the state legislators appointed may be from any one political party.

[~~(5)~~] (6) (a) The council shall elect a [~~chairman~~] chair and [~~vice-chairman~~] vice-chair from among its members [~~and~~].

(b) The council may elect other officers [~~as~~] that it finds necessary.

(c) The [~~chairman~~] chair and [~~vice-chairman~~] vice-chair shall serve for one year and may be reelected. If both the [~~chairman~~] chair and [~~vice-chairman~~] vice-chair are absent at any meeting, the voting members present shall elect a temporary [~~chairman~~] chair by a majority vote.

[~~(6)~~] (7) (a) If a representative of the counties or of the municipalities or a legislator ceases to be an officer or member of the [~~unit~~] entity that he is appointed to represent, his membership on the council [~~shall terminate~~] terminates immediately [~~and there shall be a vacancy in the membership~~]. [~~Within~~]

(b) The original appointing authority shall fill the vacancy within 30 days [~~the vacancy shall be filled in the manner of the original appointment, and the person appointed to fill the vacancy shall serve only to the end of the original~~] by appointing a qualified person to serve out the unexpired term.

[~~(7)~~] (8) The presiding officers of the Legislature shall be guided in their appointments by consideration of the legislators' expertise, interest, and experience, including legislative committee service in the field of intergovernmental relations.

[~~(8)~~] (9) Twelve members of the council [~~constitute~~] are a quorum.

CHAPTER 172
S. B. No. 233
Passed March 2, 1993
Approved March 16, 1993
Effective May 3, 1993

TAX TREATMENT OF CERTAIN MOBILE HOMES

By Haven J. Barlow

AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE TREATMENT OF MOBILE HOMES USED AS A PRIMARY RESIDENCE FOR PURPOSES OF AD VALOREM TAXATION SEIZURE AND SALE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-2-1303, AS LAST AMENDED BY CHAPTER 237, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-2-1303, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1992, is amended to read:

59-2-1303. Seizure and sale — Method and procedure.

Unless taxes or uniform fees on personal property assessed by the county assessor are paid or secured as provided under Section 59-2-1302, the assessor shall collect the taxes, including accrued interest and penalties, by seizure and sale of any personal property owned by the person against whom the tax is assessed in the following manner:

(1) [~~Sale~~] (a) Except as provided in Subsection (b), the sale shall be made:

[~~(a)~~] (i) at public auction;

[~~(b)~~] (ii) of a sufficient amount of property to pay the taxes, or uniform fees and interest, penalties, and costs;

[~~(c)~~] (iii) when practicable, in the city, town, or precinct where the property was seized; and

[~~(d)~~] (iv) after one week's notice of the time and place of the sale, given by publication in a newspaper having general circulation in the county, or by posting in three public places in the county.

(b) For mobile homes that are used as a primary residence and that do not qualify as an improvement upon real property as provided in Section 59-2-602, the county may not seize the mobile home until 30 days before the date of the sale of that mobile home and the sale shall be made:

(i) at public auction;

(ii) when practicable, in the city, town, or precinct where the property was seized;

(iii) no sooner than one year after the taxes on the property became delinquent as determined in Section 59-2-1302;

(iv) after publication of the date, time, and place of sale in a newspaper having general circulation in the county, once in each of four successive weeks immediately preceding the date of the sale; and

(v) after notification, sent by certified mail at least three weeks but no more than five weeks before the date of the sale, to the owner of the mobile home of the date, time, and place of the sale.

(2) For seizing or selling personal property the assessor may charge in each case the actual and necessary expenses for travel and seizing, handling, keeping, selling, or caring for that property.

(3) Upon payment of the price bid for any personal property sold under this section, the delivery of the property, with a bill of sale, vests title in the purchaser.

(4) All sale proceeds in excess of taxes, or uniform fees and interest, penalties, and costs shall be returned to the owner of the personal property, and until claimed shall be deposited in the county treasury and made subject to the order of the owner, the owner's heirs, or assigns.

(5) The unsold portion of any property may be left at the place of sale at the risk of the owner.

(6) If there is no acceptable purchaser of the property, the property shall be declared the property of the county. The county governing body may sell or rent any property held in the name of the county at any time after the sale upon terms determined by the governing body.

CHAPTER 173
S. B. No. 246
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

FOSTER CARE CITIZEN REVIEW BOARDS

By Delpha A. Baird

AN ACT RELATING TO JUVENILE COURT; ESTABLISHING A CITIZEN REVIEW BOARD PILOT PROJECT; ESTABLISHING A STEERING COMMITTEE TO OVERSEE THAT PROJECT; PROVIDING THE DUTIES OF THE REVIEW PANELS; PROVIDING A REPEAL DATE; AND PROVIDING AN FFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-278, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1992

ENACTS:
78-3G-101, UTAH CODE ANNOTATED 1953
78-3G-102, UTAH CODE ANNOTATED 1953
78-3G-103, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 63-55-278, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1992, is amended to read:

63-55-278. Repeal dates, Title 78.

(1) The Office of the Court Administrator, created in Section 78-3-23, is repealed July 1, 2002.

(2) Title 78, Chapter 56, Court Reporters and Stenographers, is repealed July 1, 1997.

(3) Citizen Review Panel Pilot Project, created in Title 78, Chapter 3g, is repealed April 1, 1995.

Section 2. Section Enacted.

Section 78-3g-101, Utah Code Annotated 1953, is enacted to read:

78-3g-101. Definitions.

As used in this chapter:

(1) "Committee" means the Citizen Review Panel Pilot Project Steering Committee created in this section.

(2) "Division" means the Division of Family Services within the Department of Human Services.

(3) "Office" means the Office of Social Services within the Department of Human Services.

(4) "Panel" means a Citizen Review Panel created in Section 78-3g-103.

(5) "Plan" or "plans" means the same as that term is defined in Subsection 78-3f-103(3).

Section 3. Section Enacted.

Section 78-3g-102, Utah Code Annotated 1953, is enacted to read:

78-3g-102. Citizen Review Panel Steering Committee — Membership — Chair — Staff support.

(1) There is created within state government the Citizen Review Panel Pilot Project Steering Committee composed of the following members:

(a) a member of the Legislature appointed by the president of the Senate and the speaker of the House of Representatives;

(b) a member of the Board of Family Services, within the Department of Human Services, appointed by the chair of that board;

(c) the director of the division, or his designee;

(d) the director of the Office of Social Services, within the Department of Human Services, or his designee;

(e) a juvenile court judge, appointed by the presiding officer of the Judicial Council;

(f) a juvenile court administrator, appointed by the administrator of the courts;

(g) a representative of the Utah Foster Parents Association, appointed by the president of that organization;

(h) a representative of a statewide advocacy organization for children, appointed by the chair of the committee;

(i) a representative of an agency or organization that provides services to children who are adjudicated to be under the jurisdiction of the juvenile court, appointed by the chair of the committee; and

(j) a guardian ad litem, appointed by the chair of the committee.

(2) The persons described in Subsections (1)(a) through (1)(g) shall elect a chair of the committee from among themselves.

(3) Five members of the committee constitute a quorum. The action of the majority of a quorum represents the action of the committee.

(4) The committee shall:

(a) appoint members of panels in the juvenile court districts and locations chosen by the committee;

(b) supervise the recruitment, training, and retention of panel members;

(c) develop methods for assigning plans to panels for review, including the methodology to be followed in randomly assigning plans;

(d) supervise the evaluation of the pilot project; and

(e) submit a final report on the results of the pilot project to the Legislative Human Services and Judiciary Interim Committees and the Board of Juvenile Court Judges before December 31, 1994.

(5) The division shall provide professional staff and clerical support to the committee.

Section 4. Section Enacted.

Section 78-3g-103, Utah Code Annotated 1953, is enacted to read:

78-3g-103. Citizen review panels.

(1) There is established the Citizen Review Panel Pilot Project. The project shall operate from July 1, 1993 to April 1, 1995 in at least three court locations within at least two juvenile court districts selected by the committee.

(2) The committee shall appoint members of citizen review panels. Each panel has seven members, five of whom must be parents. Five members of a panel constitute a quorum and the action of a majority of a quorum constitutes the action of the panel. A panel member may not be an employee of the division, the office, or the juvenile court. A panel may elect its own chair and vice chair and other offices as it deems appropriate. The division shall provide professional and clerical staff support to panels.

(3) Except as provided in Subsection (d), the division shall submit to the panel for review, a randomly selected sample of plans. The number of plans to be submitted to each panel and the time interval between submitting plans shall be determined by the committee. The review of plans by the panel may be:

(a) based on alternative methods of review when done in conjunction with a dispositional hearing under Subsection 78-3a-42(3)(b) as deemed appropriate by the panel;

(b) in lieu of a six-month review conducted by an administrative body within the division;

(c) to advise the court or an administrative body regarding the outcome of a dispositional hearing held under Subsection 78-3a-42 (3)(b); or

(d) at the request of the juvenile court.

(4) The panel shall report its findings and recommendations to the court and division within 30 days after the request to review the plan is submitted.

(5) The consideration and review of the plan by the panel shall consist of at least the following:

(a) the extent to which the plan's objectives have been implemented by the parent, the child, and the division;

(b) whether revisions to the plan's objectives and interventions are needed, and, if so, how the plan should be revised;

(c) the extent to which the division has provided the interventions described in the plan and whether these interventions are assisting, or will assist, the parent and child to achieve the plan's objectives;

(d) the extent to which the parent and child have willingly and actively participated in the interventions described in the plan;

(e) the continuing necessity for and appropriateness of the placement;

(f) the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement in foster care; and

(g) a projection of a likely date by which the child may be returned home or placed for adoption or legal guardianship.

(6) If the review of the plan by the panel is in conjunction with a dispositional hearing under Section 78-3a-42, the recommendations of the panel shall also include a recommendation regarding what option described under Subsection 78-3a-42(3)(b) the court or administrative body should chose.

Section 5. Repeal Date.

This act is repealed on April 1, 1995.

Section 6. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 174
S. B. No. 256
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

TOP DEPARTMENT EMPLOYEE PROGRAM

By Brent C. Richards

AN ACT RELATING TO EMPLOYEE RECOGNITION AND AWARDS; REPEALING THE SUGGESTION AWARDS PROGRAM; ESTABLISHING A DEPARTMENTAL REWARD PROGRAM; APPROPRIATING $9,900 TO THE DEPARTMENT OF HUMAN RESOURCE MANAGEMENT FOR AWARDS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
67-19C-101, UTAH CODE ANNOTATED 1953

REPEALS:
67-19B-101, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-102, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-201, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-202, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-203, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-204, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-205, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-301, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-302, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990
67-19B-303, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1990

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

Section 1. Section Enacted.

Section 67-19c-101, Utah Code Annotated 1953, is enacted to read:

67-19c-101. Department award program.

(1) As used in this section:

(a) "Department" means the Department of Administrative Services, the Department of Agriculture, the Department of Alcoholic Beverage Control, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Employment Security, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Resource Management, the Department of Human Services, the Industrial Commission, the Insurance Department, the National Guard, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the State Board of Education, the State Board of Regents, the State Tax Commission, and the Department of Transportation.

(b) "Department head" means the individual or body of individuals in whom the ultimate legal authority of the department is vested by law.

(2) There is created a department awards program to award an outstanding employee in each department of state government.

(3) (a) By April 1 of each year, each department head shall solicit nominations for outstanding employee of the year for his department from the employees in his department.

(b) By July 1 of each year, the department head shall:

(i) select a person from the department to receive the outstanding employee of the year award using the criteria established in Subsection (c); and

(ii) announce the recipient of the award to his employees.

(c) Department heads shall make the award to a person who demonstrates:

(i) extraordinary competence in performing his function;

(ii) creativity in identifying problems and devising workable, cost-effective solutions to them;

(iii) excellent relationships with the public and other employees;

(iv) a commitment to serving the public as the client; and

(v) a commitment to economy and efficiency in government.

(4) (a) The Department of Human Resource Management shall divide any appropriation for outstanding department employee awards that it receives from the Legislature equally among the departments.

(b) If the department receives monies from the Department of Human Resource Management or if the department budget allows, the department head shall provide the employee with a bonus, a plaque, or some other suitable acknowledgement of the award.

(5) (a) The department head may name the award after an exemplary present or former employee of the department.

(b) A department head may not name the award for himself or for any relative as defined in Section 52-3-1.

(c) Any awards or award programs existing in any department as of May 3, 1993, shall be modified to conform to the requirements of this section.

Section 2. Repealer.

Section 67-19b-101, Definitions, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-102, Application of chapter, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-201, Director's responsibilities — Annual report, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-202, Utah Suggestion Awards Board — Creation — Duties, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-203, Suggestion awards administration — Appointment — Duties, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-204, Department coordinators — Appointment — Duties, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-205, Department committees — Appointment — Duties, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-301, Suggestion evaluation procedures — Administration, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990;

Section 67-19b-302, Suggestion evaluation procedures — Coordinator and board — Criteria — Ineligible suggestions, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990; and

Section 67-19b-303, Awards, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1990, are repealed.

Section 3. Appropriation.

There is appropriated $9,900 from the General Fund to the Department of Human Resource Management for fiscal year 1993-94.

CHAPTER 175
S. B. No. 283
Passed March 3, 1993
Approved March 16, 1993
Effective July 1, 1993

GUARDIAN AD LITEM TRAINING

By Delpha A. Baird

AN ACT RELATING TO THE COURTS; PROVIDING SYSTEMATIC GUARDIAN AD LITEM TRAINING FOR CHILDREN IN THE JUSTICE SYSTEM; PROVIDING THAT THE NATIONALLY ACCEPTED CASA TRAINING BE USED; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-63A-8, AS ENACTED BY CHAPTER 253, LAWS OF UTAH 1992
78-3A-44.5, AS LAST AMENDED BY CHAPTER 213, LAWS OF UTAH 1992
78-7-9, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1992

REPEALS:
78-3A-63, AS LAST AMENDED BY CHAPTER 213, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-63a-8, Utah Code Annotated 1953, as enacted by Chapter 253, Laws of Utah 1992, is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, Mandatory Educational Course on Children's Needs for Divorcing Parents - Pilot Program, and Sections 30-3-15.3, 30-3-18, and 30-3-19 through 30-3-31, Mediation Pilot Program - Child Custody or Visitation;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-44.5, [~~78-3a-63,~~] 78-3a-65, 78-11-6, and 78-7-9[~~,~~]; the training of guardian ad litems and volunteers as provided in 78-3a-44.5; and termination of parental rights as provided in Sections 78-3a-39, 78-3a-42, 78-3a-47, and [~~78-3a-101~~] 78-3f-101 through [~~78-3a-115~~] 78-3f-114. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section [~~78-3a-63~~] 78-3a-44.5; and

(c) requiring community service for violation of visitation orders or failure to pay child support as provided in Section 78-32-12.1.

(4) The following withheld fees shall be allocated to the Children's Legal Defense Account:

(a) an additional fee of $10 shall be withheld on every marriage license issued in the state of Utah as provided in Section 21-2-2; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in [~~Section~~] Subsection (4) from the General Fund to the Children's Legal Defense Account.

Section 2. Section Amended.

Section 78-3a-44.5, Utah Code Annotated 1953, as last amended by Chapter 213, Laws of Utah 1992, is amended to read:

78-3a-44.5. Appointment of guardian ad litem — Duties and responsibilities — Training — Volunteers — Costs — Immunity.

(1) (a) The court may appoint a guardian ad litem to represent the best interests of a child involved in a case before the court.

(b) The court shall consider only the best interests of a child in determining whether to appoint a guardian ad litem.

(2) In cases that result in a judicial proceeding, the court shall appoint a guardian ad litem to represent any child named in a petition alleging abuse, child sexual abuse, neglect, or dependency.

[~~(2)~~] (3) The guardian ad litem shall:

(a) investigate the case, especially as it affects the interests of the child[~~,~~]; and

(b) present to the court an independent determination of what court action would be in the best interests of the child.

(4) (a) A guardian ad litem or the juvenile court may [~~train~~] use volunteers, as defined in Subsection 67-20-2 (3), to assist in [the] investigation and preparation of information regarding the cases of individual children before the court.

(b) When possible and appropriate, the court may use a volunteer who is a peer of the child appearing before the court, in order to provide assistance to that child, under the supervision of the guardian ad litem.

(5) The Office of the Court Administrator shall employ one full-time employee and provide the staff and resources necessary to train each guardian ad litem in the state appointed under this section or Section 78-7-9, and all volunteers described in Sub-

section (4) (a), to follow, at a minimum, the guidelines established by the National Court Appointed Special Advocate Association.

[~~(3)~~] (6) The guardian ad litem shall continue to serve the child until released from his duties by the court. [~~The costs of a guardian ad litem appointed in juvenile court cases of child abuse, child sexual abuse, neglect, or dependency are borne by the state.~~]

(7) The juvenile court is responsible for all costs resulting from the appointment of the guardian ad litem and shall use funds specifically appropriated by the Legislature to cover those costs.

[~~(4) Guardians~~] (8) A guardian ad litem appointed under this section when serving in the scope of [~~their~~] his duties as [~~guardians~~] guardian ad litem [~~are~~] is considered [~~employees~~] an employee of the state for purposes of indemnification under the Governmental Immunity Act.

Section 3. Section Amended.

Section 78-7-9, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1992, is amended to read:

78-7-9. Appointment of guardian ad litem in child sexual abuse proceedings.

(1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any state court, the court shall upon its own motion or that of any party to that proceeding consider the need to appoint a guardian ad litem.

(2) The court may appoint a guardian ad litem when it considers it necessary and appropriate to represent the best interests of any child named in the allegation and in all related proceedings conducted in any state court involving the child abuse, child sexual abuse, or neglect charged.

(3) The guardian ad litem appointed shall receive the training described in Section 78-3a-44.5.

[~~(2)~~] (4) If a guardian ad litem has been appointed for the child by any court in the state in any prior proceeding or related matter, the court may continue that appointment or may reappoint the guardian ad litem, if still available, to act on behalf of the child.

[~~(3)~~] (5) The court is responsible for all costs resulting from the appointment of the guardian ad litem and shall use funds specifically appropriated by the Legislature to cover those costs.

[~~(4)~~] (6) The court may assess the costs for recoupment in an action if a party is found impecunious.

Section 4. Repealer.

Section 78-3a-63, Abused or neglected child — Guardian ad litem — Costs, Utah Code Annotated 1953, as last amended by Chapter 213, Laws of Utah 1992, is repealed.

Section 5. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 176
S. B. No. 284
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

LONG-TERM CARE OMBUDSMAN AMENDMENTS

By Stephen J. Rees

AN ACT RELATING TO HUMAN SERVICES; AMENDING THE DUTIES AND POWERS OF THE LONG-TERM CARE OMBUDSMAN.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-3-202, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-3-203, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-3-204, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-3-206, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-3-207, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 62A-3-202, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-202. Definitions.

As used in this part:

(1) "Elderly resident" means an adult 60 years of age or older who because of physical, economic, social, or emotional problems cannot function normally on an independent basis, and who resides in a long-term care facility.

(2) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.

(3) "Long-term care facility" means any skilled nursing facility, intermediate care facility, nursing home, residential care facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

(4) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.

Section 2. Section Amended.

Section 62A-3-203, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-203. Creation of long-term care ombudsman program — Responsibilities.

(1) (a) There is created within the division the long-term care ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the state.

(b) The ombudsman is responsible for:

(i) receiving and resolving complaints relating to elderly residents of long-term care facilities[~~, for~~];

(ii) conducting investigations of any act, practice, policy, or procedure of any long-term care facility or government agency which it has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly resident of a long-term care facility; [~~and for~~]

(iii) coordinating the department's services for elderly residents of long-term care facilities to ensure that those services are made available to eligible elderly citizens of the state; and

(iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.

(2) (a) A long-term care facility shall display an ombudsman program information poster.

(b) The division is responsible for providing the posters, which shall include the names and phone numbers for local ombudsman programs.

Section 3. Section Amended.

Section 62A-3-204, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-204. Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

(1) comply with Title VII of the federal Older American's Act, 42 U.S.C. 3058 et seq.;

[~~(1)~~] (2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with elderly residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;

[~~(2)~~] (3) investigate an administrative act or omission of any long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;

[~~(3)~~] (4) recommend to the board rules that it deems necessary to carry out the purposes of the ombudsman;

[~~(4)~~] (5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;

[(5)] (6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

[(6)] (7) establish local ombudsman programs to assist in carrying out the purposes of this part[. Local ombudsman programs], which shall meet the standards developed by the division, and possess all of the authority and power granted to the long-term care ombudsman program under this part; and

[(7)] (8) exercise [such] other powers and responsibilities as [may be] reasonably required to carry out the purposes of this part.

Section 4. Section Amended.

Section 62A-3-206, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-206. Investigation of complaints — Procedures.

[(1) The ombudsman may investigate any complaint if he determines that investigation is appropriate and in accordance with the purposes of this part. Immediately prior to undertaking an investigation, the ombudsman shall notify any complainant and any long-term care facility or governmental agency affected by the investigation. However, if the ombudsman has good cause to believe that prior notice would result in increased harm or risk of harm to the elderly resident by whom or on whose behalf the complaint was made, the ombudsman may proceed as provided in Subsection (2)(c).]

(1) (a) The ombudsman shall investigate each complaint he receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.

(b) The ombudsman shall notify any complainant of its decision [not] to [investigate] not pursue investigation of a complaint after the initial investigation and the reasons [therefore] for the decision.

(2) In making any investigation, the ombudsman may engage in actions it deems appropriate including, but not limited to:

(a) making inquiries and obtaining information;

(b) holding investigatory hearings;

(c) entering upon and inspecting any premises, without notice to the facility, provided [however, that] the investigator [shall identify] identifies himself upon entering the premises as a person authorized by this part to inspect the premises; and

(d) inspecting or obtaining any book, file, medical record, or other record [which is] required by law to be retained by the long-term care facility or governmental agency, pertaining to elderly residents, subject to Subsection (3).

(3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.

(b) The effort to obtain permission under Subsection (a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.

[(3)] (4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

Section 5. Section Amended.

Section 62A-3-207, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-3-207. Confidentiality of materials relating to complaints or investigations — Immunity from liability — Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to assure that all files maintained by the long-term care ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or elderly resident of a long-term care facility may not be disclosed by the ombudsman unless:

(a) the complainant or elderly resident, or the legal representative of either, consents in writing to the disclosure; [or]

(b) disclosure is ordered by the court; or

(c) the disclosure is made to a local area agency on aging, the state adult protective services agency, the Department of Health, the Department of Public Safety, the local law enforcement agency, or the county attorney as part of the investigation of a complaint.

(2) Neither the ombudsman nor its agents or designees may be required to testify in court with respect to confidential matters, except as the court [may deem] finds necessary to enforce the provisions of this part.

(3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability [therefor,] unless the complaint was made maliciously or without good faith.

(4) [No discriminatory] (a) Discriminatory, disciplinary, or retaliatory action may not be taken against any volunteer or employee of a long-term care facility or governmental agency, or against any elderly resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

(b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

CHAPTER 177
H. B. No. 12
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

SMALL CLAIMS COURT LIMITS

By Allan C. Rushton
Darrell L. Jorgensen

AN ACT RELATING TO THE JUDICIAL CODE; RAISING THE JURISDICTIONAL AMOUNT CLAIMED IN A SMALL CLAIMS COURT PROCEEDING TO $5,000; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-6-1, AS LAST AMENDED BY CHAPTER 127, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 78-6-1, Utah Code Annotated 1953, as last amended by Chapter 127, Laws of Utah 1992, is amended to read:

78-6-1. Creation — Jurisdiction — Biannual review — Counsel not necessary — Deferring multiple claims of one plaintiff — Supreme Court to govern procedures.

(1) The circuit court shall and, if certified by the Judicial Council, the justice court may create a department known as the "Small Claims Department" which has jurisdiction in cases:

(a) for the recovery of money where the amount claimed does not exceed [~~$2,000~~] $5,000 including attorney fees but exclusive of court costs and interest and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed [~~$2,000~~] $5,000 including attorney fees but exclusive of court costs and interest.

(2) In no event shall the judgment of the small claims [~~division~~] department exceed [~~$2,000~~] $5,000 including attorney fees but exclusive of court costs and interest.

(3) Counter claims may be maintained in the small claims [division] department if the counter claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(4) The Judicial Council shall present to the Judiciary Interim Committee prior to the general session of the Legislature during odd-numbered years a report and recommendations concerning the jurisdiction of the Small Claims Department.

(5) Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees with or without counsel.

(6) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

(7) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

(8) The fee for filing a small claims action shall be $40 where the amount claimed is greater than $2,000 and less than $5,001.

CHAPTER 178
H. B. No. 23
Passed February 12, 1993
Approved March 17, 1993
Effective May 3, 1993

RECLASSIFICATION OF WILDLIFE VIOLATIONS

By Brent H. Goodfellow
Met Johnson
Stephen M. Bodily
Clark L. Reber
Daniel H. Tuttle
Irby N. Arrington
Dan Q. Price
Eli H. Anderson
Arlo D. James
Fred R. Hunsaker

AN ACT RELATING TO WILDLIFE RESOURCES; PROVIDING THAT A VIOLATION OF A WILDLIFE RULE OR PROCLAMATION IS A CLASS C MISDEMEANOR; SPECIFYING REQUIREMENTS FOR DONATING AND TAGGING WILDLIFE; PRESCRIBING SAFETY MEASURES; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
23-13-11, AS LAST AMENDED BY CHAPTER 212, LAWS OF UTAH 1991
23-19-3, AS LAST AMENDED BY CHAPTER 124, LAWS OF UTAH 1985
23-20-4, AS REPEALED AND REENACTED BY CHAPTER 27, LAWS OF UTAH 1992

ENACTS:
23-20-30, UTAH CODE ANNOTATED 1953
23-20-31, UTAH CODE ANNOTATED 1953
23-20-32, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
23-20-9, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1971

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

Section 1. Section Amended.

Section 23-13-11, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1991, is amended to read:

23-13-11. Violations.

(1) Unless otherwise provided, a violation of any provision of this title [~~or any rule, proclamation, or order issued by the Wildlife Board or the Board of Big Game Control~~] is a class B misdemeanor.

(2) A violation of any rule or proclamation of the Wildlife Board or Board of Big Game Control is a class C misdemeanor.

Section 2. Section Amended.

Section 23-19-3, Utah Code Annotated 1953, as last amended by Chapter 124, Laws of Utah 1985, is amended to read:

23-19-3. Special tags as supplements to licenses and permits.

[~~There may be issued~~] The division may issue, as supplements to appropriate licenses and permits, special [~~tag or~~] tags for protected wildlife, as determined by the Wildlife Board or the Board of Big Game Control[~~, except as provided in Subsection 23-19-40(2)~~].

Section 3. Section Amended.

Section 23-20-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 27, Laws of Utah 1992, is amended to read:

23-20-4. Wanton destruction of protected wildlife — Penalties.

(1) A person is guilty of wanton destruction of protected wildlife if he:

(a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through 23-15-9, 23-16-5, or Subsection 23-20-3(1);

(b) captures, injures, or destroys protected wildlife; and

(c) (i) does so with intentional, knowing, or reckless conduct as defined in Section 76-2-103;

(ii) intentionally abandons protected wildlife or a carcass;

(iii) commits the offense at night with the use of a weapon;

(iv) is under a court or Wildlife Board revocation of a license, tag, permit, or certificate of registration; or

(v) acts for pecuniary gain.

(2) Subsection (1) does not apply to actions taken which are in accordance with the following:

[~~(c)~~] (a) Title 4, Chapter 14, Utah Pesticide Control Act[~~,~~];

[~~(a)~~] (b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or

[~~(b)~~] (c) Section 23-16-3[~~; or~~].

(3) Wanton destruction of wildlife is punishable:

(a) as a third degree felony if the aggregate value of the protected wildlife determined by the values in Subsection 23-20-4(4) is more than $500;

(b) as a class A misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection 23-20-4(4) is more than $250, but does not exceed $500;

(c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection 23-20-4(4) is $250 or less.

[~~(3)~~] (4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the following values shall be assigned to protected wildlife for the purpose of determining the offense for wanton destruction of wildlife:

(a) $1,000 per animal for:

(i) bison;

(ii) bighorn sheep;

(iii) rocky mountain goat;

(iv) moose;

(v) bear;

(vi) cougar; or

(vii) endangered species;

(b) $750 per animal for:

(i) elk; or

(ii) threatened species;

(c) $500 per animal for:

(i) golden eagle; or

(ii) river otter;

(d) $400 per animal for:

(i) pronghorn antelope; or

(ii) deer;

(e) $350 per animal for bobcat;

(f) $100 per animal for:

(i) swan;

(ii) sandhill crane;

(iii) turkey;

(iv) pelican;

(v) loon;

(vi) egrets;

(vii) herons; or

(viii) raptors, except those that are threatened or endangered;

(g) $35 per animal for furbearers, except:

(i) bobcat;

(ii) river otter; and

(iii) threatened or endangered species;

(h) $15 per animal for game birds, except:

(i) turkey;

(ii) swan; and

(iii) sandhill crane;

(i) $10 per animal for game fish;

(j) $8 per pound dry weight of processed brine shrimp including eggs; and

(k) $5 per animal for protected wildlife not listed.

[~~(4)~~] (5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in [~~Section~~] Subsection 76-3-203(4).

Section 4. Section Repealed and Reenacted.

Section 23-20-9, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1971, is repealed and reenacted to read:

23-20-9. Donating protected wildlife.

(1) A person may donate protected wildlife or their parts to another person only at the following places:

(a) the residence of the donor;

(b) the residence of the person receiving protected wildlife or their parts;

(c) a meat locker;

(d) a storage plant; or

(e) a meat processing facility.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor; and

(d) the signature of the donor.

(3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big game animal to another person or organization at any place without a donation slip.

Section 5. Section Enacted.

Section 23-20-30, Utah Code Annotated 1953, is enacted to read:

23-20-30. Tagging requirements.

(1) The Wildlife Board or Board of Big Game Control may make rules that require the carcass of certain species of protected wildlife to be tagged.

(2) The carcass of any species of protected wildlife required to be tagged must be tagged before the carcass is moved from or the hunter leaves the site of kill.

(3) To tag a carcass, a person shall:

(a) completely detach the tag from the license or permit;

(b) completely remove the appropriate notches to correspond with:

(i) the date the animal was taken; and

(ii) the sex of the animal; and

(c) attach the tag to the carcass so that the tag remains securely fastened and visible.

(4) A person may not:

(a) remove more than one notch indicating date or sex; or

(b) tag more than one carcass using the same tag.

Section 6. Section Enacted.

Section 23-20-31, Utah Code Annotated 1953, is enacted to read:

23-20-31. Requirement to wear hunter orange.

(1) (a) A person shall wear a minimum of 400 square inches of hunter orange material while hunting any species of big game, except as provided in Subsection (2).

(b) Hunter orange material must be worn on the head, chest, and back.

(c) A camouflage pattern in hunter orange does not meet the requirements of Subsection (1)(a).

(2) A person is not required to wear hunter orange material during an archery, muzzle-loader, or bighorn sheep hunt, unless a centerfire rifle hunt is in progress in the same area.

Section 7. Section Enacted.

Section 23-20-32, Utah Code Annotated 1953, is enacted to read:

23-20-32. Written permission required to discharge a firearm within 600 feet of a building.

A person may not, without written permission from the owner or person in charge, discharge a firearm within 600 feet of:

(1) a house, dwelling, or any other building; or

(2) any structure where a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen, or stockyard.

CHAPTER 179
H. B. No. 24
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

MANDATORY TESTING FOR HIV INFECTION OF CONVICTED PROSTITUTES AND CONVICTED PATRONS OF PROSTITUTES

By Kurt E. Oscarson

AN ACT RELATING TO THE CRIMINAL CODE; REQUIRING MANDATORY TESTING FOR HIV INFECTION OF A PERSON CONVICTED OF PROSTITUTION, PATRONIZING A PROSTITUTE, OR SEXUAL SOLICITATION; PROVIDING NOTICE TO PERSONS WITH HIV; DEFINING TERMS; PROVIDING TESTING AND REPORTING GUIDELINES; AND SETTING PENALTIES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-6-5, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1981
76-10-1302, AS LAST AMENDED BY CHAPTER 107, LAWS OF UTAH 1991
76-10-1303, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973

ENACTS:
76-10-1309, UTAH CODE ANNOTATED 1953
76-10-1310, UTAH CODE ANNOTATED 1953
76-10-1311, UTAH CODE ANNOTATED 1953
76-10-1312, UTAH CODE ANNOTATED 1953
76-10-1313, UTAH CODE ANNOTATED 1953
76-10-1314, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 26-6-5, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-6-5. Willful introduction of communicable disease a misdemeanor.

Any person who willfully or knowingly introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

Section 2. Section Amended.

Section 76-10-1302, Utah Code Annotated 1953, as last amended by Chapter 107, Laws of Utah 1991, is amended to read:

76-10-1302. Prostitution.

(1) A person is guilty of prostitution when:

(a) he engages [~~or offers or agrees to engage~~] in any sexual activity with another person for a fee;

(b) is an inmate of a house of prostitution; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) Prostitution is a class B misdemeanor. However, any person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

Section 3. Section Amended.

Section 76-10-1303, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-1303. Patronizing a prostitute.

(1) A person is guilty of patronizing a prostitute when:

(a) he pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(b) he enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(2) Patronizing a prostitute is a class [C] B misdemeanor, except as provided in Section 76-10-1309.

Section 4. Section Enacted.

Section 76-10-1309, Utah Code Annotated 1953, is enacted to read:

76-10-1309. Enhanced penalties — HIV positive offender.

A person who is an HIV positive individual and has actual knowledge of that fact and has received written personal notice of the positive test results from a law enforcement agency pursuant to Section 76-10-1312 and is convicted of:

(1) prostitution under Section 76-10-1302 shall be guilty of a felony of the third degree;

(2) patronizing a prostitute under Section 76-10-1303 shall be guilty of a felony of a third degree; or

(3) sexual solicitation under Section 76-10-1313 shall be guilty of a felony of the third degree.

Section 5. Section Enacted.

Section 76-10-1310, Utah Code Annotated 1953, is enacted to read:

76-10-1310. Definitions.

(1) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive confirmatory test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(2) "HIV positive individual" means a person who is HIV positive and has actual knowledge of his disease.

(3) "Local law enforcement agency" means the agency responsible for investigation of the violations of Sections 76-10-1302, 76-10-1303, and 76-10-1313, the filing of charges which may lead to conviction, and the conducting of tests for HIV infection.

(4) "Notice" means the HIV positive individual has been notified by the law enforcement agency as provided in Section 76-10-1312.

(5) "Positive" means an indication of the HIV infection as defined in Subsection (1).

(6) "Test" or "testing" means a test or tests for HIV infection in accordance with standards recommended by the Department of Health.

Section 6. Section Enacted.

Section 76-10-1311, Utah Code Annotated 1953, is enacted to read:

76-10-1311. Mandatory testing — Retention of offender medical file — Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

(a) the HIV infection test results;

(b) a copy of the written notice as provided in Section 76-10-1312;

(c) photographic identification; and

(d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63-2-302(1)(b) or a controlled record pursuant to Section 63-2-303.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8)(a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.

(10) When the medical file is released as provided in Section 63-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 7. Section Enacted.

Section 76-10-1312, Utah Code Annotated 1953, is enacted to read:

76-10-1312. Notice to offender of HIV positive test results.

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person at the sentencing hearing in the presence of the judge and counsel only.

(2) Whenever practicable, prior to notification in the district court, the offender shall be served personally with written notice by the local law enforcement agency at a meeting with a local law enforcement officer and a person from the state or county health department.

(a) At that meeting, the offender shall be informed of the test results and counseled on HIV infection and its effects.

(b) The local law enforcement agency shall arrange the time and place of notification and counseling.

(3) The notice shall contain the following information:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and receiving actual notice and personal written notice of the positive test results shall be guilty of a felony of the third degree pursuant to Section 76-10-1309."

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 8.

Section 8. Section Enacted.

Section 76-10-1313, Utah Code Annotated 1953, is enacted to read:

76-10-1313. Sexual solicitation — Penalty.

(1) A person is guilty of sexual solicitation when:

(a) he offers or agrees to commit any sexual activity with another person for a fee; or

(b) he pays or offers or agrees to pay another person to commit any sexual activity for a fee.

(2) Sexual solicitation is a class B misdemeanor. However, any person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

Section 9. Section Enacted.

Section 76-10-1314, Utah Code Annotated 1953, is enacted to read:

76-10-1314. Examination of testing procedures and results in legal proceedings.

(1) Employees of the laboratory who conduct laboratory analysis of blood samples for presence of antibody to HIV provided pursuant to a request by a law enforcement agency or the Department of Corrections under Section 76-10-1311, may be examined in a legal proceeding of any kind or character as to:

(a) the nature of the testing;

(b) the validity of the testing;

(c) the results of the test;

(d) the HIV positivity or negativity of the person tested;

(e) the evidentiary chain of custody; and

(f) other factors relevant to the prosecution, subject to the court's ruling.

(2) This section applies only to the criminal investigation and prosecution under Section 76-10-1309 which permits enhanced penalties upon a subsequent conviction for:

(a) prostitution, Section 76-10-1302;

(b) patronizing a prostitute, Section 76-10-1303; or

(c) sexual solicitation, Section 76-10-1313.

Section 10. Severability clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

CHAPTER 180
H. B. No. 70
Passed February 12, 1993
Approved March 17, 1993
Effective May 3, 1993

WAIVER OF 90-DAY PERIOD

By J. Brent Haymond

AN ACT RELATING TO HUSBAND AND WIFE; CLARIFYING WHEN THE 90-DAY WAITING PERIOD ON DIVORCE MAY BE WAIVED; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
30-3-18, AS LAST AMENDED BY CHAPTERS 98 AND 158, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 30-3-18, Utah Code Annotated 1953, as last amended by Chapters 98 and 158, Laws of Utah 1992, is amended to read:

30-3-18. Waiting period for hearing after filing for divorce — Exemption — Use of counseling and education services not to be construed as condonation or promotion.

(1) Unless the court, for good cause shown and set forth in the findings, otherwise orders, no hearing for decree of divorce shall be held by the court until[: ~~(a)~~] 90 days shall have elapsed from the filing of the complaint, [~~except in the third and fourth judicial districts where the pilot program is administered;~~] provided the court may make such interim orders as may be just and equitable[;].

[~~(b) both parties, who have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program is administered as provided in Section 30-3-11.3, have attended the mandatory course and presented a certificate of completion of the course or a signed waiver to the court; and~~]

[~~(c) when applicable as provided in Sections 30-3-21 through 30-3-24, both parties have attended the mandatory mediation sessions and the mediator has presented a certificate of completion except if the court has concluded that a further stay of proceedings is not warranted as provided in Section 30-3-23.~~]

(2) The 90-day period as provided in Subsection (1) shall not apply in any case where both parties have completed the mandatory educational course for divorcing parents as provided in Section 30-3-11.3 or the mediation requirement as provided in Section 30-3-21.

[~~(2)~~] (3) The use of counseling, mediation, and education services provided under this chapter may not be construed as condoning the acts that may constitute grounds for divorce on the part of either spouse nor of promoting divorce.

CHAPTER 181
H. B. No. 92
Passed March 3, 1993
Approved March 17, 1993
Effective July 1, 1993

INCREASING MINIMUM MONTHLY RETIREMENT ALLOWANCE

By Stephen M. Bodily

AN ACT RELATING TO PENSIONS; INCREASING THE ALLOWANCE FOR THE MINIMUM MONTHLY RETIREMENT BENEFIT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-2-602, AS LAST AMENDED BY CHAPTER 224, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 49-2-602, Utah Code Annotated 1953, as last amended by Chapter 224, Laws of Utah 1991, is amended to read:

49-2-602. Minimum monthly allowance.

No member who retired under this system may receive less than [~~$6.75~~] $8 per month for each year of service credit at the time of retirement. The increased allowance provided by this section may not exceed the allowance payable under Plan I by more than 75%. The cost of providing this benefit shall be assumed within the contribution rate established under Section 49-2-301.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 182
H. B. No. 100
Passed March 3, 1993
Approved March 17, 1993
Effective July 1, 1993

CENTENNIAL SCHOOLS PROGRAM

By Rob W. Bishop
Michael G. Waddoups
Gerry A. Adair
Frank R. Pignanelli
Kelly C. Atkinson
Haynes R. Fuller
Patricia B. Larson
Steve Barth
Tom Matthews
Pete Suazo
Eli H. Anderson
Darrell L. Jorgensen
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James F. Yardley
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Neal B. Hendrickson
Don E. Bush
DeMar Bowman
Ray Short
Nora B. Stephens
Evan L. Olsen
Lowell A. Nelson
Grant D. Protzman
Brad Johnson
Bill Wright
David M. Jones
Tim Moran
Gene Davis
Mary Carlson
Kurt E. Oscarson
Judy Ann Buffmire
James Gowans
Sara Eubank
Karen B. Smith
Dan Q. Price
Met Johnson
Daniel H. Tuttle
Brent H. Goodfellow
Paul Shepherd
Stephen M. Bodily
John L. Valentine
Marda Dillree
Arlo D. James
R. Lee Ellertson

AN ACT RELATING TO PUBLIC SCHOOLS; PROVIDING FOR A CENTENNIAL SCHOOLS PROGRAM; ESTABLISHING CRITERIA FOR PARTICIPATION IN THE PROGRAM; PROVIDING DEFINITIONS; PROVIDING FOR AN APPLICATION AND SELECTION PROCESS; PROVIDING A $2,600,000 APPROPRIATION FOR THE PROGRAM; PROVIDING FOR THE ESTABLISHMENT OF SCHOOL DIRECTORS AT CENTENNIAL SCHOOLS, EMPOWERED BY LOCAL SCHOOL BOARDS TO MAKE DECISIONS AT THE SCHOOL LEVEL; PROVIDING FOR ASSISTANCE FROM THE STATE OFFICE OF EDUCATION AND COLLABORATION WITH HIGHER EDUCATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-1A-301, UTAH CODE ANNOTATED 1953
53A-1A-302, UTAH CODE ANNOTATED 1953
53A-1A-303, UTAH CODE ANNOTATED 1953
53A-1A-304, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-1a-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Centennial Schools Program

53A-1a-301. Definitions.

As used in this part:

(1) "Centennial School" means a public school selected to participate in the program authorized under this part.

(2) "Delegation document" means a document adopted by a local school board that delegates to school directors the authority to make decisions at the school level on teacher career ladders, technology in the classroom, class size reduction, and any other areas related to strategic planning at the school level that are specifically outlined in the document. The delegation document shall designate the school directors. If the community council is not designated as the school directors, then the composition of the directorship shall be similar to that of the council, but in either case at least 1/3 of the school directors shall be teachers at the school.

(3) "School directors" means the group of individuals empowered by a school district delegation document to implement a centennial school program at a public elementary or secondary school. The school directors may be the same group authorized as a community council under Section 53A-1a-108.

(4) "Site-based decision making" means a joint planning and problem solving process that seeks to improve the quality of working life and education. It is a cooperative effort in which a local school community group comprised of teachers, classified employees, school administrators, and parents of students engage in collaborative decision making at the school level on matters critical to the achievement of school goals established by the group.

Section 2. Section Enacted.

Section 53A-1a-302, Utah Code Annotated 1953, is enacted to read:

53A-1a-302. Establishment of Centennial Schools Program — Qualifications for participation.

(1) There is established a Centennial Schools Program to assist the state's public schools in accomplishing the mission of public education outlined in Section 53A-1a-103.

(2) Participation in the program is on a voluntary basis and subject to the following requirements:

(a) the execution of a delegation document between a local board of education and the school directors at the applicant school;

(b) adoption by the school board of the district in which the applicant school is located of accountability procedures related to the authority delegated to the school directors at the applicant school, which may be included as part of the delegation document;

(c) the development and implementation of a program by the applicant school that integrates technology into its curriculum, instruction, and student assessment;

(d) the implementation of a strategic planning process by the applicant school in which the school has:

(i) defined clearly articulated performance goals for students at the school and devised a means for evaluating those goals;

(ii) established strategies to involve business and industry at the school through partnerships or adoption programs;

(iii) determined to focus on the totality of the student, which may involve collaborative services from other state and local agencies such as Health, Human Services, and the Juvenile Courts;

(iv) provided for extensive involvement by parents of students at the school in developing a personalized education plan or personalized education occupation plan for each student at the school; and

(v) designed a program to include the basics of education as well as higher learning skills in its development of curriculum and considered new instructional designs to facilitate learning, such as integrated studies, open schedules, easy access and exit from course offerings, fine arts integration, and optimum use of instructional time.

(3) (a) The school directors may request a waiver from the local board of education of any provision in an agreement or contract between the district and its employees that prevents or hinders the school from achieving its performance goals.

(b) The waiver is subject to agreement between the local board and the entity that represented the employees in obtaining the agreement or contract referred to in Subsection (a).

Section 3. Section Enacted.

Section 53A-1a-303, Utah Code Annotated 1953, is enacted to read:

53A-1a-303. Selection process — Appropriation.

(1) The State Board of Education in collaboration with the governor's office shall select the schools to participate in the Centennial Schools Program.

(2) (a) The State Board of Education through the State Office of Education shall establish application deadlines for participation in the program.

(b) The local school board of the district in which the applicant school is located shall review and approve the school's application prior to its submission to the state board.

(3) (a) The state board and the governor's office shall give consideration to the need for a broad selection of schools to participate in the program.

(b) The total number of schools participating in the program during its first year may not exceed 200, unless the Legislature provides a specific supplemental appropriation in addition to the amounts authorized under this part.

(4) (a) There is appropriated for fiscal year 1993-94 $2,600,000 from the Uniform School Fund to the State Board of Education to implement the Centennial Schools Program authorized under this part.

(b) The board, through the State Office of Education, shall administer and distribute the appropriation in the following manner:

(i) each school participating in the program shall receive $5,000 as a base allocation;

(ii) each school shall receive an additional $20 per student based on the school's average daily membership for the 1992-93 school year.

(c) Monies appropriated for the program are nonlapsing.

(d) A participating school may reapply for an allocation in each succeeding year to assist in accomplishing its performance goals.

(5) (a) The appropriation authorized in this section is the appropriation referred to for centennial schools in Title 53A, Chapter 17a, Minimum School Program Act.

(b) Participant schools are encouraged to:

(i) supplement their allocation with monies they may have access to under other programs authorized in Title 53A and Title 63, such as experimental and developmental programs, site-based decision-making pilot programs, class size reduction programs, Educational Technology Initiative programs, and Coordinated Services for Children and Youth At Risk programs; and

(ii) focus and build on innovative projects and practices currently being used in certain schools within the state as part of their strategic planning.

(6) (a) A centennial school may use its allocation for any purpose designated in its delegation document so long as the use does not put the school out of compliance with state or federal law or federal regulations.

(b) The school may not use its allocation for administrative costs.

Section 4. Section Enacted.

Section 53A-1a-304, Utah Code Annotated 1953, is enacted to read:

53A-1a-304. Assistance from state board — Collaboration with higher education — Report.

(1) The State Board of Education through the State Office of Education shall provide services,

upon request, to any school or school directors that require its assistance to participate in the program established under this part.

(2) The State Board of Regents shall adopt policies for the state's public colleges of education to use centennial schools as on-site professional development centers offering preservice programs for teachers and administrators.

(3) (a) Each school and group of school directors participating in the program shall annually review and report the school's progress and achievements under the program pursuant to guidelines established by the State Board of Education.

(b) The reporting requirement may be satisfied in the school district performance report required in Section 53A-1a-109 or 53A-3-602.

Section 5. Sunset date.

The Centennial Schools Program authorized under this part shall terminate June 30, 1996, unless otherwise continued by the Legislature.

Section 6. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 183
H. B. No. 101
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

CROP DAMAGE FROM BIG GAME

By Tom Matthews

AN ACT RELATING TO BIG GAME; AMENDING PROCEDURES FOR THE REMOVAL OF BIG GAME ANIMALS THAT ARE DAMAGING CROPS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
23-16-3, AS ENACTED BY CHAPTER 46, LAWS OF UTAH 1971

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

Section 1. Section Amended.

Section 23-16-3, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1971, is amended to read:

23-16-3. Damage to cultivated crops by big game animals — Notice to division — Crop owner authorized to kill animals.

[~~Whenever big game animals~~] (1) (a) To obtain assistance from the division in removing big game animals that are damaging cultivated crops from or upon cleared and planted land, the owner of the crops shall immediately, upon discovery of [~~this~~] the damage, notify the division [~~of wildlife resources~~].

(b) The notice must be made both orally and in writing.

(2) Upon being notified of the damage, the division [~~of wildlife resources~~] shall remove, as far as possible, the offending big game animals. [~~In the event~~]

(3) (a) If the removal is not accomplished in a reasonable time, not to exceed 72 hours, and it becomes necessary for the crop owner to kill big game animals to protect cultivated crops from or upon cleared and planted land, he may do so after having first notified the division [~~of wildlife resources~~] of the necessity of removing [~~such~~] the animals [~~and shall immediately~~].

(b) Immediately after making the kill, the crop owner shall notify the division [~~of wildlife resources~~].

(4) (a) The carcass of [~~any~~] an animal [~~so~~] killed pursuant to this section shall become the property of the division [~~of wildlife resources~~] and shall be disposed of by it.

(b) Any [~~and all~~] money derived from the sale of [~~such~~] the animals shall be placed in the Wildlife Resources Account.

(5) For purposes of this section, cultivated crops may include crop residues that have forage value for livestock.

CHAPTER 184
H. B. No. 106
Passed February 16, 1993
Approved March 17, 1993
Effective May 3, 1993

MODEL BUSINESS CORPORATION ACT REVISIONS

By Nancy S. Lyon

AN ACT RELATING TO CORPORATIONS; AMENDING THE UTAH REVISED BUSINESS CORPORATION ACT; CLARIFYING WHEN CERTAIN ACTIONS CAN BE TAKEN, HOW BOARD VACANCIES ARE FILLED, WHAT AMENDMENTS TO ARTICLES CAN BE MADE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
16-10A-704, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-810, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-824, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-1002, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-1103, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-1104, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992
16-10A-1502, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 16-10a-704, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-704. Action without meeting.

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection 16-10a-1704(4), any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted.

(2) (a) Unless the written consents of all shareholders entitled to vote have been obtained, notice of any shareholder approval without a meeting shall be given at least ten days before the consummation of the transaction, action, or event authorized by the [approval] shareholder action to:

(i) those shareholders entitled to vote who have not consented in writing; and

(ii) those shareholders not entitled to vote and to whom this chapter requires that notice of the proposed action be given.

(b) The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholder, may revoke the consent by a signed writing describing the action and stating that the shareholder's prior consent is revoked, if the writing is received by the corporation prior to the effectiveness of the action.

(4) [An] A shareholder action taken pursuant to this section is not effective unless all written consents on which the corporation relies for the taking of an action pursuant to Subsection (1) are received by the corporation within a [sixty-day] 60-day period and not revoked pursuant to Subsection (3). Action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation, unless all of the written consents necessary to effect the action specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the corporation has received written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to the action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action. Unless otherwise provided by the bylaws, the writing may be received by the corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy thereof, including a copy of the signature thereto.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

(6) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action so taken is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

Section 2. Section Amended.

Section 16-10a-810, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-810. Vacancy on board.

(1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of direc-

tors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles of incorporation, if the vacant office was held or is to be held by a director elected by a voting group of shareholders:

(a) if one or more of the other directors [~~are~~] elected by the same voting group are serving, only they are entitled to vote to fill the vacancy if it is filled by the directors; and

(b) only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Section 16-10a-807 or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 3. Section Amended.

Section 16-10a-824, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-824. Quorum and voting.

(1) Unless the articles of incorporation or bylaws require a greater number, or, as permitted in Subsection (2), a lower number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed, or if no number is prescribed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to [~~Section~~] Subsection 16-10a-803(2).

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Subsection (1).

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation, bylaws, or this chapter require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to the action taken at the meeting unless:

(a) the director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(b) the director contemporaneously requests his dissent or abstention as to any specific action to be entered into the minutes of the meeting; or

(c) the director causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the corporation promptly after adjournment of the meeting.

(5) The right of dissent or abstention as to a specific action pursuant to Subsection (4) is not available to a director who votes in favor of the action taken.

Section 4. Section Amended.

Section 16-10a-1002, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-1002. Amendment by board of directors.

(1) Unless otherwise provided in the articles of incorporation, a corporation's board of directors may adopt, without shareholder action, one or more amendments to the corporation's articles of incorporation to:

(a) delete the names and addresses of incorporators or initial directors [~~named in~~] or both from the articles of incorporation;

(b) delete the name and address of the initial registered agent or registered office;

(c) change each issued and unissued authorized share of a class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(d) change the corporate name by adding the word "corporation," "incorporated," or "company," or an abbreviation of these words, or by substituting any such word or abbreviation for a similar word or abbreviation in the name; or

(e) make any other change expressly permitted by this chapter to be made without shareholder action.

(2) The board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a corporation pursuant to Section 16-10a-1422.

Section 5. Section Amended.

Section 16-10a-1103, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-1103. Action on plan.

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of each corporation whose shares will be acquired in the share exchange, shall submit the plan of merger to its shareholders for approval, except as provided in:

(a) Subsection (7)[;]:

(b) Section 16-10a-1104[;]; or

(c) the plan of share exchange[, ~~to its shareholders for approval~~].

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote on the plan of merger or share exchange must approve the plan as provided in Subsection (5).

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall give notice of the shareholders' meeting in accordance with Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share exchange. The notice must state that one of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required on a plan of:

(a) merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under Section 16-10a-1004; and

(b) share exchange by each class or series of shares included in the share exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in Subsection (7):

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a plan of merger or share exchange is approved, and at any time before the merger or share exchange becomes effective the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

(10) If a merger or share exchange is abandoned after articles of merger or share exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed effective date, the merger or share exchange may be prevented from becoming effective by delivering to the division for filing prior to the specified effective time and date a statement of abandonment stating that by appropriate corporate action the merger or share exchange has been abandoned. The statement of abandonment shall be executed in the same manner as the articles of merger or share exchange.

Section 6. Section Amended.

Section 16-10a-1104, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-1104. Merger of parent and subsidiary.

(1) By complying with the provision of this section, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may either merge the subsidiary into itself or merge itself into the subsidiary.

(2) The board of directors of the parent shall adopt and its shareholders, if required by Subsection (3), shall approve a plan of merger that sets forth:

(a) the names of the parent and subsidiary and the name of the surviving entity;

(b) the terms and conditions of the merger;

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;

(d) any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and

(e) any other provisions relating to the merger as may be determined to be necessary or desirable.

(3) A vote of the shareholders of the subsidiary [~~may~~] is not [~~be~~] required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6). If the parent will be the surviving corporation, no vote of its shareholders is required if all of the provisions of Subsection 16-10a-1103(7) are met with respect to the merger. If all the provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103 (1) through (6).

(4) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary (other than the parent) who does not waive this mailing requirement in writing.

(5) The effective date of the merger may not be earlier than the date on which all shareholders of the subsidiary waived the mailing requirement of Subsection (4) or ten days after the date the parent mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

Section 7. Section Amended.

Section 16-10a-1502, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-1502. Consequences of transacting business without authority.

(1) A foreign corporation transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed [~~by~~] with the division.

(2) The successor to a foreign corporation that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign corporation or its successor.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed by the division.

(4) A foreign corporation that transacts business in this state without authority is subject to a civil penalty, payable to this state, of $100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of $5,000 for each year. Each officer of a foreign corporation who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign corporation who transacts business in this state on behalf of a foreign corporation that is not authorized is subject to a civil penalty, payable to this state, not exceeding $1,000.

(5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in an appropriate court in Salt Lake County or in any other county in this state in which the corporation has a registered, principal, or business office or in which it has transacted business. Upon a finding by the court that a foreign corporation or any of its officers or agents have transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any corporate rights and privileges in this state. Upon issuance of the injunction, the foreign corporation shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign corporation has otherwise complied with the provisions of this part.

(6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have authority to transact business in this state does not impair the validity of its corporate acts, nor does the failure prevent the corporation from defending [~~and~~] any proceeding in this state.

CHAPTER 185
H. B. No. 166
Passed March 2, 1993
Approved March 17, 1993
Effective May 3, 1993

ORDINANCE ENFORCEMENT OFFICERS

By Brent H. Goodfellow

AN ACT RELATING TO CITIES AND TOWNS; CLARIFYING DEFINITION OF SPECIAL FUNCTION OFFICERS TO INCLUDE CERTAIN ORDINANCE ENFORCEMENT OFFICERS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-1A-4, AS LAST AMENDED BY CHAPTER 213, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 77-1a-4, Utah Code Annotated 1953, as last amended by Chapter 213, Laws of Utah 1991, is amended to read:

77-1a-4. Special function officers.

(1) (a) "Special function officers" means persons performing specialized investigations, service of legal process, or security functions. [~~These~~]

(b) "Special function officers" include state military police, constables, port-of-entry officers, school district security officers, Utah State Hospital security officers designated pursuant to Section 62A-12-203, Utah State Training School security officers designated pursuant to Subsection 62A-5-206(9), fire arson investigators for any political subdivision of the state, airport security officers of any airport owned or operated by the state or any of its political subdivisions, railroad special agents deputized by a county sheriff under Section 17-30-2, and all other persons designated by statute as having peace officer authority.

(c) Ordinance enforcement officers employed by municipalities or counties may be special function officers.

(2) (a) Special function officers have peace officer authority only while engaged in the duties of their [~~respective~~] employment, and not for the purpose of general law enforcement. If the officer is charged with security functions respecting facilities or property, the powers may be exercised only in connection with acts occurring on the property where the officer is employed or when required for the protection of the employer's interest, property, or employees.

(b) Airport security officers have total peace officer authority when on duty and when acting in relation to the responsibilities of the airport at which they are employed, providing that the powers may be exercised only in connection with acts occurring on the property of the airport.

(c) Special function officers may carry firearms only if authorized and under conditions [~~as~~] specified by the officer's employer or chief administrator. The carrying of firearms by constables is authorized only while they are engaged in the duties of their employment.

(3) (a) A special function officer may not exercise the authority of a peace officer until the officer has satisfactorily completed an approved basic training program for special function officers as provided under Subsection [~~(3)~~](b) and the chief law enforcement officer or administrator has certified this fact to the director of the [~~Division of~~] Peace Officer Standards and Training Division. City and county constables and their deputies shall certify their completion of training to the legislative governing body of the county they serve.

(b) The agency that the special function officer serves shall establish and maintain a basic special function course and in-service training programs as approved by the director of the [~~Division of~~] Peace Officer Standards and Training Division with the advice and consent of the [~~Council on~~] Peace Officer Standards and Training Council. The training shall consist of no fewer than 40 hours per year and shall be conducted by the agency's own staff or other agencies.

CHAPTER 186
H. B. No. 194
Passed Febrary 26, 1993
Approved March 17, 1993
Effective May 3, 1993

HUNTER EDUCATION RECORDS RELEASE

By Brent H. Goodfellow

AN ACT RELATING TO FISH AND GAME; PROVIDING THAT THE DIVISION MAY VERIFY COMPLETION OF A HUNTER EDUCATION COURSE BY RESEARCHING THE DIVISION'S RECORDS; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
23-19-11, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 23-19-11, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1990, is amended to read:

23-19-11. Age restriction — Proof of hunter education required.

(1) [~~No~~] The division may not issue a hunting license [~~shall be issued~~] to any person born after December 31, 1965, unless [~~he presents~~] proof is presented to the [~~Division of Wildlife Resources~~] division or one of its authorized wildlife license agents [~~proof of having satisfactorily~~] that the person has passed a [~~Division of Wildlife Resources~~] division approved hunter education course offered by a state, province, or country.

(2) For purposes of this section, "proof" means:

(a) a certificate of [~~satisfactory~~] completion of a hunter education course;

(b) a current or immediately preceding year's hunting license issued by a state, province, or country with the applicant's hunter education number noted on the hunting license; or

(c) verification of [~~satisfactory~~] completion of a hunter education course [~~received by the division~~] pursuant to [~~Subsection~~] Subsections (3) and (4).

(3) If an applicant for a nonresident hunting license is not able to present a hunting license or a certificate [~~or hunting license~~] of completion as provided in [~~Subsection~~] Subsections (1) and (2), the [~~Division of Wildlife Resources~~] division may contact another state, province, or country to verify [~~satisfactory~~] the completion of a hunter education course [~~for the purposes of issuing~~] so that a nonresident hunting license may be issued.

(4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license or a certificate of completion as provided in Subsections (1) and (2), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.

(5) The division may charge a fee for [~~this service~~] any service provided in Subsection (3) or (4).

[~~(4) Any violation of the provisions of this section shall be considered a violation by both the person issuing the license and the person to whom the license is issued.~~]

CHAPTER 187
H. B. No. 204
Passed February 26, 1993
Approved March 17, 1993
Effective March 17, 1993

UTAH MEDICAID HOSPITAL PROVIDER TEMPORARY ASSESSMENT ACT

By John L. Valentine
Kelly C. Atkinson
Rob W. Bishop
Grant D. Protzman
Christine R. Fox
David M. Jones
Melvin R. Brown

AN ACT RELATING TO ACCESS TO AND REIMBURSEMENT FOR QUALITY HEALTH CARE; IMPOSING AN ASSESSMENT ON HOSPITALS TO PROVIDE TEMPORARY FUNDING SOURCES; ASSISTING PATIENTS SERVED BY THE UTAH MEDICAID PROGRAM UNTIL OTHER STATE FUNDING IS ESTABLISHED; REPEALING THE ASSESSMENT; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-1-30, AS LAST AMENDED BY CHAPTER 170, LAWS OF UTAH 1992

ENACTS:
26-36-101, UTAH CODE ANNOTATED 1953
26-36-102, UTAH CODE ANNOTATED 1953
26-36-103, UTAH CODE ANNOTATED 1953
26-36-104, UTAH CODE ANNOTATED 1953
26-36-105, UTAH CODE ANNOTATED 1953
26-36-106, UTAH CODE ANNOTATED 1953
26-36-107, UTAH CODE ANNOTATED 1953
26-36-108, UTAH CODE ANNOTATED 1953
26-36-109, UTAH CODE ANNOTATED 1953
26-36-110, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 26-1-30, Utah Code Annotated 1953, as last amended by Chapter 170, Laws of Utah 1992, is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard considered dangerous or important or which may affect the public health;

(e) report to the public major causes of injury, sickness, death, and disability and the major risk factors that contribute to the major causes of injury, sickness, death, and disability within the state;

(f) prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state except that the programs shall not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the industrial commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employ-

ment in industry, and make recommendations for elimination or reduction of the hazards;

(o) investigate the cause of maternal and infant mortality;

(p) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(q) provide the Commissioner of Public Safety with monthly statistics reflecting the results of the examinations provided for in Subsection (p) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this subsection;

(r) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(s) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(t) adopt rules and enforce minimum sanitary standards for the operation and maintenance of: orphanages; boarding homes; summer camps for children; lodging houses; hotels; restaurants and all other places where food is handled for commercial purposes, sold, or served to the public; tourist and trailer camps; service stations; public conveyances and stations; public and private schools; factories; private sanatoria; barber shops; beauty shops; physicians' offices; dentists' offices; workshops; industrial, labor, or construction camps; recreational resorts and camps; swimming pools, public baths, and bathing beaches; state, county, or municipal institutions including hospitals and other buildings, centers, and places used for public gatherings; and of any other facilities in public buildings and on public grounds;

(u) conduct health planning for the state and perform the health planning functions of the state required under P.L. 93-641 and subsequent amendments;

(v) monitor the costs of health care in the state and foster price competition in the health care delivery system;

(w) adopt rules for the licensure of health facilities within the state pursuant to the provisions of Title 26, Chapter 21; [~~and~~]

(x) serve as the collecting agent, on behalf of the state, for the nursing facility assessment fee imposed under Title 26, Chapter 35, and adopt rules for the enforcement and administration of the nursing facility assessment consistent with the provisions of Title 26, Chapter 35; and

(y) serve as the collecting agent, on behalf of the state, for the temporary provider assessment imposed under Title 26, Chapter 36, and adopt rules for the enforcement and administration of the temporary hospital assessment consistent with the provisions of Title 26, Chapter 36.

Section 2. Section Enacted.

Section 26-36-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 36. UTAH MEDICAID HOSPITAL PROVIDER TEMPORARY ASSESSMENT ACT

26-36-101. Short title.

This chapter in known as the "Utah Medicaid Hospital Provider Temporary Assessment Act."

Section 3. Section Enacted.

Section 26-36-102, Utah Code Annotated 1953, is enacted to read:

26-36-102. Legislative findings.

(1) The federal government requires the state to participate in the funding of the Medicaid program as a condition to receiving federal Medicaid matching funds known as federal financial participation.

(2) Congress has enacted the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, in part to regulate the use by states of donations and taxes from health care providers to meet state and federal financial participation requirements for the Medicaid program.

(3) It is the purpose of the assessment imposed by this act to raise revenue on a temporary basis from Utah hospital and ambulatory surgical facility providers that are expressly made subject to the assessment imposed by this act in a manner that will satisfy the provider-specific tax requirements of federal law and thereby assure, in part, the ability of the state to secure federal financial participation for Medicaid funds during the temporary period covered by this act. The temporary assessment imposed by this act, and its collection and use, shall in all respects be interpreted and implemented in a manner that will qualify all funds collected as state Medicaid funds eligible for federal financial participation pending establishment in the state of a broader base of public funding.

(4) All hospital and ambulatory surgical facility providers made subject to and required to pay the assessment imposed by this act shall, by the effective date of this act, be permitted to qualify as providers eligible for reimbursement for services provided according to the state Medicaid plan, and where the state has contracted for capitated mental health services with another entity to arrange for the provision of services for persons under the age of 22 and over the age of 64, the state's mental health capitated contractee shall contract with qualified providers who agree to accept reimbursement for services at the contracted rate, and shall refer patients to all the qualified providers.

(5) The assessment under this act shall be an interim measure for the specific purposes stated

pending development and implementation of public policy toward health care generally and the Medicaid program specifically.

Section 4. Section Enacted.

Section 26-36-103, Utah Code Annotated 1953, is enacted to read:

26-36-103. Application of act.

(1) Other than for the imposition of the assessment described in and utilized for purposes stated in this act, nothing in this act shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under Section 501(c), as amended, of the Internal Revenue Code or other applicable federal law, or under any state law, or any activities of or property owned by any such provider with respect to exemption from ad valorem property taxes, income or franchise taxes, sales or use taxes, or any other taxes, fees, or assessments whatever, whether imposed or sought to be imposed by the state or any political subdivision, county, municipality, district, authority, or any agency or department thereof.

(2) For providers subject to the assessment imposed by this act, and also subject to the corporate franchise or income tax under Title 59, Chapter 7, all assessments paid under this act shall be allowed as a deductible expense under Title 59, Chapter 7.

(3) All assessments paid under this act may be included as allowable costs of hospitals for purposes of any applicable Medicaid reimbursement formula.

Section 5. Section Enacted.

Section 26-36-104, Utah Code Annotated 1953, is enacted to read:

26-36-104. Definitions.

As used in this chapter:

(1) "Adjusted inpatient days" for any hospital during a particular measuring period means the number of inpatient days for a hospital during a measuring period times a fraction, the numerator of which is the total patient revenue of the hospital during a measuring period and the denominator of which is the total inpatient revenue of the hospital during a measuring period.

(2) "Assessment" means the Medicaid hospital provider temporary assessment established by this chapter.

(3) "Federal act" means the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Public Law 102-234, enacted December 12, 1991.

(4) "Freestanding ambulatory surgical facility" means an urban or rural nonhospital based or nonhospital affiliated licensed facility as defined in Subsection 26-21-2(2), with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.

(5) "Gross revenue" for any hospital during a particular measuring period means standard, nondiscounted charges for all services rendered to patients by the hospital during a measuring period.

(6) "Hospital" means:

(a) any general acute hospital operating in the state of Utah as defined in Subsection 26-21-2(8), and any specialty hospital operating in the state of Utah as defined in Subsection 26-21-2(18) that may be engaged exclusively in rendering psychiatric or other mental health treatment.

(b) "Hospital" does not include residential care or treatment facilities as defined in Subsections 62A-2-101(17), and (18), and (20), Health Maintenance Organization owned service facilities, the Utah State Hospital or any rural hospital that operates outside of a metropolitan statistical area, a metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census.

(7) "Hospital-based ambulatory surgical facility" means an urban or rural on hospital campus or hospital affiliated licensed facility with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.

(8) "Inpatient" means a patient of a hospital who is admitted on an overnight basis.

(9) "Inpatient day" means, with respect to each hospital patient excluding patients in the nursery, skilled nursing and labor room, each 24-hour period during which a patient is an inpatient of the hospital.

(10) "Inpatient services" means all services rendered by a hospital to an inpatient.

(11) "Outpatient" means any patient of a hospital other than an inpatient.

(12) "Outpatient services" means all services rendered by a hospital other than inpatient services.

(13) "Patient encounter" as applied to any freestanding ambulatory surgical facility or hospital-based ambulatory surgical facility means one or more outpatient surgery procedures performed on one outpatient during the course of one outpatient visit for which a charge is incurred. The patient encounter as defined in this act includes ancillary services incident to the surgical procedures performed during the surgical visit.

(14) "Total inpatient revenue" for any hospital during a particular measuring period means total gross revenue derived by the hospital from inpatient services rendered during a measuring period.

(15) "Total outpatient revenue" for any hospital during a particular measuring period means total gross revenue derived by the hospital from all outpatient services rendered, minus those revenues derived from a hospital-based ambulatory surgical facility, during a measuring period.

(16) "Total patient revenue" means the sum of total inpatient revenue and total outpatient revenue.

Section 6. Section Enacted.

Section 26-36-105, Utah Code Annotated 1953, is enacted to read:

26-36-105. Assessment, collection, and payment of Medicaid Hospital Provider Temporary Assessment.

(1) Beginning on May 1, or the effective date of this act, whichever is later, a uniform, broad based, temporary assessment is imposed on each hospital, hospital-based ambulatory surgical facility, and freestanding ambulatory surgical facility as follows:

(a) For hospitals, a quarterly rate of assessment times the number of adjusted inpatient days for the hospital.

(b) For freestanding ambulatory surgical facilities, and hospital-based ambulatory surgical facilities, a quarterly rate of assessment times the number of patient encounters for the facility. The rate of assessment imposed under this subsection shall not exceed $1 per patient encounter.

(2) The quarterly rate of assessment imposed by Subsection (1) shall be determined as follows:

(a) The executive director shall on a quarterly basis set an assessment rate that will generate revenues for the partial calendar quarter of May and June 1993 in the amount of $1,500,000, for fiscal year 1993-94 in the amount of $8,800,000, and for fiscal year 1994-95 in an amount not to exceed $10,200,000.

(b) When setting the rate of assessment, the executive director shall consult with representatives of health care providers, including hospitals and other informed persons. The quarterly adjustment shall be such that within the restrictions of Subsection (2)(a), the total state funding for the Medicaid program shall remain substantially constant after adjustments for inflation, and increases in eligibility rolls or changes in benefits or services, as provided by law. For purposes of this section, the funding from the General Fund and from any restricted accounts created by this act or by Title 26, Chapter 35, "Nursing Facility Assessment Act" or any other appropriations from state funds for Medicaid services shall not be less than the amount funded by the state for Medicaid services for fiscal year ending June 30, 1993.

(3) (a) The assessment imposed by this act is due and payable on a quarterly basis on or before the last day of the month next succeeding each quarterly period. The first quarterly period for this act shall end on June 30, 1993.

(b) The collecting agent for the assessment shall be the department which is vested with the administration and enforcement of this act, including the right to audit records of a hospital or ambulatory surgical facility related to inpatient days and patient encounters as specified in Section 26-36-106.

(c) The department shall forward proceeds from the assessment imposed by this act to the state treasurer for deposit into a restricted account of the General Fund known as the "Medicaid Hospital Provider Temporary Assessment Account" created in Section 26-36-107.

Section 7. Section Enacted.

Section 26-36-106, Utah Code Annotated 1953, is enacted to read:

26-36-106. Reporting and auditing requirements.

(1) Each hospital or ambulatory surgical facility shall, on or before the end of the month next succeeding each quarterly period, file with the department a return for the quarterly period, and shall remit with the return the assessment required by this act to be paid for the period covered by the return.

(2) Each return for hospitals shall contain the following:

(a) total inpatient revenue;

(b) total outpatient revenue;

(c) total patient revenue;

(d) inpatient days; and

(e) adjusted inpatient days.

(3) Each return for freestanding or hospital-based ambulatory surgical centers shall report total patient encounters.

(4) The data required in the return are to be supplied from each reporting provider's internal operating sources. A representative of each reporting provider will sign a disclosure statement indicating that the data are accurate to the best of the representative's knowledge. The report shall include a place to make adjustments in the assessment based on corrected data from a prior period to be paid with or deducted from the current quarter reporting and payment.

(5) Providers subject to the assessment imposed by this act shall maintain complete and accurate records. The providers may have their records independently audited to verify the calculation of the assessment and to verify that all applicable penalties and interest have been paid. Auditors from the department assigned by the director to enforce and administer the provisions of this act may inspect each provider's independent audit report to verify compliance with this act. If the provider has not conducted an independent audit, the department may conduct an audit of the provider's records related to inpatient days or patient encounters for the purpose of verifying compliance with this act. Any state review of a provider's independent audit reports shall be done on a confidential basis without any intent or effect of creating a breach or a waiver of any applicable auditor/client privilege.

(6) Separate providers owned or controlled by a holding company or similar entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separate reporting provider.

(7) The department may, by rule, extend the time for making returns and paying assessments.

(8) Each hospital or ambulatory surgical center that fails to pay any assessment required to be paid

by this act, within the time required by this act, or that fails to file a return as required by this act, shall pay, in addition to the assessment, penalties and interest established by the department.

(9) The department shall by rule adopt reasonable penalties and interest for the events described in Subsection (8). The penalties and interest shall not exceed those that apply to the collection of sales tax revenues by the State Tax Commission under Title 59, or any limits imposed by the federal act. The department shall have the same authority to waive, reduce, or compromise the penalties and interest provided for in this subsection in the same manner as provided in Subsection 59-1-401(8).

Section 8. Section Enacted.

Section 26-36-107, Utah Code Annotated 1953, is enacted to read:

26-36-107. Restricted Account — Creation — Deposits.

(1) There is created a restricted account within the General Fund pursuant to Section 51-5-4 known as the "Medicaid Hospital Provider Temporary Assessment Account." Proceeds from the assessment shall be deposited in the restricted account to be used for the purposes of funding the state's hospital reimbursement share of the Medicaid program that, together with federal financial participation, shall be redistributed on the basis of methodology in the state Medicaid plan.

(2) Money shall be appropriated from the account to the department for the purposes described in Subsection (1) in accordance with Title 63, Chapter 38, Budgetary Procedures Act.

Section 9. Section Enacted.

Section 26-36-108, Utah Code Annotated 1953, is enacted to read:

26-36-108. Intergovernmental transfers.

The assessment imposed by this act otherwise applicable to the University of Utah Hospital and to any other publicly owned or operated hospital may be provided by means of a quarterly governmental transfer in lieu of payment and collection of the assessment.

Section 10. Section Enacted.

Section 26-36-109, Utah Code Annotated 1953, is enacted to read:

26-36-109. Repeal of assessment.

The repeal of this assessment shall occur upon the certification by the director that the sooner of the following has occurred:

(1) the effective date of any existing or future action by Congress to disqualify the assessments from counting towards state Medicaid funds available to be used to determine the federal financial participation;

(2) the effective date of any other act of Congress that eliminates or substantially modifies the federal act so that the federal financial participation related thereto cannot be administered for effective reimbursement of hospitals or freestanding or hospital-based ambulatory surgical facilities;

(3) the effective date of any decision, enactment, or other determination by the state Legislature or by any court, officer, department, or agency of the state or of the federal government that has the effect of:

(a) disqualifying the assessments from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or

(b) creating for any reason a failure of the state to utilize the assessments for the Medicaid program as described in this act; or

(4) June 30, 1995, for assessments based on the period ending on that date and to be collected within 30 days thereafter for utilization during the successive calendar quarter for the purposes stated in this act.

Section 11. Section Enacted.

Section 26-36-110, Utah Code Annotated 1953, is enacted to read:

26-36-110. Federal law compliance — Waiver requests — Provider participation.

(1) Consistent with the intent of Subsection 26-36-102(4) the executive director or the executive director's designee in the department shall monitor the functioning of the assessment provided by this chapter and provider reimbursement under the state Medicaid plan with reference to the federal act and regulations promulgated thereunder, and as necessary shall consult with the U.S. Health Care Financing Administration regarding any adjustments that should be made in implementation of this act or in the state Medicaid plan generally.

(2) If it is determined by the department that any provider should be or should not be covered as a Medicaid reimbursable provider, or subject to the assessment, the department shall take actions and make rules that may be appropriate to correct the circumstance consistent with the purposes of this act, including the filing of any waiver requests permitted by the federal act or applicable regulations with regard to inclusion or exclusion of any provider or class of providers, or confirming the broad based and uniformly applied assessment.

(3) If the department is informed that a provider is unable, or is precluded from being reimbursed as a Medicaid reimbursable provider, or is subject to the assessment without participating as a Medicaid reimbursable provider, whether by reason of federal or state law, or through implementation or operation of the state Medicaid plan, the department shall take the actions and adopt the rules that may be appropriate to correct the circumstances consistent with the purposes of this act.

Section 12. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the con-

stitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 188
H. B. No. 225
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

UNDERGROUND STORAGE TANKS - TECHNICAL AMENDMENTS

By Mary Carlson

AN ACT RELATING TO ENVIRONMENT; MAKING TECHNICAL CORRECTIONS IN TITLE 19, CHAPTER 6, HAZARDOUS SUBSTANCES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
19-6-421, AS LAST AMENDED BY CHAPTER 214, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 19-6-421, Utah Code Annotated 1953, as last amended by Chapter 214, Laws of Utah 1992, is amended to read:

~~19-6-421~~. Third party payment restrictions and requirements.

(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the executive secretary shall authorize payment from the fund to third parties as provided in Subsection (2) if:

(a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or

[~~(b) if~~] (ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and

[~~(c)~~] (b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.

(2) The executive secretary shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

CHAPTER 189
H. B. No. 232
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

MOTOR VEHICLE OWNER'S OR OPERATOR'S SECURITY EXEMPTION

By Grant D. Protzman

AN ACT RELATING TO MOTOR VEHICLES; CLARIFYING EXEMPTION FROM REQUIREMENT FOR OWNER'S OR OPERATOR'S SECURITY FOR A MOTOR VEHICLE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-12A-301, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1987
41-12A-302, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 41-12a-301, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1987, is amended to read:

41-12a-301. Definition — Requirement of owner's or operator's security — Exceptions for off-highway vehicles and off-highway implements of husbandry.

(1) As used in this section, "highway" has the same meaning as provided in Section 41-1a-102.

[~~(1) Every~~] (2) Except as provided in Subsection (5):

(a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect throughout the registration period of the motor vehicle[~~.~~]; and

[~~(2) Every~~] (b) every nonresident owner of a motor vehicle [~~which~~] that has been physically present in this state for more than 90 days during the preceding 365 days shall thereafter maintain owner's or operator's security in effect continuously throughout the period the motor vehicle remains within Utah.

(3) [~~The~~] Except as provided in Subsection (5), the state of Utah and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect continuously in respect to their motor vehicles. Any other state is considered to be a nonresident owner of its motor vehicles and is subject to Subsection (2)(b).

(4) The United States or any political subdivision of it, or any of its agencies, may maintain owner's or operator's security in effect in respect to their motor vehicles.

(5) Owner's or operator's security is not required for any of the following:

(a) off-highway vehicles registered under Section 41-22-3 when operated either:

(i) on a highway designated as open for off-highway vehicle use; or

(ii) in the manner prescribed by Section 41-22-10.3; [or]

(b) off-highway implements of husbandry operated in the manner prescribed by Subsections 41-22-5.5 (3) through (5);

(c) a motor vehicle that is not operated or moved on a highway.

Section 2. Section Amended.

Section 41-12a-302, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

41-12a-302. Operating motor vehicle without owner's or operator's security — Penalty.

(1) Any owner of a motor vehicle on which owner's or operator's security is required under Section 41-12a-301, who operates his vehicle or permits it to be operated on a [~~public~~] highway in this state without owner's security being in effect is guilty of a class B misdemeanor.

(2) Any other person who operates [~~the~~] a motor vehicle upon a [~~public~~] highway in Utah with the knowledge that the owner does not have owner's security in effect for the motor vehicle is also guilty of a class B misdemeanor, unless that person has in effect owner's security on a Utah-registered [~~car~~] motor vehicle or its equivalent [~~in effect which~~] that covers the operation, by him, of the motor vehicle in question.

CHAPTER 190
H. B. No. 249
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

WORKERS' COMPENSATION INSURANCE FRAUD PREVENTION

By Rob W. Bishop

AN ACT RELATING TO WORKERS' COMPENSATION; PRESCRIBING THE ELEMENTS OF AND PENALTIES FOR WORKERS' COMPENSATION INSURANCE FRAUD; AND REQUIRING NOTICE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
35-1-109, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 35-1-109, Utah Code Annotated 1953, is enacted to read:

35-1-109. Workers compensation insurance fraud — Elements — Penalties — Notice.

(1) As used in this section:

(a) "Corporation" has the same meaning as in Subsection 76-2-201(3).

(b) "Intentionally" has the same meaning as in Subsection 76-2-103(2).

(c) "Knowingly" has the same meaning as in Subsection 76-2-103(2).

(d) "Person" has the same meaning as in Subsection 76-1-601(8).

(e) "Recklessly" has the same meaning as in Subsection 76-2-103(3).

(2) Any person who has intentionally, knowingly, or recklessly, devised any scheme or artifice to obtain workers' compensation insurance coverage, disability compensation, medical benefits, goods, professional services, fees for professional services, or anything of value under this chapter or Chapter 2, Utah Occupational Disease Act, by means of false or fraudulent pretenses, representations, promises, or material omissions, and who intentionally, knowingly, or recklessly communicates or causes a communication with another in furtherance of the scheme or artifice, is guilty of workers' compensation insurance fraud, which is punishable in the manner prescribed by Section 76-10-1801 for communication fraud.

(3) A corporation or association is guilty of the offense of workers' compensation insurance fraud under the same conditions as those set forth in Section 76-2-204.

(4) The determination of the degree of any offense under Subsection (1) shall be measured by the total value of all property, money, or other things obtained or sought to be obtained by the scheme or artifice described in Subsection (1), except as provided in Subsection 76-10-1801(1)(e).

(5) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).

(6) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or anything of value is not a necessary element of this offense.

(7) A scheme or artifice to obtain workers' compensation insurance coverage includes any scheme or artifice to make or cause to be made any false written or oral statement or business reorganization, incorporation, or change in ownership intended to obtain insurance coverage as mandated by this chapter or Chapter 2, Utah Occupational Disease Act, at rates that do not reflect the risk, industry, employer, or class codes actually covered by the policy.

(8) A scheme or artifice to obtain disability compensation includes a scheme or artifice to collect or make a claim for temporary disability compensation as provided in Section 35-1-65 while working for gain.

(9) Each insurer or self-insured employer who, in connection with any provision of this chapter or Chapter 2, Utah Occupational Disease Act, prints, reproduces, or furnishes a form to any person upon which that person applies for insurance coverage, reports payroll, makes a claim by reason of accident, injury, death, disease, or other claimed loss, or otherwise reports or gives notice to the insurer or self-insured employer, shall cause to be printed or displayed in comparative prominence with other content the statement: "Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison." This statement shall be preceded by the words: "For your protection, Utah law requires the following to appear on this form" or other explanatory words of similar meaning.

(10) Each insurer or self-insured employer who issues a check, warrant, or other financial instrument in payment of compensation issued under this chapter or Chapter 2, Utah Occupational Disease Act, shall cause to be printed or displayed in comparative prominence above the area for endorsement the statement: "Workers' Compensation insurance fraud is a crime punishable by Utah law."

(11) In the absence of malice, a person, employer, insurer, or governmental entity that reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim is not subject to any civil liability for libel, slander, or any other relevant cause of action.

CHAPTER 191
H. B. No. 280
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

WILDLIFE MANAGEMENT TASK FORCE

By Stephen M. Bodily
Brad Johnson
Eli H. Anderson
Arlo D. James
Met Johnson
Tim Moran
Fred R. Hunsaker
David Ure
Clark L. Reber
Grant D. Protzman
David M. Jones
Brent H. Goodfellow
John B. Arrington
Bill Wright
Evan L. Olsen
Michael R. Styler
Dan Q. Price
Tom Matthews
Jordan Tanner
Haynes R. Fuller

AN ACT RELATING TO WILDLIFE RESOURCES; CREATING THE WILDLIFE MANAGEMENT TASK FORCE TO STUDY ORGANIZATIONAL STRUCTURES AND PROCEDURES FOR THE ESTABLISHMENT OF WILDLIFE POLICY; AND APPROPRIATING $19,200 FOR FISCAL YEAR 1992-93 TO PAY FOR THE COST OF THE TASK FORCE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Wildlife Management Task Force created — Purpose — Membership.

(1) The Wildlife Management Task Force is created to study organizational structures and procedures for the establishment of policy regarding the management of the state's wildlife resources.

(2) The task force shall exist from May 1, 1993, through December 31, 1993.

(3) The membership shall include 16 members appointed by the president of the Senate and speaker of the House as follows:

(a) five members of the House of Representatives, of which no more than three shall be from the same party;

(b) three members of the Senate, of which no more than two shall be from the same party;

(c) the executive director of the Department of Natural Resources or his designee;

(d) two persons representing consumptive wildlife interests selected from recommendations submitted by hunting and fishing or wildlife conservation organizations;

(e) two persons representing nonconsumptive wildlife interests selected from recommendations submitted by wildlife conservation organizations;

(f) two persons representing private landowner interests selected from recommendations submitted by agricultural organizations; and

(g) one person representing public land management interests selected from recommendations submitted by federal land management agencies.

(4) No member of the Wildlife Board or Board of Big Game Control may serve on the task force.

(5) The president of the Senate and speaker of the House shall designate one Senator and one Representative, respectively, as co- chairman.

(6) Attendance of a majority of the members at a meeting constitutes a quorum for the transaction of the official business of the task force.

(7) Legislators on the task force shall receive compensation and expenses as provided by rules of the Legislature. Task force members who are employees of the state shall receive no additional compensation. Other task force members shall receive no compensation or expenses from the state for their service on the task force.

(8) The Office of Legislative Research and General Counsel shall provide the task force with the necessary staff assistance.

(9) The task force shall submit its findings and recommendations to the Energy, Natural Resources and Agriculture Interim Committee by November 30, 1993.

Section 2. Appropriation.

There is appropriated from the General Fund for fiscal year 1992-93:

(1) $12,000 to the Office of Legislative Research and General Counsel for staffing expenses associated with the task force; and

(2) $4,500 to the House of Representatives and $2,700 to the Senate for meeting costs associated with the task force.

CHAPTER 192
H. B. No. 304
Passed March 3, 1993
Approved March 17, 1993
Effective July 1, 1993

APPROPRIATION FOR TRAINMAN'S BUILDING AT THE OGDEN UNION STATION

By John B. Arrington
Michael R. Styler
Paul Shepherd
Met Johnson
Robert H.M. Killpack
Patricia B. Larson
Ronald J. Greensides
Haynes R. Fuller
Pete Suazo
Grant D. Protzman
Gerry A. Adair
Nancy S. Lyon

AN ACT RELATING TO THE RESTORATION AND RENOVATION OF THE TRAINMAN'S BUILDING AT OGDEN UNION STATION; APPROPRIATING $85,000 IN S. B. 212 FROM THE GENERAL FUND FOR FISCAL YEAR 1993-94 TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT FOR THE RENOVATION AND RESTORATION OF THE TRAINMAN'S BUILDING AT OGDEN UNION STATION; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriation.

(1) There is appropriated $85,000 in S. B. 212 from the General Fund for fiscal year 1993-94 to the Department of Community and Economic Development for the restoration and renovation of the Trainman's Building at Ogden Union Station.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 193
H. B. No. 317
Passed March 3, 1993
Approved March 17, 1993
Effective July 1, 1993

DUI PENALTY AND TREATMENT AMENDMENTS

By Gerry A. Adair
Martin R. Stephens

AN ACT RELATING TO MOTOR VEHICLES; EXPANDING TREATMENT OPTIONS; ALLOWING THE COURT TO ORDER TREATMENT FOR A FIRST OFFENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING EVIDENCE OF COMPLETION OF TREATMENT; REQUIRING CERTIFICATION OF REHABILITATION LEVEL IN CERTAIN CIRCUMSTANCES; ENHANCING THE PENALTY FOR REFUSAL TO TAKE A CHEMICAL TEST IN CERTAIN CIRCUMSTANCES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-44, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1991
41-6-44.10, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-6-44, Utah Code Annotated 1953, as last amended by Chapter 147, Laws of Utah 1991, is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license — Penalties.

(1) (a) [~~It is unlawful and punishable as provided in this section for any~~] A person [~~to~~] may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control[~~,~~]; or [~~if the person~~]

(ii) is under the influence of alcohol [~~or~~], any drug, or the combined influence of alcohol and any drug to a degree [~~which~~] that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a:

(i) class B misdemeanor[~~. But~~]; or

(ii) class A misdemeanor if the person has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner[~~, he is guilty of a class A misdemeanor~~].

(b) In this section, the standard of negligence is that of simple negligence, the failure to exercise that degree of care [~~which~~] that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(c) In this section, a reference to this section includes any similar local ordinance adopted in compliance with Section 41-6-43.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours nor more than 240 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 24 hours nor more than 50 hours.

(c) (i) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate.

(ii) For a violation committed after July 1, 1993, the court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug dependency rehabilitation facility determines that the person has a problem condition involving alcohol or drugs.

(5) (a) Upon a second conviction for a violation committed within six years of a prior violation under this section [~~or under a local ordinance similar to this section adopted in compliance with Section 41-6-43~~] the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours nor more than 720 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 80 hours nor more than 240 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate. The court may, in its discretion, order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6) (a) A third conviction for a violation committed within six years of two prior violations under this

section [~~or under a local ordinance similar to this section adopted in compliance with Section 41-6-43~~] is a:

(i) class B misdemeanor except as provided in Subsections [~~(6)(a)~~] (ii) and (7); and

(ii) class A misdemeanor if both of the prior convictions are for violations committed after April 23, 1990.

(b) (i) Under Subsection [~~(6)~~] (a)(i) the court shall as part of any sentence impose a mandatory jail sentence of not less than 720 nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility, as appropriate.

(c) (i) Under Subsection [~~(6)~~] (a)(ii) the court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of [~~a chemical~~] an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(7) (a) A fourth or subsequent conviction for a violation committed within six years of the prior violations under this section is a third degree felony if at least three prior convictions are for violations committed after April 23, 1990. [~~The prior convictions may be under this section or under a local ordinance similar to this section adopted in compliance with Section 41-6-43.~~]

(b) The court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(c) (i) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence.

(ii) Enrollment in and completion of [~~a chemical~~] an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(d) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(8) (a) [~~No~~] The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation [~~of~~] under this section [~~or a local ordinance similar to this section adopted in compliance with Subsection 41-6-43(1)~~] may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, [~~if it is a second or subsequent conviction for a violation committed within six years of a prior violation,~~] until the convicted person has furnished evidence satisfactory to the department that:

(i) all required alcohol or drug dependency assessment, education, treatment, and rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

(ii) all fines and fees[~~,~~] including fees for restitution and rehabilitation costs[~~,~~] assessed against the person have been paid[~~:~~], if the conviction is a second or subsequent conviction for a violation committed within six years of a prior violation; and

(iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.

(9) (a) (i) The provisions in Subsections (4), (5), (6), and (7) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do any combination of those things, apply to a conviction for a violation of Section 41-6-45 that qualifies as a prior conviction under Subsection (10).

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-45 that qualifies as a prior conviction under Subsection (10), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections [~~41-6-44~~] (4), (5), (6), and (7).

(b) For purposes of determining whether a conviction under Section 41-6-45 [which] that qualified as a prior conviction under Subsection (10), is a first, second, or subsequent conviction under this subsection, a previous conviction under either this section or Section 41-6-45 is considered a prior conviction.

(c) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(10)(a)(i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45 or of an ordinance enacted under Section 41-6-43 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol [or], drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts [which] that shows whether there was consumption of alcohol [or], drugs, or a combination of both, by the defendant, in connection with the violation.

(b) (i) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-45 as follows.

(ii) If the court accepts the defendant's plea of guilty or no contest to a charge of violating Section 41-6-45, and the prosecutor states for the record that there was consumption of alcohol [or], drugs, or a combination of both, by the defendant in connection with the violation, the resulting conviction is a prior conviction for the purposes of Subsections (5), (6), and (7).

(c) The court shall notify the department of each conviction of Section 41-6-45 [which] that is a prior offense for the purposes of Subsections (5), (6), and (7).

(11) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(12)(a) The Department of Public Safety shall suspend for 90 days the operator's license of any person convicted for the first time under Subsection (1), and shall revoke for one year the license of any person convicted of any subsequent offense under Subsection (1) if the violation is committed within a period of six years from the date of the prior violation.

(b) The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 41-2-130, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

Section 2. Section Amended.

Section 41-6-44.10, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.10. Implied consent to chemical tests for alcohol or drug — Number of tests — Refusal — Warning, report — Hearing, revocation of license — Appeal — Person incapable of refusal — Results of test available — Who may give test — Evidence.

(1)(a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

(b) The peace officer determines which of the tests are administered and how many of them are administered, except the officer shall request that either the blood or urine test be administered under Section 76-5-207. If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered. The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2)(a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle. Following this warning, unless the person immediately requests that the chemical test or tests as offered by a peace officer be administered, no test may be given.

(b) A peace officer shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle. When the officer serves the immedi-

ate notice on behalf of the Driver License Division, he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only [30] 29 days; and

(iii) supply to the operator, on a form approved by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if approved as to form by the Driver License Division, serve also as the temporary license.

(d) The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4 or while under the influence of alcohol [or], any drug, or combination of alcohol and any drug under Section 41-6-44 and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e)(i) A person who has been notified of the Driver License Division's intention to revoke his license under this section is entitled to a hearing.

(ii) A request for the hearing shall be made in writing within ten days after the date of the arrest. [~~Within 20 days after receiving a written request, the division shall notify the person of his opportunity to be heard as early as practicable.~~]

(iii) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(iv) If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in [~~Utah shall be~~] the state is revoked [~~for a period of one year~~] beginning on the [~~31st~~] 30th day after the date of arrest for a period of:

(A) one year unless Subsection (B) applies; or

(B) 18 months if the person has had a previous license sanction after July 1, 1993, under this section, Section 41-2-130 or 41-6-44.4, or a conviction after July 1, 1993, under Section 41-6-44.

(f)(i) If a hearing is requested by the person and conducted by the Driver License Division, and the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the Driver License Division as required in the notice, the Driver License Division shall revoke his license or permit to operate a motor vehicle in Utah [~~for one year,~~] beginning on the date the hearing is held for a period of:

(A) one year unless Subsection (B) applies; or

(B) 18 months if the person has had a previous license sanction after July 1, 1993, under this section, Section 41-2-130 or 41-6-44.4, or a conviction after July 1, 1993, under Section 41-6-44.

(ii) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 41-2-112(15), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

(iii) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

(g)(i) Any person whose license has been revoked by the Driver License Division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5)(a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to [~~the~~] taking [~~of~~] a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6)(a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under

this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol [or], any drug, or combination of alcohol and any drug.

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 194
H. B. No. 360
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

TAX COMMISSION LOWERING ASSESSMENT

By Martin R. Stephens

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING TAX COMMISSION PROCEDURES FOR MAKING ADJUSTMENTS TO PROPERTY ASSESSMENTS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-2-1007, AS LAST AMENDED BY CHAPTER 41, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 59-2-1007, Utah Code Annotated 1953, as last amended by Chapter 41, Laws of Utah 1990, is amended to read:

59-2-1007. Time for application to correct assessment — Hearings.

(1) If the owner of any property assessed by the commission, or any county with a showing of reasonable cause, objects to the assessment, either party may, on or before June 1, apply to the commission for a hearing. Both the owner [~~or~~] and the county, upon a showing of reasonable cause, shall be allowed to be a party at any hearing under this section.

(2) The owner shall include in the application under Subsection (1) the owner's estimate of the fair market value of the property.

(3) The commission shall set a time for hearing the objection and render a written decision no later than October 1. At the hearing the commission may increase, lower, or sustain the assessment if:

(a) the commission finds an error in the assessment; or

(b) it is necessary to equalize the assessment with other similarly assessed property.

(4) (a) If the commission proposes to adjust an assessment which was made pursuant to Section 59-2-201, the commission shall furnish notice, sent by first class mail, of its intent to adjust the assessment to the county auditor of any county whose tax revenues may be affected by the decision if the county has not already been made a party pursuant to Subsection (1). The notice shall request the county to show good cause, within 30 days from the postmarked date of the notice, why the assessment should not be adjusted.

(b) If a county files a response to the commission's request, the commission shall hold a hearing or take such other action as it considers appropriate to consider the good cause alleged by the county and shall then issue a written decision increasing, lowering, or sustaining the assessment with respect to such county.

(c) If a county does not file a response to the request issued by the commission within 30 days, the commission shall adjust the assessment and send a copy of its written decision to that effect to the affected county.

(5) The provisions in Subsection (4) do not limit the rights of any county as outlined in Subsection (1).

CHAPTER 195
H. B. No. 409
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

EMERGENCY PERSONNEL STRESS DEBRIEFING PROGRAM

By Blake D. Chard
R. Mont Evans
Kevin S. Garn
Pete Suazo
John L. Valentine
Steve Barth
Robert H.M. Killpack

AN ACT RELATING TO HEALTH; AUTHORIZING A PROGRAM TO PROVIDE SUPPORT FOR EMERGENCY MEDICAL SERVICES PERSONNEL; AND PROVIDING THAT THE LEGISLATURE APPROPRIATE FUNDING FOR THE PROGRAM.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
26-8-5.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 26-8-5.5, Utah Code Annotated 1953, is enacted to read:

26-8-5.5. Emergency personnel stress debriefing program — General Fund appropriation for training and reimbursement.

(1) Under this chapter the department may develop and implement a statewide program to provide support and counseling for emergency medical services personnel who have been exposed to one or more stressful incidents in the course of providing emergency medical services.

(2) This program shall include:

(a) ongoing training for agencies providing emergency medical services and program volunteers; and

(b) critical incident stress debriefing for emergency medical services personnel.

(3) Beginning with fiscal year 1993-94, the Legislature shall appropriate General Fund monies to the department to fund the program created in this section.

CHAPTER 196
S. B. No. 192
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

BUSINESS LICENSE FEE FOR MOTOR CARGO DELIVERIES

By Howard A. Stephenson

AN ACT RELATING TO MUNICIPALITIES; PROHIBITING DISCRIMINATION BETWEEN RESIDENTS AND NONRESIDENTS IN GRANTING LICENSES; ESTABLISHING CRITERIA FOR IMPOSING BUSINESS LICENSE FEES ON MOTOR VEHICLE DELIVERIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-8-4, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 10-8-4, Utah Code Annotated 1953, is amended to read:

10-8-4. Special taxes and licenses.

[~~They~~] (1) Municipal legislative bodies may:

(a) subject to Subsection (2), fix the amount, terms, and manner of issuing licenses[~~,~~]; and [~~may,~~]

(b) consistent with general law, provide the manner and form in which special taxes [~~shall be~~] are levied and collected.

(2) (a) Municipal legislative bodies may not discriminate between resident community businesses and nonresident community businesses in establishing license requirements.

(b) Municipal legislative bodies may not impose motor vehicle delivery license fees on persons or entities who:

(i) are licensed as dealers in another municipality;

(ii) do not have a permanent business location in the municipality.

CHAPTER 197
S. B. No. 193
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

VOTER REGISTRATION INFORMATION

By Millie M. Peterson

AN ACT RELATING TO VOTER REGISTRATION FORMS; REQUIRING PLACEMENT OF FORMS IN CERTAIN GOVERNMENT OFFICES; REQUIRING CERTAIN GOVERNMENT OFFICES TO REQUEST ADDITIONAL FORMS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20A-2-301, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993

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

Section 1. Section Amended.

Section 20A-2-301, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-2-301. Registration form — Forms available to interested organizations — Distribution of form — Verification of residency.

(1) As used in this section, "government office" means a state, county, municipal, school district, or special district office that is open to the public and where the public regularly comes in and out.

(2) The county clerk shall prepare book voter registration forms and by-mail voter registration forms for use in the voter registration process.

[~~(2)~~] (3) (a) (i) The clerk shall place by-mail voter registration forms visibly accessible at government offices and visibly accessible at convenient public locations throughout the county such as banks, [~~municipal offices,~~] libraries, post offices, and high schools in order to implement the provisions of this chapter.

(ii) The county clerk shall provide copies of by-mail voter registration forms to public school districts and nonpublic schools as provided in Section 20A-2-302.

(iii) Each government office shall request more by-mail voter registration forms from the county clerk when supplies of the form are low.

(b) (i) Each general regular election year, the county clerk shall make by-mail voter registration forms available to the political parties as provided in this Subsection (b).

(ii) The county clerk shall set aside by-mail registration forms equal to 10% of the number of registered voters in the county as of January 1 of that regular general election year for allocation to political parties.

(iii) The forms shall be allocated to the respective political parties in each county as provided in this Subsection (iii):

(A) 90% of the forms shall be made available on an equal basis to all parties who had any candidate who polled 10% or more of the vote for any partisan office in the last regular general election.

(B) 10% of the forms will be made available on an equal basis to all other parties who qualify for a position on the ballot for the next regular general election.

(c) Candidates, parties, organizations, and interested persons may purchase by-mail voter registration forms from the county clerk or from the printer.

[~~(3)~~] (4) (a) The clerk shall make available book voter registration forms to interested organizations in lots of 250, to be replaced when each lot of 200 is returned to the county clerk in alphabetical order by voting precinct with data completed.

(b) Interested organizations that receive book voter registration forms from the county clerk shall return them to the county clerk at least 20 days before the date of the election.

[~~(4)~~] (5) The county clerk may not refuse to register any person to vote for failing to provide a telephone number on the voter registration form.

[~~(5)~~] (6) The county clerk shall remove all inactive voter registration sheets from the file.

[~~(6)~~] (7) (a) It is unlawful for any person to willfully fail or refuse to deliver completed voter registration forms, obtained as provided in this section, to the county clerk.

(b) A person who violates this subsection is guilty of a class B misdemeanor.

CHAPTER 198
S. B. No. 279
Passed March 2, 1993
Approved March 17, 1993
Effective May 3, 1993

LEGAL RATE OF INTEREST ON JUDGMENTS

By David H. Steele

AN ACT RELATING TO CONTRACTS AND OBLIGATIONS IN GENERAL; AMENDING THE RATE OF INTEREST ON JUDGMENTS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
15-1-4, AS LAST AMENDED BY CHAPTER 73, LAWS OF UTAH 1981

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

Section 1. Section Amended.

Section 15-1-4, Utah Code Annotated 1953, as last amended by Chapter 73, Laws of Utah 1981, is amended to read:

15-1-4. Interest on judgments.

(1) Any judgment rendered on a lawful contract shall conform [~~thereto~~] to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment[~~; other~~].

(2) Other judgments shall bear interest at the federal postjudgment interest rate [~~of 12% per annum~~] as of January 1 of each year, plus 2%.

(3) "Federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C Sec. 1961, as amended.

CHAPTER 199
S. B. No. 280
Passed March 3, 1993
Approved March 17, 1993
Effective May 3, 1993

INDUSTRIAL COMMISSION ADVISORY COUNCIL

By Lane Beattie

AN ACT RELATING TO THE INDUSTRIAL COMMISSION; AMENDING THE MEMBERSHIP OF THE INDUSTRIAL COMMISSION'S ADVISORY COUNCIL; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-1-17, AS LAST AMENDED BY CHAPTER 254, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 35-1-17, Utah Code Annotated 1953, as last amended by Chapter 254, Laws of Utah 1992, is amended to read:

35-1-17. Appointment of state council — Composition — Terms of members — Membership nominations — Compensation.

(1) The Industrial Commission shall appoint a state council composed of:

(a) five employer representatives;

(b) five employee representatives; and

(c) three members, one representing the Workers' Compensation Fund of Utah, one representing a private insurance carrier, and one representing health care providers, all of whom are nonvoting.

(2) The Utah insurance commissioner shall serve on the state council as an ex officio nonvoting member.

[~~(2)~~] (3) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and the disabled.

[~~(3)~~] (4) Each council member shall be appointed for a two-year term beginning July 1 and ending June 30. The first term shall begin July 1, 1992. The commission shall terminate the terms of any council member who ceases to be representative as designated by his original appointment. The council shall confer at least quarterly for the purpose of advising the commission and the Legislature on the Utah workers' compensation and occupational disease laws, the administration of them, and related rules.

[~~(4)~~] (5) The council shall offer advice on issues requested by the commission and the Legislature and also make recommendations to the commission regarding workers' compensation, rehabilitation, and reemployment of employees who are disabled because of an industrial injury or occupational disease. Members of the council shall serve without pay, but they shall be entitled to all necessary expenses incurred in attending any meetings called by the council or commission.

CHAPTER 200
S. B. No. 96
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

AMENDMENTS TO HAZARDOUS WASTE FEES

By Stephen J. Rees

AN ACT RELATING TO HEALTH AND ENVIRONMENT; AMENDING THE HAZARDOUS WASTE FEE PROVISIONS; AMENDING PROVISIONS REGARDING THE SOLID AND HAZARDOUS WASTE BOARD AND ITS FUNCTIONS; AND APPROPRIATING $200,000 TO THE DEPARTMENT OF PUBLIC SAFETY.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
19-6-103, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
19-6-104, AS LAST AMENDED BY CHAPTER 198, LAWS OF UTAH 1992
19-6-118, AS LAST AMENDED BY CHAPTER 282, LAWS OF UTAH 1992

ENACTS:
19-6-118.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 19-6-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-6-103. Solid and Hazardous Waste Control Board — Members — Terms — Organization — Meetings.

(1) The Solid and Hazardous Waste Control Board created by Section 19-1-106 comprises the executive director and [ten] 12 members appointed by the governor with the advice and consent of the Senate.

(2) The appointed members shall be knowledgeable about solid and hazardous waste matters and consist of:

(a) one representative of municipal government;

(b) one representative of county government;

(c) one representative of the manufacturing or fuel industry;

(d) one representative of the mining industry;

(e) one representative of the private solid waste disposal or solid waste recovery industry;

(f) one registered professional engineer;

(g) one representative of a local health department; [and]

(h) one representative of the hazardous waste disposal industry; and

[~~(h) three~~] (i) four representatives of the public, at least one of whom is a representative of organized environmental interests.

(3) Not more than five of the appointed members may be from the same political party.

(4) Members shall be appointed for terms of four years each.

(5) Each member is eligible for reappointment.

(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) Vacancies shall be filled through appointment by the governor, after considering recommendations of the board and with the consent of the Senate, for the unexpired term of the person whose office was vacated.

(8) The board shall elect a chairman and vice-chairman on or before April 1 of each year from its membership.

(9) The board members shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties, and shall receive a per diem allowance at the same rate provided in Sections 63-1-14.5 and 63-1-15.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chairman, the executive secretary, or any three of the members.

(11) Six members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Section 2. Section Amended.

Section 19-6-104, Utah Code Annotated 1953, as last amended by Chapter 198, Laws of Utah 1992, is amended to read:

19-6-104. Powers of board — Creation of statewide solid waste management plan.

(1) The board [may] shall:

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

(b) carry out inspections pursuant to Section 19-6-109;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers who shall be delegated these powers;

(d) issue orders necessary to effectuate the provisions of this part and implementing rules and en-

force them by administrative and judicial proceedings, and cause the initiation of judicial proceedings to secure compliance with this part;

(e) settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;

(f) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

(g) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the purposes of this part;

(h) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

(i) meet the requirements of federal law related to hazardous wastes to insure that the hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over hazardous waste;

(j) subject to the limitations of Subsection 19-6-102(13)(b), require any facility, including any incinerator that is intended for disposing of nonhazardous solid waste to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part; and

(k) exercise all other incidental powers necessary to carry out the purposes of this part.

(2) (a) The board shall establish a comprehensive statewide solid waste management plan by January 1, 1994.

(b) The plan shall:

(i) incorporate the solid waste management plans submitted by the counties;

(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;

(iii) assess the state's ability to minimize waste and recycle;

(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;

(v) evaluate facility siting, design, and operation;

(vi) review funding alternatives for solid waste management; and

(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.

(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.

(3) (a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.

(b) The board shall review and modify the inventory no less frequently than once every five years.

(4) Subject to the limitations contained in Subsection 19-6-102 (13)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

Section 3. Section Amended.

Section 19-6-118, Utah Code Annotated 1953, as last amended by Chapter 282, Laws of Utah 1992, is amended to read:

19-6-118. Hazardous waste disposal fee.

(1) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall collect the [~~fees listed in~~] fee under Subsection (2) from the generator.

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste that is generated by off-site sources not owned, controlled, or operated by the owner or operator [~~are~~] is subject to the fee [~~provisions of~~] under Subsection (2).

(2) (a) The owner or operator of each facility under Subsection (1) shall collect from the generators of hazardous waste and mixed waste [~~the following fees for all waste received at the facility for treatment, disposal, or both at any hazardous or mixed waste treatment or disposal unit: (a) On and after July 1, 1992,~~] a fee of [~~$10~~] $28 per ton or fraction of a ton [~~is imposed~~] on all hazardous waste [~~generated in this state that is~~] and mixed waste received at the facility or site for disposal [~~or~~], treatment, or both. [~~This fee increases to $12 on July 1, 1993, and to $14 on July 1, 1994.~~]

[~~(b) On and after July 1, 1992, a fee of $35 per ton or fraction of a ton is imposed on all hazardous waste generated outside of this state that is received at the facility or site for disposal or treatment.~~]

[~~(c)~~] (b) When hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under this subsection is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this subsection.

[~~(d)~~] (c) (i) The department shall allocate at least 10% of the fees received from a facility under this section to the county in which the facility is located.

(ii) The county may use those fees to carry out its hazardous waste monitoring and response programs.

[~~(e)~~] (d) The department shall deposit the state portion of the fees received under this section into the General Fund.

(3) (a) The owner or operator shall pay the fees imposed under Subsection (1) to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) In each fiscal year, the department shall retain as dedicated credits any state portion of hazardous waste disposal fees to be used by the department to oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state. The department may determine facility oversight priorities. However, in each fiscal year, the first [~~$1,375,000~~] $1,575,000 collected by the department under this subsection shall be transferred to the General Fund as free revenue.

(4) With the monthly fee, the owner or operator shall submit a form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the amount of the fee for which the owner or operator is liable.

(5) (a) The department, in preparing its budget for the governor and the Legislature, shall separately note the amount necessary to administer the hazardous waste program established by this part.

(b) The Legislature shall appropriate[~~, by a separate line item,~~] the costs of administering this program.

(6) The Office of Legislative Fiscal Analyst shall monitor the fees collected under this part.

Section 4. Section Enacted.

Section 19-6-118.5, Utah Code Annotated 1953, is enacted to read:

19-6-118.5. PCB disposal fee.

(1) On and after July 1, 1993, a fee of $4.75 per ton or fraction of a ton is imposed on all wastes containing polychlorinated biphenyls (PCBs) that are regulated under 15 U.S.C.A. 2605, and that are received at a facility for disposal or treatment.

(2) This section regarding waste containing PCBs and the fee imposed in this section is in lieu of any fee imposed on nonhazardous solid waste under Section 19-6-119, as described in Subsection (1).

(3) The fees collected under this section shall be managed by the same procedure as under Subsection 19-6-119(3) regarding nonhazardous solid waste.

(4) The Legislature shall appropriate to the department the cost of administering the program.

Section 5. Appropriation.

There is appropriated annually upon review by the Appropriation Committee, and as a separate line item, $200,000 from the General Fund to the Department of Public Safety. This appropriation shall be used solely for the administration of the Hazardous Materials Institute within that department.

CHAPTER 201
S. B. No. 105
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

HEALTH CARE FACILITY LICENSURE AMENDMENTS

By John P. Holmgren

AN ACT RELATING TO HEALTH; CLARIFYING LICENSURE PROVISIONS FOR ERTAIN SMALL HEALTH CARE FACILITIES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-21-8, AS LAST AMENDED BY CHAPTER 114, LAWS OF UTAH 1990
26-21-13.5, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1989

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

Section 1. Section Amended.

Section 26-21-8, Utah Code Annotated 1953, as last amended by Chapter 114, Laws of Utah 1990, is amended to read:

26-21-8. License required — Not assignable or transferable — Posting — Expiration and renewal — Time for compliance by operating facilities.

(1) (a) [~~No~~] A person or governmental unit[~~, except as otherwise provided,~~] acting severally or jointly with any other person or governmental unit, [~~shall~~] may not establish, conduct, or maintain a health care facility in this state without receiving a license from the department as provided by this chapter and the rules of the committee.

(b) This subsection does not apply to those facilities exempted under Section 26-21-7.

(2) [~~No~~] A license issued under this chapter is not assignable or transferable.

(3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.

(4) (a) Each license [~~shall expire~~] expires at midnight on the last day of the month, 12 months from date of issuance unless previously revoked by the department.

(b) The license shall be renewed annually upon completion of the application requirements, unless the department finds [~~that~~] the health care facility has not complied with the provisions of this chapter or the rules adopted pursuant to Section 26-21-5.

(5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.

[~~(5)~~] (6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this chapter shall be given a reasonable time for compliance as determined by the committee.

Section 2. Section Amended.

Section 26-21-13.5, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1989, is amended to read:

26-21-13.5. Intermediate care facilities for the mentally retarded — Licensing.

(1) (a) It is the Legislature's intent that developmentally disabled persons be provided with an environment and surrounding that, as closely as possible, resembles small community-based, homelike settings, to allow those persons to have the opportunity, to the maximum extent feasible, to exercise their full rights and responsibilities as citizens.

(b) It is the Legislature's purpose, in enacting this section, to provide assistance and opportunities to enable persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community.

(2) After July 1, 1990, the department may only license intermediate care beds for the mentally retarded in small health care facilities.

(3) The department [~~has authority to~~] may define by rule "small health care facility" for purposes of licensure under this section and [~~to~~] adopt rules necessary to carry out the requirements and purposes of this section.

(4) This section does not [~~effect beds and facilities~~] apply to the renewal of a license or the licensure to a new owner of any facility that [~~are~~] was licensed on or before July 1, 1990, [~~or the renewal of those licenses~~] and that licensure has been maintained without interruption.

CHAPTER 202
S. B. No. 106
Passed March 1, 1993
Approved March 16, 1993
Effective May 3, 1993

EVIDENCE OF MOTOR VEHICLE INSURANCE

By David H. Steele

AN ACT RELATING TO MOTOR VEHICLES; REQUIRING CERTAIN OPERATORS TO SHOW EVIDENCE OF OWNER'S OR OPERATOR'S SECURITY; PROVIDING A DEFENSE; PROVIDING A PENALTY; REQUIRING NONRESIDENT OWNERS TO MAINTAIN OWNER'S OR OPERATOR'S SECURITY WHILE IN UTAH; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-6-35.5, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1988
41-12A-301, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1987

ENACTS:
41-12A-303.2, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 41-6-35.5, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1988, is amended to read:

41-6-35.5. Vehicle accidents — Investigation and report of operator security — Agency action if no security — Surrender of plates — Penalties.

(1) [~~When~~] Upon request of a peace officer investigating an accident involving a motor vehicle [~~cites the operator of a motor vehicle involved for the alleged violation of any provision of this title~~], the [~~cited~~] operator of the vehicle shall [~~at the peace officer's request~~] provide evidence of the owner's or operator's security required [~~by~~] under Section 41-12a-301.

(2) The peace officer shall record on a form approved by the department:

(a) the information provided by the operator[~~, and also indicate if~~];

(b) whether the operator provided insufficient or no information[~~. The officer shall also note on the form~~]; and

(c) if he finds reasonable cause to believe that any information given is not correct.

(3) The peace officer shall deposit all completed forms with his agency, which shall forward the forms to the department no later than ten days after receipt.

(4) The department shall within ten days of receipt of the forms from the agency take action as follows:

(a) If the operator provided no information under Subsection (1), the department shall take direct action under Subsection 41-2-128 (12).

(b) (i) If the peace officer noted or the department determines that there is reasonable cause to believe that the information given under Subsection (1) is not correct, the department shall contact directly the insurance company or other provider of security as described in Subsection (7) and request verification[~~, which the department may require to be in writing, within 30 days of receipt of the request,~~] of the accuracy of the information submitted as of the date of the traffic offense for which the citation was issued.

(ii) The department may require the verification under Subsection (i) to be in writing.

(iii) The insurance company or other provider of security shall return the verification to the department within 30 days of receipt of the request.

(c) If the department does not receive verification within 35 days after mailing the request, or within the 35 days receives notice that the information was not correct, the department shall take action under Subsection 41-2-128 (12).

(5) (a) The owner of a vehicle with unexpired license plates for which security is not provided as required under this chapter, shall return the plates for the vehicle to the Motor [~~Vehicles~~] Vehicle Division unless specifically permitted by statute to retain them.

(b) If the owner fails to return the plates as required, they shall be confiscated under Section 41-2-134.

(6) The department may make rules for the enforcement of this section.

(7) In this section, "evidence of owner's or operator's security" [~~means~~] includes any one of the following:

(a) a copy of the operator's valid:

(i) insurance policy;

(ii) binder notice;

(iii) renewal notice; or

(iv) card issued by an insurance company as evidence of insurance;

[~~(a)~~] (b) [~~the name of the insurance company which issued the~~] a certificate of insurance [~~policy~~] issued under [~~Subsection 41-12a-103 (9) (a), and the number of the insurance policy~~] Section 41-12a-402;

[~~(b)~~] (c) [~~the name of the surety which issued the~~] a certified copy of a surety bond issued under [~~Subsection 41-12a-103 (9) (b), and the number of the insurance policy~~] Section 41-12a-405;

[~~(c)~~] (d) [~~the number of the~~] a certificate of [~~deposit issued by~~] the state treasurer issued under Section 41-12a-406; or

[(d)] (e) [the number of the] a certificate of self-funded coverage issued [by the department] under Section 41-12a-407.

(8) A person is guilty of a class B misdemeanor, and shall be fined not less than $100, who:

(a) when requested to provide security information under Subsection (1), or Section 41-12a-303.2, provides false information;

(b) falsely represents to the department that security required under this chapter is in effect; or

(c) sells a vehicle to avoid the penalties of this section as applicable either to himself or a third party.

Section 2. Section Amended.

Section 41-12a-301, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1987, is amended to read:

41-12a-301. Requirement of owner's or operator's security — Exceptions for off-highway vehicles and off-highway implements of husbandry.

(1) Every resident owner of a motor vehicle shall maintain owner's or operator's security in effect throughout the registration period of the motor vehicle.

(2) Every nonresident owner of a motor vehicle [which] that has been physically present in this state for:

(a) 90 or fewer days during the preceding 365 days shall maintain the type and amount of owner's or operator's security required in his place of residence, in effect continuously throughout the period the motor vehicle remains within Utah; or

(b) more than 90 days during the preceding 365 days shall [thereafter] maintain owner's or operator's security in effect continuously throughout the period the motor vehicle remains within Utah.

(3) The state of Utah and all of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect continuously in respect to their motor vehicles. Any other state is considered to be a nonresident owner of its motor vehicles and is subject to Subsection (2).

(4) The United States or any political subdivision of it, or any of its agencies, may maintain owner's or operator's security in effect in respect to their motor vehicles.

(5) Owner's or operator's security is not required for:

(a) off-highway vehicles registered under Section 41-22-3 when operated either:

(i) on a highway designated as open for off-highway vehicle use; or

(ii) in the manner prescribed by Section 41-22-10.3; or

(b) off-highway implements of husbandry operated in the manner prescribed by Subsections 41-22-5.5 (3) through (5).

Section 3. Section Enacted.

Section 41-12a-303.2, Utah Code Annotated 1953, is enacted to read:

41-12a-303.2. Evidence of owner's or operator's security to be carried when operating motor vehicle — Production in court.

(1) (a) (i) Except as provided in Subsection (ii), a person operating a motor vehicle shall:

(A) have in his immediate possession evidence of owner's or operator's security for the vehicle he is operating; and

(B) display it upon demand of a peace officer.

(ii) A person operating a government-owned or leased motor vehicle is exempt from the requirements of Subsection (i).

(b) Evidence of owner's or operator's security includes any one of the following:

(i) a copy of the operator's valid:

(A) insurance policy;

(B) binder notice;

(C) renewal notice; or

(D) card issued by an insurance company as evidence of insurance;

(ii) a certificate of insurance issued under Section 41-12a-402;

(iii) a certified copy of a surety bond issued under Section 41-12a-405;

(iv) a certificate of the state treasurer issued under Section 41-12a-406; or

(v) a certificate of self-funded coverage issued under Section 41-12a-407.

(2) It is a defense to a charge under this section that the person charged produces in court proof that owner's or operator's security was in effect for the vehicle he was operating at the time of his citation or arrest.

(3) A violation of this section is a class C misdemeanor.

CHAPTER 203
S. B. No. 109
Passed March 3, 1993
Approved March 16, 1993
Effective June 1, 1993

COUNTY OPTION FUNDING FOR BOTANICAL, CULTURAL, AND ZOOLOGICAL ORGANIZATIONS

By Haven J. Barlow
Delpha A. Baird
Lane Beattie
Arnold Christensen
Scott N. Howell
Ronald J. Ockey
Craig A. Peterson
Stephen J. Rees
Robert C. Steiner
Blaze D. Wharton

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING FOR A SALES AND USE TAX OF 1/10 OF 1% ON A COUNTY-OPTION BASIS TO ENCOURAGE THE ECONOMIC AND CULTURAL DEVELOPMENT OF BOTANICAL, CULTURAL, AND ZOOLOGICAL ORGANIZATIONS; PROVIDING GUIDELINES FOR THE DISTRIBUTION OF REVENUES RAISED BY THE TAX; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
59-12-701, UTAH CODE ANNOTATED 1953
59-12-702, UTAH CODE ANNOTATED 1953
59-12-703, UTAH CODE ANNOTATED 1953
59-12-704, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 59-12-701, Utah Code Annotated 1953, is enacted to read:

59-12-701. Purpose statement.

The Utah Legislature finds and declares that:

(1) The botanical, cultural, and zoological organizations of the state of Utah enhance the quality of life of Utah's citizens, as well as the continuing growth of Utah's tourist, convention, and recreational industries.

(2) Utah was the first state in this nation to create and financially support a state arts agency, now the Utah Arts Council, which is committed to the nurturing and growth of cultural pursuits.

(3) Utah has provided, and intends to continue, the financial support of the botanical, cultural, and zoological organizations of this state.

(4) The state's support of its botanical, cultural, and zoological organizations has not been sufficient to assure the continuing existence and growth of these organizations, and the Legislature believes that local government may wish to play a greater role in the support of these organizations.

(5) Without jeopardizing the state's ongoing support of its botanical, cultural, and zoological organizations, the Legislature intends to permit the counties of the state of Utah to enhance public financial support of Utah's botanical, cultural, and zoological organizations through the imposition of a county sales and use tax.

Section 2. Section Enacted.

Section 59-12-702, Utah Code Annotated 1953, is enacted to read:

59-12-702. Definitions.

As used in this part:

(1) "Botanical organization" means any private or public nonprofit organization or administrative unit thereof having as its primary purpose the advancement and preservation of plant science through horticultural display, botanical research, and community education.

(2) (a) "Cultural organization" means a nonprofit institutional organization or administrative unit thereof having as its primary purpose the advancement and preservation of natural history, art, music, theater, or dance.

(b) "Cultural organization" does not include any agency of the state, any political subdivision of the state, or any educational institution whose annual revenues are directly derived more than 50% from state funds, any radio or television broadcasting network or station, cable communications system, newspaper, or magazine.

(3) (a) "Zoological organization" means a nonprofit institutional organization having as its primary purpose the advancement and preservation of zoology.

(b) "Zoological organization" does not include any agency of the state, educational institution, radio or television broadcasting network or station, cable communications system, newspaper, or magazine.

Section 3. Section Enacted.

Section 59-12-703, Utah Code Annotated 1953, is enacted to read:

59-12-703. Bases — Rates — Opinion question.

(1) (a) Any county legislative body may, by majority vote of all members, submit an opinion question to the residents of that county so that each resident has an opportunity to express his opinion on the imposition of a local sales and use tax of 1/10 of 1% to fund botanical, cultural, and zoological organizations in that county.

(b) The election shall follow the procedures outlined in Title 11, Chapter 14, Utah Municipal Bond Act.

(2) (a) If the county legislative body determines that a majority of the qualified electors voting on the opinion question has assented to the imposition of a local sales and use tax as prescribed in Subsection

(1)(a), the county legislative body may, by a majority vote of all members, impose such a tax.

(b) If the county legislative body imposes a tax under Subsection (2)(a), the tax shall be imposed at the beginning of the quarter following the county legislative body's decision to impose such a tax.

(3) The monies generated from any tax imposed under Subsection (2) may only be used for financing ongoing operating expenses of botanical, cultural, and zoological organizations within the county.

(4) Taxes imposed under this part shall be:

(a) levied at the same time and collected in the same manner as provided in Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period in accordance with this section.

Section 4. Section Enacted.

Section 59-12-704, Utah Code Annotated 1953, is enacted to read:

59-12-704. Distribution of revenues — Determining operating expenses.

(1) Except as provided in Subsection (5), and subject to the requirements of Subsection (3), any revenues collected by a county of the first class under this part shall be distributed annually by the county legislative body to botanical, cultural, and zoological organizations within that first class county as follows:

(a) 50% of the revenue collected by the county under this section shall be distributed to botanical, cultural, and zoological organizations with average annual operating expenses of more than $250,000 as determined under Subsection (3). The county legislative body shall distribute the monies among such organizations in proportion to their average annual operating expenses as determined under Subsection (3);

(b) 35% of the revenue collected by the county under this section shall be distributed to botanical, cultural, and zoological organizations with average annual operating expenses of more than $250,000 as determined under Subsection (3). The county legislative body shall determine how application shall be made by the organizations and how the monies shall be distributed among such organizations;

(c) 10% of the revenue collected by the county under this section shall be distributed to botanical, cultural, and zoological organizations. The county legislative body shall determine how application shall be made by the organizations and how the monies shall be distributed among such organizations; and

(d) 5% of the revenue collected by the county under this section shall be distributed to botanical, cultural, and zoological organizations with average annual operating expenses of less than $250,000 as determined under Subsection (3). The county legislative body shall determine how application shall be made by the organizations and how the monies shall be distributed among such organizations.

(2) An advisory board consisting of appointees of the county legislative body, to include members of the Utah Arts Council, will be created to advise the county legislative body on disbursement of funds generated by this act in counties of the first class.

(3) To be eligible to receive monies collected by the county under this part, a botanical, cultural, and zoological organization located within a county of the first class shall, every three years:

(a) calculate their average annual expenses based upon audited expenses for three preceding fiscal years; and

(b) submit to the appropriate county legislative body:

(i) a verified audit of annual expenses for each of those three preceding fiscal years; and

(ii) the average annual expenses as calculated under Subsection (2)(a).

(4) When calculating average annual expenses as described in Subsection (3), each botanical, cultural, and zoological organization shall use the same three-year fiscal period as determined by the county legislative body.

(5) By July 1 of each year, the county legislative body of a first class county may index the threshold amount in Subsections (1)(a), (b), and (d). Any change shall be rounded off to the nearest $100.

(6) In all other counties, the revenues collected by a county as a result of a tax imposed under this section shall be distributed to botanical, cultural, and zoological organizations within the county as determined by the county legislative body.

(7) The commission may retain an amount not to exceed 2-1/2% of the county option funding collected under this part for the cost of administering this part.

Section 5. Public access to the arts.

Any botanical, cultural, or zoological organization which receives monies from a tax imposed under this part and which designates a day as a "free day" or a "discounted rate day" shall make such waiver or discount of admission available to all residents of the state.

Section 6. Effective Date.

If this act is not approved by two-thirds of all members elected to each house, this act takes effect on June 1, 1993.

If approved by two-thirds of all members elected to each house, this act takes effect on April 1, 1993.

CHAPTER 204
H. B. No. 7
Passed March 3, 1993
Approved March 18, 1993
Effective July 1, 1994

REVERSE MORTGAGE SERVICES

By Fred R. Hunsaker
Gerry A. Adair

AN ACT RELATING TO THE DIVISION OF AGING AND ADULT SERVICES; PROVIDING DEFINITIONS; AUTHORIZING THE DIVISION TO PROVIDE INFORMATION AND COUNSELING SERVICES REGARDING REVERSE MORTGAGES; REQUIRING CERTAIN THINGS OF INDEPENDENT CONTRACTORS WHO PROVIDE THESE SERVICES; EXCLUDING LOAN PROCEEDS FROM DETERMINATIONS OF ELIGIBILITY FOR OTHER BENEFITS; PROVIDING A SUNSET DATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-262, AS LAST AMENDED BY CHAPTER 40, LAWS OF UTAH 1992

ENACTS:
62A-3-401, UTAH CODE ANNOTATED 1953
62A-3-402, UTAH CODE ANNOTATED 1953
62A-3-403, UTAH CODE ANNOTATED 1953
62A-3-404, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 62A-3-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Reverse Mortgage Services

62A-3-401. Definitions.

As used in this part, "reverse mortgage" means a written instrument evidencing or creating a nonrecourse loan secured by real property that:

(1) provides cash advances to a borrower in the form of a lump sum, periodic payments, a line of credit, or other similar method or combination of methods;

(2) is based on the equity in the borrower's owner-occupied principal residence; and

(3) requires no partial or other payment of principal or interest until the entire loan becomes due and payable.

Section 2. Section Enacted.

Section 62A-3-402, Utah Code Annotated 1953, is enacted to read:

62A-3-402. Information and counseling service authorized.

(1) To the extent funded by the Legislature, the division shall provide information and, as requested, counseling regarding reverse mortgages as part of its services to the aging.

(2) Information and counseling provided under this section may include such things as an explanation of what reverse mortgages are, how they work, where they can be obtained, why they might be desirable, and what consequences and obligations follow from borrowing through a reverse mortgage.

(3) At the request of an aging person who is considering entering into a reverse mortgage agreement, the division shall provide counseling to:

(a) help in understanding the loan documents;

(b) help in identifying the total cost of the loan, including the interest rate and any origination fee, closing costs, servicing fee, insurance premium, contingent interest based on appreciation, penalties, accelerated and balloon payments, and other fees and costs;

(c) help in identifying the amount and schedule of periodic or other payments under the loan;

(d) help in identifying the effects of the reverse mortgage on the borrower's estate;

(e) help in identifying alternatives to reverse mortgages; and

(f) other relevant and reasonable assistance and advice as requested.

(4) Information and counseling provided by the division shall include an explicit statement:

(a) suggesting to potential borrowers that they consider all relevant facts carefully, including the total cost of the loan, before deciding to enter a reverse mortgage agreement; and

(b) explaining that the decision to enter or not to enter a reverse mortgage agreement is the sole responsibility of the borrower.

Section 3. Section Enacted.

Section 62A-3-403, Utah Code Annotated 1953, is enacted to read:

62A-3-403. Independent contractors.

If the division enters an agreement with any independent contractor to provide services under this part, the contract shall be in writing and shall provide that the contractor shall hold harmless and shall indemnify the state, the division, or employee for any act or omission of the contractor.

Section 4. Section Enacted.

Section 62A-3-404, Utah Code Annotated 1953, is enacted to read:

62A-3-404. Loan proceeds not a factor in benefit eligibility.

For purposes of determining eligibility and benefits under means-tested programs of aid to individuals:

(1) reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income; and

(2) undisbursed funds under a reverse mortgage shall be treated as equity in a borrower's home and not as proceeds from a loan.

Section 5. Section Amended.

Section 63-55-262, Utah Code Annotated 1953, as last amended by Chapter 40, Laws of Utah 1992, is amended to read:

63-55-262. Repeal dates, Title 62A.

The following provisions of Title 62A, Social Services Code, are repealed on the following dates:

(1) (a) The Board of Aging and Adult Services, created in Section 62A-1-105, is repealed July 1, 1995.

(b) The Division of Aging and Adult Services, created in Section 62A-1-105, is repealed July 1, 1995.

(2) (a) The Board of Family Services, created in Section 62A-1-105, is repealed July 1, 2000.

(b) The Division of Family Services, created in Sections 62A-1-105 and 62A-4-104, is repealed July 1, 2000.

(3) (a) The Board of Mental Health, created in Section 62A-1-105, is repealed July 1, 1997.

(b) The Division of Mental Health, created in Sections 62A-1-105 and 62A-12-102, is repealed July 1, 1997.

(4) (a) The Board of Services for People with Disabilities, created in Section 62A-1-105, is repealed July 1, 1996.

(b) The Division of Services for People with Disabilities within the department, created in Sections 62A-1-105 and 62A-5-102, is repealed July 1, 1996.

(c) Title 62A, Chapter 5, Part 2, Utah State Developmental Center, is repealed July 1, 1996.

(5) (a) The Board of Substance Abuse, created in Section 62A-1-105, is repealed July 1, 1997.

(b) The Division of Substance Abuse, created in Sections 62A-1-105 and 62A-8-103, is repealed July 1, 1999.

(6) (a) The Board of Youth Corrections, created in Section 62A-1-105, is repealed July 1, 1999.

(b) The Division of Youth Corrections, created in Sections 62A-1-105 and 62A-7-102, is repealed July 1, 1999.

(7) The Office of Social Services, created in Section 62A-1-105, is repealed July 1, 1999.

(8) (a) Administrative Hearings within the department, authorized under Section 62A-1-110, is repealed July 1, 1995.

(b) Administrative Services within the department, authorized under Section 62A-1-110, is repealed July 1, 1995.

(9) The Office of Recovery Services within the department, created in Sections 62A-1-105 and 62A-11-102, is repealed July 1, 1995.

(10) The Office of Family Support within the department, created in Sections 62A-1-105 and 62A-9-104, is repealed July 1, 1999.

(11) The Coordinating Council for Persons with Disabilities, created in Section 62A-5a-103, is repealed July 1, 1996.

(12) Title 62A, Chapter 3, Part 4, Reverse Mortgage Services, is repealed July 1, 1998.

Section 6. Effective Date.

This act takes effect on July 1, 1994.

CHAPTER 205
H. B. No. 25
Passed February 11, 1993
Approved March 18, 1993
Effective July 1, 1993

SUBPOENA IN DRIVERS LICENSE REVOCATION HEARING

By Kurt E. Oscarson

AN ACT RELATING TO MOTOR VEHICLES; PROVIDING FOR MANDATORY ISSUANCE OF SUBPOENAS IN DRIVERS LICENSE REVOCATION HEARINGS; AMENDING THE ADMINISTRATIVE FEE FOR LICENSE REINSTATEMENT TO FUND WITNESS FEES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-2-103, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991
41-2-130, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1992
41-6-44.10, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-2-103, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

41-2-103. Fees — Schedule for operator licenses — Identification card.

The following fees apply under this chapter:

(1) An original class D license application under Section 41-2-112 is $15.

(2) An original class M license application under Section 41-2-112 is $15.

(3) An original provisional license application for a class D license under Section 41-2-112 is $20.

(4) An original provisional license application for a class M license under Section 41-2-112 is $20.

(5) An original application for a motorcycle or taxicab endorsement under Section 41-2-112 is $5.

(6) A renewal of a class D license under Section 41-2-125 is $15 unless Subsection (11) applies.

(7) A renewal of a class M license under Section 41-2-125 is $15.

(8) A renewal of a provisional license application for a class D license under Section 41-2-125 is $15.

(9) A renewal of a provisional license application for a class M license under Section 41-2-125 is $15.

(10) A renewal of a motorcycle or taxicab endorsement under Section 41-2-125 is $5.

(11) A renewal of a class D license for a person 65 and older under Section 41-2-125 is $5.

(12) An extension of a class D license under Section 41-2-125 is $12 unless Subsection (17) applies.

(13) An extension of a class M license under Section 41-2-125 is $12.

(14) An extension of a provisional license application for a class D license under Section 41-2-125 is $12.

(15) An extension of a provisional license application for a class M license under Section 41-2-125 is $12.

(16) An extension of a motorcycle or taxicab endorsement under Section 41-2-125 is $5.

(17) An extension of a class D license for a person 65 and older under Section 41-2-125 is $3.

(18) An original or renewal application for a commercial class A, B, or C license or an original or renewal of a provisional commercial class A or B license under Part 7 of this chapter is:

(a) $30 for the written test; and

(b) $50 for the skills test.

(19) Each original CDL endorsement for passengers, hazardous material, double or triple trailers, or tankers is $5.

(20) An original CDL endorsement for a school bus under Part 7 of this chapter is $5.

(21) A renewal of a CDL endorsement under Part 7 of this chapter is $5.

(22) A retake of a CDL written or a CDL skills test provided for in Section 41-2-112 is $15.

(23) A retake of a CDL endorsement test provided for in Section 41-2-112 is $5.

(24) A duplicate class A, B, C, D, or M license certificate under Section 41-2-123 is $10.

(25)(a) A license reinstatement application under Section 41-2-112 is $25.

(b) A license reinstatement application under Section 41-2-112 for an alcohol-related offense is $25 in addition to the fee under Subsection (a)

(26) An administrative fee for license reinstatement after an alcohol-related offense under Section 41-2-130 or an alcohol, drug, or combination of alcohol and any drug-related offense under Section 41-6-44.10 is [~~$25~~] $35. This administrative fee is in addition to the fees under Subsection (25).

(27) An administrative fee for license reinstatement after an alcohol-related offense under Part 7 of this chapter is [~~$25~~] $35. This administrative fee is in addition to the fees under Subsection (25).

(28) An administrative fee for license reinstatement after confiscation under Section 41-2-134 is $25.

(29) An administrative fee for providing the driving record of an operator under Section 41-2-119 or 41-2-719 is $3.

(30) A rescheduling fee under Section 41-2-112 or 41-2-708 is $25.

(31) An identification card application under Section 41-2-403 is $5.

Section 2. Section Amended.

Section 41-2-130, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1992, is amended to read:

41-2-130. Chemical test for driving under the influence — Temporary license — Hearing and decision — Suspension and fee — Judicial review.

(1) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) In this section, a reference to Section 41-6-44 includes any similar local ordinance adopted in compliance with Subsection 41-6-43 (1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6-44 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a vehicle may, result in suspension or revocation of the person's license to operate a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6-44, or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6-44, the officer directing administration of the test or making the determination shall serve on the person, on behalf of the division, immediate notice of the division's intention to suspend the person's license to operate a vehicle.

(4) (a) When the officer serves immediate notice on behalf of the division he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license certificate effective for only 29 days; and

(iii) supply to the operator, on a form to be approved by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by the officer may, if approved as to form by the division, serve also as the temporary license certificate.

(5) The peace officer serving the notice shall send to the division within five days after the date of arrest and service of the notice:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Section 41-6-44.

(6) (a) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten days of the date of the arrest.

(b) A hearing, if held, shall be before the division in the county in which the arrest occurred, unless the division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of Section 41-6-44;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) (i) In connection with a hearing the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; and

(B) may issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 21-5-4.

(e) One or more members of the division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.

(g) After the hearing, the division shall order whether the person's license to operate a motor vehicle be suspended or not.

(7) (a) A first suspension, whether ordered or not challenged under this subsection, is for a period of 90 days, beginning on the 30th day after the date of the arrest.

(b) A second or subsequent suspension under this subsection is for a period of one year, beginning on the 30th day after the date of arrest.

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection 41-2-112(15), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

(b) A person whose license has been suspended by the division under this subsection may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 41-2-131.

Section 3. Section Amended.

Section 41-6-44.10, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.10. Implied consent to chemical tests for alcohol or drug — Number of tests — Refusal — Warning, report — Hearing, revocation of license — Appeal — Person incapable of refusal — Results of test available — Who may give test — Evidence.

(1)(a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

(b) The peace officer determines which of the tests are administered and how many of them are administered, except the officer shall request that either the blood or urine test be administered under Section 76-5-207. If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered. The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2)(a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle. Following this warning, unless the person immediately requests that the chemical test or tests as offered by a peace officer be administered, no test may be given.

(b) A peace officer shall serve on the person, on behalf of the division, immediate notice of the division's intention to revoke the person's privilege or license to operate a motor vehicle. When the officer serves the immediate notice on behalf of the division, he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only 30 days; and

(iii) supply to the operator, on a form approved by the division, basic information regarding how to obtain a hearing before the division.

(c) A citation issued by a peace officer may, if approved as to form by the division, serve also as the temporary license.

(d) The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4 or while under the influence of alcohol [~~or~~], any drug, or combination of alcohol and any drug under Section 41-6-44 and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e) A person who has been notified of the division's intention to revoke his license under this section is entitled to a hearing. A request for the hearing shall be made in writing within ten days after the date of the arrest. Within 20 days after receiving a written request, the division shall notify the person of his opportunity to be heard as early as practicable. If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in Utah shall be revoked for a period of one year beginning on the 31st day after the date of arrest.

(f) If a hearing is requested by the person and conducted by the division, [~~and~~] the hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6-44; and

(ii) whether the person refused to submit to the test.

(g)(i) In connection with the hearing, the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; and

(B) shall issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 21-5-4.

(h) If after a hearing, the division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the division as required in the notice, the division shall revoke his license or permit to operate a motor vehicle in Utah for one year, beginning on the date the hear-

ing is held. The division shall also assess against the person, in addition to any fee imposed under Subsection 41-2-112 (15), a fee under Section 41-2-103, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

[~~(g)~~] (i) (i) Any person whose license has been revoked by the division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol [or], any drug, or combination of alcohol and any drug.

Section 4. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 206
H. B. No. 38
Passed March 3, 1993
Approved March 18, 1993
Effective March 18, 1993

CAPITAL ACCESS AMENDMENTS

By David M. Jones

AN ACT RELATING TO ECONOMIC DEVELOPMENT; AMENDING THE AUTHORITY OF UTAH TECHNOLOGY FINANCE CORPORATION; CHANGING THE CAPITAL ACCESS ACT TO BROADEN ITS SCOPE TO INCLUDE MORE SMALL BUSINESSES; DIRECTING THE UTAH TECHNOLOGY FINANCE CORPORATION TO ADMINISTER AND MARKET THE CAPITAL ACCESS FUND; ALLOWING PARTICIPATING LENDERS TO CLAIM MONIES IN THE FUND AS ASSETS AND TO WITHDRAW PART OF THOSE MONIES PLUS INTEREST UPON LEAVING THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

9-2-1302, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1303, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1304, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1305, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1306, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1310, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1311, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1312, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

REPEALS AND REENACTS:

9-2-1307, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1308, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-2-1302, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1302. Definitions.

As used in this part:

(1) "Fund" means the Utah Capital Access Fund created under this part.

(2) "Lender's Fund reserve account" means a separate account within the fund created for each participating lender into which premium charges paid by the lender and borrowers are deposited.

(3) "Loss" includes any losses on the enrolled loan revolving principal, accrued interest, and documented out-of-pocket expenses.

(4) "Participating lender" means any state or federally regulated financial institution or branch thereof that:

(a) has commercial lending experience; and

(b) enters into an arrangement with the [~~state treasurer~~] Utah Technology Finance Corporation under this chapter to establish a special loan portfolio and to pay fees and premiums into the fund in order to qualify for loan loss or default protection.

(5) "Special loan portfolio" means any loan or loans filed for enrollment with the [~~state treasurer~~] Utah Technology Finance Corporation under this part in order to be covered against losses. A loan in the special loan portfolio may be in the form of a line of credit.

(6) "State fund reserve account" means a separate account within the fund into which a transfer of matching funds from the Capital Access Fund is made for each participating lender.

Section 2. Section Amended.

Section 9-2-1303, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1303. Utah Capital Access Fund.

(1) There is created within the office of the state treasurer the Utah Capital Access Fund. The purpose of the fund shall be to encourage lending institutions to make debt capital more readily available to [~~new and expanding~~] small businesses in Utah of a size that may be eligible for Small Business Administration loans under 13 C.F.R. Sec. 121.1. The fund shall consist of any money appropriated by the Legislature, fees and premiums paid by participating lenders and borrowers, any other money from any other source, public or private, and interest and income earned on these monies.

(2) The [~~state treasurer~~] Utah Technology Finance Corporation created in Part 7 of this chapter shall administer and supervise the fund in all aspects and shall market the availability of the fund to lending institutions and to any business in Utah of a size that may be eligible for Small Business Administration loans under 13 C.F.R. Sec. 121.1.

Section 3. Section Amended.

Section 9-2-1304, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1304. Fund reserve accounts.

(1) (a) The [~~state treasurer~~] Utah Technology Finance Corporation shall request the state treasurer

to establish a separate lender's fund reserve account within the fund for each participating lender paying premiums.

(b) Each lender's fund reserve account shall consist of the fees and premiums paid by the participating lenders and borrower's, together with interest and income earned on these monies[~~, and other monies available from the fund. Monies~~].

(c) Monies in the lender's fund reserve account may be considered an asset of that participating lender.

(d) Except as permitted by Section 9-2-1310, monies in the lender's fund reserve account [~~of a participating lender~~] may be used, pledged, and dedicated only to offset losses on loans within the special loan portfolio of the participating lender.

(2) (a) The Utah Technology Finance Corporation shall request the state treasurer to establish a separate state fund reserve account within the fund for each participating lender.

(b) Each state fund reserve account shall consist of the state matching funds as determined in accordance with Subsection 9-2-1306(3), together with interest earned on these monies.

(c) Monies in the state fund reserve account are an asset of the state.

(d) Monies in the state fund reserve account of a participating lender may be used, pledged, and dedicated only to offset losses on loans within the special loan portfolio of the participating lender.

Section 4. Section Amended.

Section 9-2-1305, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1305. Conditions for match — Special loan portfolios.

In order to receive matching monies from the fund, a participating lender shall establish a special loan portfolio consisting of commercial loans that [~~cannot~~] might not otherwise be made within the guidelines established by the participating lender for making loans in the normal course of business.

Section 5. Section Amended.

Section 9-2-1306, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1306. Premiums — Administrative costs — Transfers.

(1) When a participating lender makes a loan that qualifies it to be placed within a special loan portfolio, the premium charges payable to the lender's fund reserve account by the participating lender and the borrower shall be prescribed by the participating lender. The amount paid by the borrower may not be less than 1.5% of the principal amount of the loan nor more than 3.5% of the principal amount of the loan. The amount paid by the participating lender shall be equal to the amount paid by the borrower. This amount shall then be deposited into the lender's fund reserve account [~~of the participating lender making the loan~~]. The participating lender may recover from the borrower the cost of the participating lender's payment in any manner agreed to by the participating lender and the borrower.

(2) The [~~state treasurer~~] Utah Technology Finance Corporation may withdraw up to 50% of all interest or income earned on money in the fund or in any fund reserve account for costs incurred in administering the fund.

(a) Any interest remaining in the fund [~~or in any fund reserve account~~] shall remain in the fund [~~or account~~].

(b) Any interest remaining in the lender's fund reserve account shall remain in the account until a claim is filed in accordance with Section 9-2-1308 or until it is withdrawn under Section 9-2-1310.

(c) Any interest remaining in the state fund reserve account shall remain in the account until a claim is filed in accordance with Section 9-2-1308.

(3) When enrolling a loan, the [~~state treasurer~~] Utah Technology Finance Corporation shall request the treasurer to transfer into the state fund reserve account an amount determined as follows:

(a) If the amount of any loan made by a participating lender, plus the amount of loans previously enrolled by that participating lender, is less than $750,000, the [~~state treasurer~~] Utah Technology Finance Corporation shall request the state treasurer to deposit into the state fund reserve account in each case an amount equal to:

(i) [~~150%~~] 250% of the combined amounts paid into the lender's fund [~~by the borrower and the participating lender for each enrolled loan~~] reserve account in all areas of the state except those designated as enterprise zones under Title [~~59~~] 9, Chapter [~~20~~] 2; or

(ii) [~~200%~~] 300% of the combined amounts paid into the lender's fund [~~by the borrower and the participating lender for each enrolled loan~~] reserve account in areas designated as enterprise zones under Title [~~59~~] 9, Chapter [~~20~~] 2.

(b) If prior to the enrollment of the loan the amount of loans previously enrolled equals or exceeds $750,000, the [~~state treasurer~~] Utah Technology Finance Corporation shall request the state treasurer to transfer into the state fund reserve account an amount equal to the [~~combined~~] amounts paid into the [~~fund by the borrower and the participating lender for each enrolled loan~~] lender's fund reserve account.

(c) If the amount of loans previously enrolled by a participating lender is less than $750,000 but the enrollment of a loan will cause the aggregate amount of all loans enrolled by that participating lender to exceed $750,000, the [~~state treasurer~~] Utah Technology Finance Corporation shall request the state treasurer to transfer into the state fund reserve account an amount equal to a percentage of the [~~combined~~] amount paid [~~by the participating lender and the borrower~~] into the lender's fund re-

serve account, which percentage shall be determined:

(i) by multiplying by [~~150~~] 250% for loans in areas described in Subsection (3)(a)(i), and by 300% for loans in areas described in Subsection (3)(a)(ii) that portion of the loan which when added to the amount of all previously enrolled loans totals $750,000;

(ii) by multiplying the balance of the loan by 100%; and

(iii) by adding together the products of such computations and dividing the sum by the total amount of the loan.

(4) In any three-year period, the [~~state treasurer~~] Utah Technology Finance Corporation may not request the treasurer to transfer more than [~~$50,000~~] $100,000 from the fund into any state fund reserve account for any one borrower.

Section 6. Section Repealed and Reenacted.

Section 9-2-1307, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is repealed and reenacted to read:

9-2-1307. Enrolling.

(1) For each loan to be covered under this chapter, each participating lender shall enroll the loan with the Utah Technology Finance Corporation within ten days after the loan is made.

(2) The Utah Technology Finance Corporation shall keep an accurate record of the participating lender's special loan portfolio, the lender's fund reserve account, and the related state fund reserve account.

(3) The Utah Technology Finance Corporation shall develop a contract to be used between the participating lender and the borrower that shall adequately protect the state's interest in collateral used to secure loans and other interests of the state that the Utah Technology Finance Corporation considers necessary.

Section 7. Section Repealed and Reenacted.

Section 9-2-1308, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is repealed and reenacted to read:

9-2-1308. Loan losses — Claims.

If any loss or default occurs on any loan within a participating lender's special loan portfolio, the lender shall file a claim with the Utah Technology Finance Corporation after the lender has charged off all or part of the loan as a loss. The participating lender may claim any amount up to the actual amount lost from the lender's fund reserve account and from the related state fund reserve account to cover that loss or default.

(1) If the amount in the fund reserve account is insufficient to cover the loss, and the amount of the loans previously enrolled by that participating lender is $750,000 or more, the participating lender shall absorb the loss and the Utah Technology Finance Corporation, the state and the state's agencies, instrumentalities, and political subdivision are not liable for any such losses.

(2) If the amount in the fund reserve account is insufficient to cover the entire amount of that claim, and the amount of loans previously enrolled by that participating lender is less than $750,000, the Utah Technology Finance Corporation shall pay to the participating lender an amount equal to the current balance in the fund reserve account. That claim shall then be held in abeyance until the remaining balance of the claim is not greater than 75% of the balance in the fund reserve account, then the Utah Technology Finance Corporation, upon the request of the lender, shall pay the remaining balance of the claim.

(3) If a participating lender makes a claim and there are sufficient monies in the fund reserve accounts, the claim shall be paid from the fund reserve accounts in the same proportions as the contributions and transfers to the fund reserve accounts upon enrollment of the loan.

Section 8. Section Amended.

Section 9-2-1310, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1310. Termination — Withdrawal.

(1)(a) If matching money is no longer available in the fund, the [~~state treasurer~~] Utah Technology Finance Corporation may terminate [~~his~~] its obligation under this part to enroll loans.

(b) If a participating lender fails to comply with the intent or provisions of this part or with the provisions of any agreement entered into pursuant to this [~~chapter~~] part, the [~~state treasurer~~] Utah Technology Finance Corporation may terminate [~~his~~] its obligation under this part to enroll loans for that participating lender.

(2)(a) The termination described in Subsection (1) shall be applicable on the effective date specified in the notice of termination, except that the termination may not apply to any loan made on or before the date on which the notice of termination is received by the participating lender.

(b) If the [~~state treasurer~~] Utah Technology Finance Corporation is terminating the enrollment of loans not merely for the participating lender but instead for all participating lenders under this part, the [~~state treasurer~~] Utah Technology Finance Corporation shall provide notice of at least 90 days to the participating lender.

(c) Any terminations under Subsection (1) shall be prospective only, and do not apply to any loans previously enrolled under this chapter, except that if a previously enrolled loan is refinanced, the amount covered under this part may not be increased beyond the covered amount as previously enrolled.

(3) (a) Any participating lender may withdraw from the Capital Access Program under this part upon written notice to the [~~state treasurer~~] Utah Technology Finance Corporation 30 days before the date of withdrawal. This withdrawal shall be applicable on the effective date specified in the notice of

withdrawal, except that the withdrawal may not apply to any unpaid loan made on or before the date on which the notice of withdrawal is received by the [~~state treasurer~~] Utah Technology Finance Corporation.

(b) Any withdrawals under this subsection shall be prospective only, and do not apply to any unpaid loans previously enrolled under this chapter, except that if a previously enrolled loan is refinanced, the amount covered under this part may not be increased beyond the covered amount as previously enrolled.

(c) If a participating lender chooses to withdraw, it [~~has no~~] may claim [~~on any~~] monies left in the [~~fund or in any~~] lender's fund reserve account attributable to the lender's portion of the premium charges plus interest, as determined by the Utah Technology Finance Corporation. Any such withdrawal may not have the effect of exposing the state or the Utah Technology Finance Corporation to any loss or default on any loan made by the withdrawing participating lender.

Section 9. Section Amended.

Section 9-2-1311, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1311. Reports — Audits.

(1) The [~~state treasurer~~] Utah Technology Finance Corporation shall report to the Legislature at least quarterly on the activities of the fund. The report shall include, but not be limited to, information on location of all borrowers and participating lenders, amount and type of financial assistance being requested, and type of project or product being financed.

(2) The [~~state treasurer~~] Utah Technology Finance Corporation shall provide to each participating lender monthly transaction reports indicating the balance in [~~its~~] the lender's fund reserve account, payments and transfers into the account, withdrawals from the account, and interest or income earned on money credited to the account. The records of the [~~state treasurer~~] Utah Technology Finance Corporation with respect to all payments and transfers into the account, withdrawals from the account, and interest or income earned on the money credited to the account shall be available to the participating lender at the office of the [~~state treasurer~~] Utah Technology Finance Corporation during normal business hours.

(3) (a) The state auditor, or a certified public accountant appointed by the state auditor, annually shall conduct and remit to the Legislature a program and financial audit of the fund and, in the conduct of the audit, shall have access to all records of the fund at any time, whether or not confidential.

(b) Each audit required by this section shall include a determination of whether the fund is likely to be able to continue to meet its obligations, including a report on the status of outstanding loans and agreements made by the fund.

Section 10. Section Amended.

Section 9-2-1312, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-1312. State agency support.

All departments and agencies of state government shall provide full cooperation to the [~~state treasurer~~] Utah Technology Finance Corporation in the performance of [~~his~~] its duties, powers, and responsibilities under this part.

Section 11. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 207
H. B. No. 48
Passed March 3, 1993
Approved March 18, 1993
Effective July 1, 1993

PUBLIC EDUCATION CLASS SIZE REDUCTION

By Rob W. Bishop
Martin R. Stephens
Christine R. Fox
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Ronald J. Greensides
Neal B. Hendrickson
Patricia B. Larson
Nancy S. Lyon
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Jordan Tanner
Phil H. Uipi
Michael G. Waddoups
Gerry A. Adair

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING A $11,053,098 APPROPRIATION FOR CLASS SIZE REDUCTION IN THE PUBLIC SCHOOLS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-17A-124.5, AS ENACTED BY CHAPTER 53, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 53A-17a-124.5, Utah Code Annotated 1953, as enacted by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-124.5. Appropriation for class size reduction.

(1) (a) There is appropriated to the State Board of Education an amount of [~~$4,389,540 (2,946~~] $11,053,098 (7,182 weighted pupil units) to reduce the average class size in [~~the first~~] kindergarten through the third grade in the state's public schools.

(b) Included in the appropriation is:

(i) $3,124,170 (2,030 weighted pupil units) for class size reduction in kindergarten;

(ii) $4,533,894 (2,946 weighted pupil units) for class size reduction in the first grade; and

(iii) $3,395,034 (2,206 weighted pupil units) for class size reduction in the second grade.

(2) Each district shall receive its allocation based upon the following:

(a) for kindergarten, the October 1 count of students in kindergarten in the district as compared to the total October 1 count for kindergarten students in the state;

(b) for first grade, its projected number of students in the first grade as compared to the state total projected number of students in the first grade determined primarily from average daily membership in kindergarten during the prior school year; and

(c) for second grade, its projected number of students in the second grade as compared to the state total projected number of students in the second grade determined primarily from average daily membership in the first grade during the prior school year.

(3) (a) In districts where the average class size in [~~the first grade~~] kindergarten is 20 students or less, the district [~~shall~~] may use its kindergarten allocation to further reduce class size in [~~the first grade~~] kindergarten or to reduce class size in [~~other~~] the first through third grades [~~with first priority being given to kindergarten and grades two and three~~] unless an exception is granted by the State Board of Education.

(b) In districts where the average class size in the first or second grade is 20 students or less, the district may use its first or second grade allocation or both to further reduce class size in those grades or to reduce class size in kindergarten or the third grade or both or use its allocation in conjunction with centennial schools funding to reduce class size significantly below the one to 20 ratio.

(4) This appropriation is to supplement any other appropriation made for class size reduction in Title 53A, Chapter 17a, Minimum School Program Act.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 208
H. B. No. 65
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

INFORMATION TECHNOLOGY TASK FORCE

By Christine R. Fox

AN ACT RELATING TO THE LEGISLATURE; ESTABLISHING AN INFORMATION TECHNOLOGY TASK FORCE; DEFINING ITS MEMBERSHIP AND DUTIES; APPROPRIATING $20,500 FROM THE GENERAL FUND; AND PROVIDING A REPEAL DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Information Technology Task Force — Membership — Powers.

(1) There is created a legislative Information Technology Task Force.

(2) The task force shall be composed of five legislators appointed as follows:

(a) three members from the House of Representatives appointed by the speaker of the House, two of whom shall be from the majority party and one from the minority party; and

(b) two members from the Senate appointed by the president of the Senate, one from the majority party and one from the minority party.

(3) The governor shall, after consultation with the president of the Senate and the speaker of the House, appoint four voting members to the task force. These members shall serve without compensation or expenses.

(4) The task force may have up to eight nonlegislators as additional nonvoting members. The legislative members of the task force shall, in their discretion and with the approval of the president of the Senate and the speaker of the House, appoint these additional members to serve without compensation or expenses. The nonlegislators appointed to the task force shall represent, in the judgment of the legislative members, the principal interests of:

(a) providers and developers of information technology products and services;

(b) local government; and

(c) the general public.

(5) Five voting members of the task force constitute a quorum.

(6) In conducting all its business, the task force shall comply with the rules of legislative interim committees.

(7) The Office of Legislative Research and General Counsel shall provide staff services to the task force.

(8) The task force shall:

(a) study Utah's present and future information technology needs;

(b) consider the recommendation made by the governor regarding information technology;

(c) consider the scope of the Public Service Commission's authority to regulate information technology;

(d) consider issues of economic development with regard to information technology;

(e) review, analyze, and study any issue concerning or related to information technology that is of interest to the task force; and

(f) if needed, prepare legislation concerning information technology for submission to the 1994 Legislature.

(9) The task force shall report to the State and Local Interim Committee before December 31, 1993.

Section 2. Appropriation.

There is appropriated from the General Fund for fiscal year 1992–93:

(1) $3,500 to the Senate to pay for the compensation and expenses of Senators on the task force;

(2) $5,000 to the House of Representatives to pay for the compensation and expenses of Representatives on the task force; and

(3) $10,000 to the Office of Legislative Research and General Counsel to pay costs of the task force staff.

Section 3. Repeal Date.

The task force expires and this chapter is repealed on January 1, 1994.

CHAPTER 209
H. B. No. 69
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

UTAH STATE DEVELOPMENTAL CENTER AMENDMENTS

By J. Brent Haymond

AN ACT RELATING TO HUMAN SERVICES; REMOVING THE DIRECTIVE TO REDUCE THE NUMBER OF RESIDENTS AT THE DEVELOPMENTAL CENTER.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-5-201, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 62A-5-201, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1991, is amended to read:

62A-5-201. Utah State Developmental Center.

(1) The facility for persons with mental retardation located in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."

(2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:

(a) provide care, services, and treatment to persons described in Subsection (3); and

(b) provide the following services and supports to persons with disabilities who do not reside at the developmental center:

(i) psychiatric testing;

(ii) specialized medical and dental treatment and evaluation;

(iii) family and client special intervention;

(iv) crisis management;

(v) occupational, physical, speech, and audiology services; and

(vi) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.

(3) Within appropriations authorized by the Legislature, notwithstanding the provisions of Part 3 of this chapter, after June 30, 1996, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:

(a) persons with mental retardation;

(b) persons who receive services and supports under Subsection (2)(b); and

(c) persons who require at least one of the following services from the developmental center:

(i) continuous medical care;

(ii) intervention for conduct that is dangerous to self or others; or

(iii) temporary residential assessment and evaluation.

[~~(4) Within appropriations authorized by the Legislature, notwithstanding the provisions of Part 3 of this chapter, it is the intent of the Legislature that the division adopt a goal that after June 30, 1996, no more than 285 persons be residents of, admitted to, or receive care, services, or treatment at the developmental center. That number does not include persons who receive services and supports under Subsection (2)(b).~~]

(4) The division shall, in its discretion, place residents from the developmental center into appropriate less restrictive placements and shall determine each year the number to be placed based upon the individual assessed needs of the residents. The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.

(5) Within appropriations authorized by the Legislature, notwithstanding the provisions of Subsection (3) and Part 3 of this chapter, after June 30, 1996, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person. This restriction does not apply to persons who receive services and supports under Subsection (2)(b).

CHAPTER 210
H. B. No. 72
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

RETITLING VEHICLES

By Neal B. Hendrickson

AN ACT RELATING TO MOTOR VEHICLES; AUTHORIZING THE RESCINDING OF DISMANTLING PERMITS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CRITERIA FOR RETITLING A VEHICLE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-1010, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-1011, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-1a-1010, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-1010. Permit required to dismantle vehicle — Duties upon receiving the permit — Exceptions.

(1)(a) A person may not scrap, dismantle, destroy, or otherwise change any vehicle so that it loses its character [~~any vehicle~~], until the person [~~forwards~~] submits to the division:

(i) the certificate of title for the vehicle for cancellation [~~with~~]; and

(ii) an application for a permit to dismantle the vehicle.

(b) Upon approval of the application, the division shall issue a permit to dismantle the vehicle.

(2) [~~If~~] Except as provided in Subsection (3), if a [~~dismantling~~] permit to dismantle is issued under this section, the vehicle shall be destroyed and may not be rebuilt or reconstructed and may not be retitled or registered.

(3) A vehicle for which a permit to dismantle has been issued by the division may be retitled and the permit to dismantle rescinded if:

(a) prior to receiving a dismantling permit the vehicle had a Utah certificate of title;

(b) the vehicle has not been dismantled;

(c) an investigator for the Motor Vehicle Enforcement Division of the commission determines after a physical inspection of the vehicle that it is the same vehicle for which the permit to dismantle was issued; and

(d) the applicant pays the fee under Subsection (4).

(4) The commission may collect a fee established in accordance with Section 63-38-3 to cover the expenses of an inspection under Subsection (3).

Section 2. Section Amended.

Section 41-1a-1011, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-1a-1011. Use of dismantling permit.

The [~~dismantling~~] permit to dismantle issued under [~~the provisions of~~] Section 41-1a-1010:

(1) requires the owner to dismantle the vehicle described in the permit unless the vehicle is retitled as provided in Subsection 41-1a-1010(3); and

(2) entitles [~~him~~] the owner of the vehicle to transport the vehicle to the place of business of a dismantler, crusher, or salvage dealer licensed under the provisions of Title 41, Chapter 3, Part 2, Licensing.

CHAPTER 211
H. B. No. 74
Passed February 15, 1993
Approved March 18, 1993
Effective July 1, 1993

PODIATRIST LICENSING ACT

By Afton B. Bradshaw

AN ACT RELATING TO HEALTH; ENACTING A CHAPTER GOVERNING THE PRACTICE OF PODIATRY; REPEALING CURRENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-258, AS LAST AMENDED BY CHAPTERS 7 AND 240, LAWS OF UTAH 1992

ENACTS:
58-5A-101, UTAH CODE ANNOTATED 1953
58-5A-102, UTAH CODE ANNOTATED 1953
58-5A-201, UTAH CODE ANNOTATED 1953
58-5A-301, UTAH CODE ANNOTATED 1953
58-5A-302, UTAH CODE ANNOTATED 1953
58-5A-303, UTAH CODE ANNOTATED 1953
58-5A-304, UTAH CODE ANNOTATED 1953
58-5A-305, UTAH CODE ANNOTATED 1953
58-5A-306, UTAH CODE ANNOTATED 1953
58-5A-401, UTAH CODE ANNOTATED 1953
58-5A-501, UTAH CODE ANNOTATED 1953

REPEALS:
58-5-1, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986
58-5-2, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-5-3, AS LAST AMENDED BY CHAPTERS 4 AND 187, LAWS OF UTAH 1985
58-5-4, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-5, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-5-6, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-7, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-8, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-5-10, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-11, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-12, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-13, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-14, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-15, AS LAST AMENDED BY CHAPTERS 4 AND 187, LAWS OF UTAH 1985

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

Section 1. Section Enacted.

Section 58-5a-101, Utah Code Annotated 1953, is enacted to read:

58-5a-101. Short title.

This chapter is known as the "Podiatrist Licensing Act."

Section 2. Section Enacted.

Section 58-5a-102, Utah Code Annotated 1953, is enacted to read:

58-5a-102. Definitions.

In addition to the definitions under Section 58-1-2, as used in this chapter:

(1) "Board" means the Podiatry Board created in Section 58-5a-201.

(2) "Practice of podiatry" means the diagnosis and treatment of conditions affecting the human foot and ankle and their manifestations of systemic conditions by all appropriate and lawful means, subject to the following provisions:

(a) surgical procedures may be performed upon all bones of the foot and ankle, with the exception of the following procedures:

(i) ankle fusion;

(ii) massive ankle reconstruction; and

(iii) reduction of trimalleolar fractures of the ankle;

(b) surgical treatment of any condition of the ankle and governing and related structures of the foot and ankle above the ankle shall be:

(i) performed in an ambulatory surgical facility, general acute hospital, or a specialty hospital, as defined in Section 26-21-2; and

(ii) subject to review by a quality care review body which includes qualified licensed physicians and surgeons.

(3) (a) "Unlawful conduct" as defined in Section 58-1-10 includes the following conduct by a person not licensed under this chapter:

(i) using the title or name podiatrist, foot doctor, foot specialist, or D. P. M.; or

(ii) implying or representing he is qualified to practice podiatry.

(b) "Unlawful conduct" as defined in Section 58-1-10 includes the following conduct by a person licensed under this chapter.

(i) administering general anesthesia; or

(ii) amputating the foot.

(4) "Unprofessional conduct" as defined in Section 58-1-2 and as may be further defined by rule, includes:

(a) communicating to a third party, without the consent of the patient, information acquired in treating the patient that is necessary to enable the podiatrist to treat the patient except as necessary for professional consultation regarding treatment of a patient;

(b) allowing one's name or license as a podiatrist to be used by another person who is not licensed to practice podiatry in this state;

(c) employing, directly or indirectly, any unlicensed person to practice podiatry;

(d) use of alcohol or drugs to the extent a licensee's ability to safely engage in the practice of podiatry is impaired;

(e) unlawfully prescribing, selling, or giving away any prescription drug, including controlled substances, as defined in Section 58-37-2;

(f) gross incompetency in the practice of podiatry;

(g) willfully and intentionally making a false statement or entry in hospital records, medical records, or reports;

(h) willfully making a false statement in reports or claim forms to governmental agencies or insurance companies with the intent to secure payment not rightfully due; or

(i) willfully using false or fraudulent advertising.

Section 3. Section Enacted.

Section 58-5a-201, Utah Code Annotated 1953, is enacted to read:

58-5a-201. Podiatry Board.

(1) There is created the Podiatry Board consisting of four podiatrists and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-7.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-8, 58-1-8.5, and 58-1-9.

Section 4. Section Enacted.

Section 58-5a-301, Utah Code Annotated 1953, is enacted to read:

58-5a-301. License required — License classifications.

(1) The division shall issue to persons qualified under this chapter a license in the classification of podiatrist.

(2) A person may not practice podiatry unless licensed or exempted from licensure under this chapter.

Section 5. Section Enacted.

Section 58-5a-302, Utah Code Annotated 1953, is enacted to read:

58-5a-302. Qualifications to practice podiatry.

An applicant for licensure to practice podiatry shall:

(1) submit an application in a form as prescribed by the division;

(2) pay a fee as determined by the department under Subsection 63-38-3(2);

(3) be of good moral character;

(4) be a graduate of a college of podiatric medicine accredited by the Council of Podiatric Education;

(5) have completed one year of postgraduate training in a residency program recognized by the board; and

(6) pass examinations required by rule.

Section 6. Section Enacted.

Section 58-5a-303, Utah Code Annotated 1953, is enacted to read:

58-5a-303. Terms of license — Expiration — Renewal.

(1) The division shall issue all licenses under this chapter in accordance with the two-year renewal cycle established by rule. A renewal period for a license may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of renewal requirements established by rule, including completion of continuing education as required under this chapter.

(3) A license issued under this chapter expires on the expiration date shown on the license unless renewed prior to that date by the licensee in accordance with Section 58-1-14.

Section 7. Section Enacted.

Section 58-5a-304, Utah Code Annotated 1953, is enacted to read:

58-5a-304. Continuing education.

(1) The division may require each person holding a license under this chapter to complete in each two-year period not more than 40 hours of qualified continuing professional education in accordance with standards defined by rule as a requirement prior to license renewal under this chapter.

(2) In establishing continuing education requirements under this section the division shall in collaboration with the board recognize the existing educational methods, procedures, devices, and programs in use among the various podiatry specialty organizations.

(3) The division shall give licensees credit toward continuing education requirements for participation in and completion of continuing education programs of:

(a) the American Medical Association;

(b) the Utah Podiatry Association;

(c) all colleges of podiatric medicine accredited by the Council on Education of the American Podiatry Association; and

(d) similar programs of other organizations that are approved by the division in collaboration with the board.

(4) If a renewal period is shortened or extended to effect a change of the renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly, as a pro rata amount of the requirements of a two-year period.

Section 8. Section Enacted.

Section 58-5a-305, Utah Code Annotated 1953, is enacted to read:

58-5a-305. License by endorsement.

The division may issue a license by endorsement to a person who holds a license to practice podiatry from another state, jurisdiction, or territory of the United States, if that person:

(1) meets the requirements of Section 58-1-12; and

(2) demonstrates to the board that he has been a licensed podiatrist in the jurisdiction issuing his license for at least two years immediately prior to applying for a license under this section.

Section 9. Section Enacted.

Section 58-5a-306, Utah Code Annotated 1953, is enacted to read:

58-5a-306. Exemptions from licensure.

The following persons may practice podiatry, subject to stated circumstances and limitations, without being licensed under this chapter:

(1) a podiatrist serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of their employment with that federal agency if the individual holds a valid license to practice podiatry issued by any other state or jurisdiction recognized by the division;

(2) a student engaged in activities that constitute the practice of podiatry while in training in a recognized school approved by the division to the extent the activities are under the supervision of qualified faculty or staff and the activities are a defined part of the training program;

(3) a person engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(4) a person residing in another state and licensed to practice podiatry there, who is called in for a consultation by a person licensed in this state and services provided are limited to that consultation or who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of podiatry so long as that individual does not establish a place of business or regularly engage in the practice of podiatry in the state;

(5) a person licensed under the laws of this state to practice or engage in any other occupation or profession while engaged in the lawful, professional, and competent practice of that occupation or profession; and

(6) persons who fit or sell corrective shoes, arch supports, or similar devices, to the extent their acts and practices involve only the fitting and selling of these items.

Section 10. Section Enacted.

Section 58-5a-401, Utah Code Annotated 1953, is enacted to read:

58-5a-401. Grounds for denial of license — Disciplinary proceedings.

(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, or place on probation the license of a licensee who:

(a) does not meet the qualifications for licensure or renewal of licensure under this chapter; or

(b) is guilty of a crime which, when considered with the functions and duties of a licensee under this chapter, demonstrates a threat or potential threat to the public health, safety, or welfare.

(2) The division may refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, or place on probation the license of a licensee who:

(a) is guilty of unlawful conduct related to practice under this chapter or unprofessional conduct as defined in this chapter, Section 58-1-2, or rules made under either;

(b) has obtained or attempted to obtain a license under this title by fraud or willful misrepresentation; or

(c) has had a license or certification to practice in any profession or occupation subjected to disciplinary action which demonstrates a threat or potential threat to the public health, safety, or welfare, when considered with the activities regulated under this chapter.

Section 11. Section Enacted.

Section 58-5a-501, Utah Code Annotated 1953, is enacted to read:

58-5a-501. Unlawful conduct — Penalties.

Any person who engages in unlawful conduct as defined in this chapter is guilty of a third degree felony, except that a violation of Subsection 58-5a-102(3)(a) is a class A misdemeanor.

Section 12. Section Amended.

Section 63-55-258, Utah Code Annotated 1953, as last amended by Chapters 7 and 240, Laws of Utah 1992, is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, is repealed July 1, 1996.

(2) Title 58, Chapter 3, Architects Licensing Act, is repealed July 1, 1996.

(3) Title 58, Chapter [5] 5a, Podiatrists Licensing Act, is repealed July 1, 1995.

(4) Title 58, Chapter 7, Dentists and Dental Hygienists Act, is repealed July 1, 1995.

(5) Title 58, Chapter 9, Funeral Service License Act, is repealed July 1, 1998.

(6) Title 58, Chapter 11, Utah Cosmetologist/Barber Licensing Act, is repealed July 1, 1996.

(7) (a) Title 58, Chapter 12, Part 1, Utah Osteopathic Medicine Licensing Act, is repealed July 1, 1995.

(b) Title 58, Chapter 12, Part 2, Fraudulent or Unauthorized Practice, is repealed July 1, 1995.

(c) Title 58, Chapter 12, Part 3, Naturopaths, is repealed July 1, 1995.

(d) Title 58, Chapter 12, Part 4, Immunity from Liability, is repealed July 1, 1995.

(e) Title 58, Chapter 12, Part 5, Utah Medical Practice Act, is repealed July 1, 1995.

(f) Title 58, Chapter 12, Part 7, Utah Chiropractic Improvements Act, is repealed July 1, 1995.

(g) Title 58, Chapter 12, Part 8, Acupuncture Licensing Act, is repealed July 1, 2002.

(8) Title 58, Chapter 15, Health Facility Administrators Act, is repealed July 1, 1995.

(9) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 1999.

(10) Title 58, Chapter 17, Pharmacy Practice Act, is repealed July 1, 1996.

(11) Title 58, Chapter 20, Registered Sanitarian Act, is repealed July 1, 1996.

(12) Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, is repealed July 1, 1996.

(13) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 1995.

(14) Title 58, Chapter 25a, Psychologists' Licensing Act, is repealed July 1, 1999.

(15) Title 58, Chapter 26, Certified Public Accountant Licensing Act, is repealed July 1, 2002.

(16) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 1995.

(17) Title 58, Chapter 31, Nurse Practice Act, is repealed July 1, 1995.

(18) Title 58, Chapter 31a, Nurse Practitioner Prescriptive Practice Act, is repealed July 1, 1995.

(19) Title 58, Chapter 35, Social Work, is repealed July 1, 1997.

(20) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 1997.

(21) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 1997.

(22) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 1997.

(23) Title 58, Chapter 39, Marriage and Family Therapist Licensing Act, is repealed July 1, 1997.

(24) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 1995.

(25) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 1999.

(26) Title 58, Chapter 42, Occupational Therapy Practice Act, is repealed July 1, 1995.

(27) Title 58, Chapter 44, Utah Certified Nurse Midwifery Practice Act, is repealed July 1, 1996.

(28) Title 58, Chapter 46, Hearing Aid Specialists' and Consumers' Act, is repealed July 1, 1995.

(29) Title 58, Chapter 47a, Massage Practice Act, is repealed July 1, 1997.

(30) Title 58, Chapter 48, Athletic Commission, is repealed July 1, 1995.

(31) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 1996.

(32) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 1998.

Section 13. Repealer.

Section 58-5-1, Definitions, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986;

Section 58-5-2, License qualifications, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989;

Section 58-5-3, Examinations, Utah Code Annotated 1953, as last amended by Chapters 4 and 187, Laws of Utah 1985;

Section 58-5-4, Grading and passing mark, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1985;

Section 58-5-5, Re-examination, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989;

Section 58-5-6, Unlawful to practice without license, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-7, License expiration, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-8, License reciprocity, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989;

Section 58-5-10, "Unprofessional conduct" defined, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-11, Reapplication following revocation, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-12, Prohibited procedures, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-13, Use of official designation prima facie evidence — Misdemeanor, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-14, Exemption from chapter, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985; and

Section 58-5-15, Continuing education requirements — Establishment — Credit for approved programs — Exemptions, Utah Code Annotated 1953, as last amended by Chapters 4 and 187, Laws of Utah 1985, are repealed.

Section 14. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 212
H. B. No. 88
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

RECODIFICATION OF DEPARTMENT OF ADMINISTRATIVE SERVICES

By Afton B. Bradshaw

AN ACT RELATING TO STATE AFFAIRS; RECODIFYING CHAPTER 1 AND 1A OF TITLE 63; CREATING TITLE 63A, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
4-2-8, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986
4-14-10, AS LAST AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
4-18-4, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1992
4-30-2, AS LAST AMENDED BY CHAPTER 71, LAWS OF UTAH 1985
4-35-3, AS ENACTED BY CHAPTER 133, LAWS OF UTAH 1985
7-1-203, AS LAST AMENDED BY CHAPTER 67, LAWS OF UTAH 1984
9-2-504, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-1003, AS ENACTED BY CHAPTER 148, LAWS OF UTAH 1991
17A-2-1704, AS LAST AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
19-2-103, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
19-3-103, AS ENACTED BY CHAPTER 112, LAWS OF UTAH 1991
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Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 4-2-8, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

4-2-8. Temporary advisory committees — Appointment — Compensation.

The commissioner may request the governor to appoint other advisory committees on a temporary basis to offer technical advice to the department. Members of any such committee shall serve at the pleasure of the commissioner and be compensated [as] at the rates established by the director of the Division of Finance [in Section 63-1-14.5] under Sections 63A-3-106 and [63-1-15] 63A-3-107.

Section 2. Section Amended.

Section 4-14-10, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

4-14-10. Pesticide Committee created — Composition — Terms — Compensation — Duties.

(1) There is created a Pesticide Committee comprising nine persons appointed by the governor with the advice and consent of the Senate to four-year terms of office, one member from each of the following state agencies and organizations:

(a) [the] Utah State Agricultural Extension Service;

(b) [the] Department of Agriculture;

(c) [the] Department of Health;

(d) [the] Division of Wildlife Resources;

(e) [the] Department of Environmental Quality;

(f) [the] Utah Pest Control Association;

(g) [the] agricultural chemical industry;

(h) [the] Utah Farmers Union; and

(i) [the] Utah Farm Bureau Federation.

(2) The committee shall elect one of its members to serve as chairman. The chairman is responsible for the call and conduct of meetings of the Pesticide Committee.

(3) Attendance of a simple majority of the members constitutes a quorum for the transaction of official business. Members, exclusive of those who are employees of the state, are entitled to per diem and expenses at the [same rate provided in] rates established by the director of the Division of Finance under Sections [63-1-14.5] 63A-3-106 and [63-1-15] 63A-3-107.

(4) The Pesticide Committee shall make recommendations to the commissioner regarding making rules pertaining to the sale, distribution, use, and disposal of pesticides.

Section 3. Section Amended.

Section 4-18-4, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1992, is amended to read:

4-18-4. Soil Conservation Commission created — Appointment — Composition — Terms — Compensation — Attorney general to provide legal assistance.

(1) There is established, to serve as an agency of the state and to perform the functions conferred upon it by this chapter, the Soil Conservation Commission comprising 12 members as follows:

(a) the director of the Extension Service at Utah State University, or his designee;

(b) the president of the Association of Soil Conservation Districts, or his designee;

(c) the commissioner, or his designee;

(d) the executive director of the Department of Natural Resources, or his designee;

(e) the executive director of the Department of Environmental Quality, or his designee; and

(f) seven district supervisors recommended by the commission to provide district representation on the commission on a multi-county basis, appointed by the governor with the advice and consent of the Senate.

(2) Members of the commission shall serve three-year terms of office.

(3) The commissioner is chairman of the commission.

(4) Attendance of a simple majority of the commission at a duly called meeting constitutes a quorum for the transaction of official business.

(5) Vacancies which occur on the commission among appointed members shall be filled by appointment of the governor for the unexpired term of the vacated member.

(6) An appointed member or his alternate is entitled to per diem and expenses incurred in the performance of the member's official duties at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

(7) The commission shall keep a record of its official actions.

(8) The attorney general shall provide legal services to the commission upon request.

Section 4. Section Amended.

Section 4-30-2, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1985, is amended to read:

4-30-2. Livestock Market Committee created — Composition — Terms — Removal — Compensation — Duties.

(1) There is created a Livestock Market Committee which consists of seven members appointed to a four-year term of office by the governor[:]:

[~~(1)~~] (a) the commissioner who serves as chairman;

[~~(2)~~] (b) one member recommended by the livestock market operators in the state;

[~~(3)~~] (c) one member recommended by the Utah Cattlemen's Association;

[~~(4)~~] (d) one member recommended by the Utah Dairymen's Association;

[~~(5)~~] (e) one member recommended by the Utah Woolgrowers' Association;

[~~(6)~~] (f) one member recommended by the horse industry; and

[~~(7)~~] (g) one member recommended by the Utah Farm Bureau Federation.

(2) No more than four members, exclusive of the commissioner, shall be members of the same political party.

(3) The governor may remove a member of the committee at the request of the association or group which recommended the member's appointment. The chairman is responsible for the call and conduct of meetings. Four members constitute a quorum for the transaction of official business. A member, other than the commissioner, is entitled to per diem and expenses [~~in accordance with Section 63-2-15~~] at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(4) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Section 5. Section Amended.

Section 4-35-3, Utah Code Annotated 1953, as enacted by Chapter 133, Laws of Utah 1985, is amended to read:

4-35-3. Decision and Action Committee created — Members — How appointed — Duties of committee — Per diem and expenses allowed.

(1) There is created the Decision and Action Committee which consists of not fewer than six members. One member is the commissioner and one member is appointed to represent the department. The remaining members of the committee are appointed by the commissioner on an ad hoc basis as necessary from persons directly affected by and involved in the current insect infestation emergency.

(2) The committee shall:

(a) establish a system of priorities for any insect infestation emergency; and

(b) certify to the commissioner any area which requires the establishment of an insect control district in areas of infestation and in which a simple major-

ity of the landowners and lessees whose total production exceeds 50% of the production in that area has agreed to pay proportionate shares of the costs of controlling the insects infesting the area.

(3) Committee members, other than the commissioner and the member from the department, are entitled to per diem and expenses incurred in the performance of their duties [in accordance with Section 63-2-15 as established by the director of the Division of Finance in] at the rates established by the director of the Division of Finance under Sections [63-1-14.5] 63A-3-106 and [63-1-15] 63A-3-107.

Section 6. Section Amended.

Section 7-1-203, Utah Code Annotated 1953, as last amended by Chapter 67, Laws of Utah 1984, is amended to read:

7-1-203. Creation of board — Composition — Chairman — Appointment — Terms — Vacancies — Meetings — Disclosure statements — Per diem and travel expenses — Budget.

(1) There is created a State Board of Financial Institutions [to be composed] which consists of the commissioner and the following five members to be appointed by the governor with the advice and consent of the Senate[: The commissioner shall act as chairman. All members of the board shall be residents of this state. One]:

(a) one shall be qualified by training and experience in the commercial banking business;

(b) one in the savings and loan business;

(c) one in the business of thrift institutions;

(d) one in the credit union business; and

(e) one shall be a representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state. [No more]

(2) The commissioner shall act as chairman.

(3) (a) All members of the board shall be residents of this state.

(b) More than three members of the board may not be from the same political party. [No two]

(c) Two or more members of the board may not be connected with the same financial institution or its holding company. [No]

(d) A member may not participate in any matter involving any institution with which he is directly connected or with which he or the institution has a conflict of interest.

[(2)] (4) The terms of office of two of the members first appointed to the board expire on July 1, 1983, and the terms of office of the other three members expire on July 1, 1985. Their successors are appointed for terms of four years each. Any vacancy in the membership of the board occurring other than by expiration of the term is filled in the same manner as the original appointment, but for the unexpired term only. All members serve until their respective successors are appointed and qualified.

[(3)] (5) The board shall meet at least quarterly on a regular date to be fixed by the board and at other times at the call of the commissioner or any two members of the board. Four members constitute a quorum for the transaction of business and actions of the board require a vote of a majority of those present. [The board shall act in an advisory capacity to the commissioner with respect to the exercise of his duties, powers, and responsibilities under this title and the organization and performance of the department and its employees.] Meetings of the board and records of its proceedings are subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of confidential information pertaining to a particular financial institution.

[(4)] (6) Each member of the board shall, by sworn or written statement filed with the state auditor, disclose any position of employment or ownership interest that he has with respect to any institution subject to the jurisdiction of the department. This statement shall first be filed upon his first becoming a member of the board and again upon any changes in those matters covered by the statement.

[(5)] (7) The members of the board may receive no salary but shall be paid a per diem allowance as established by the director of the Division of Finance for each day actually spent in the performance of their duties plus travel expenses [as allowed] established by the director of the Division of Finance under Section [63-1-15] 63A-3-107 and the rules promulgated under that section.

(8) The board shall advise the commissioner with respect to the exercise of his duties, powers, and responsibilities under this title and the organization and performance of the department and its employees.

[(6)] (9) The board shall recommend annually to the governor and the Legislature a budget for the requirements of the department in carrying out its duties, functions, and responsibilities under this title.

Section 7. Section Amended.

Section 9-2-504, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-504. Members — Appointment — Terms — Qualifications — Vacancies — Chairman and vice-chairman — Executive secretary — Executive committee — Quorum — Expenses.

(1) The council comprises the following nonvoting members or their designees:

(a) the adviser;

(b) the executive director of the Department of Natural Resources;

(c) the executive director of the Department of Community and Economic Development;

(d) the executive director of the Department of Health;

(e) the executive director of the Department of Environmental Quality;

(f) the commissioner of agriculture;

(g) the commissioner of higher education;

(h) the state planning coordinator; and

(i) the executive director of the Department of Transportation.

(2) The governor may appoint other voting members, not to exceed 12.

(3) All appointments shall be for terms of three years.

(4) The governor shall consider all institutions of higher education in the state in the appointment of council members.

(5) The voting members of the council shall be experienced or knowledgeable in the application of science and technology to business, industry, or public problems and have demonstrated their interest in and ability to contribute to the accomplishment of the purposes of this part.

(6) Vacancies on the council shall be filled for the unexpired term.

(7) (a) Each year the council shall select from its membership a chairman and a vice-chairman.

(b) The [~~chairman~~] chair and [~~vice-chairman~~] vice-chair shall hold [~~their offices respectively~~] office for [~~the term of~~] one year[;] or until a successor is [~~duly selected~~] appointed and qualified.

(8) The adviser shall serve as executive secretary of the council.

(9) An executive committee shall be established consisting of the chairman, vice-chairman, and the adviser.

(10) In order to conduct business matters of the council at regularly convened meetings, a quorum consisting of a simple majority of the total voting membership of the council is required. All matters of business affecting public policy require not less than a simple majority of affirmative votes of the total membership.

(11) The members of the council, except for the adviser, shall serve without compensation but may be reimbursed for their travel expenses at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

Section 8. Section Amended.

Section 9-2-1003, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1991, is amended to read:

9-2-1003. Creation of authority and board — Members — Terms — Quorum — Per diem and expenses.

(1) There is created an independent state agency and a body corporate and politic known as the "Utah Intermountain Port Authority."

(2) (a) The policy of the authority shall be determined by an authority board consisting of 19 members as follows:

(i) a representative of the trucking industry;

(ii) a representative of the railroad industry;

(iii) a representative of the air freight carriers industry;

(iv) a representative of the freight forwarding industry;

(v) a representative of the agriculture industry;

(vi) a representative of the manufacturing industry;

(vii) a representative of the Freeport Center;

(viii) a representative of the World Trade Association;

(ix) a representative of Salt Lake County;

(x) a representative of the Utah Association of Counties;

(xi) a representative of the Utah League of Cities and Towns;

(xii) a representative of the district export council;

(xiii) the executive director of the Department of Community and Economic Development;

(xiv) the executive director of the Department of Agriculture;

(xv) the executive director of the Department of Transportation;

(xvi) three representatives of employee organizations from affected industries; and

(xvii) the director of the Salt Lake Airport Authority.

(b) Except for the executive directors of the Departments of Community and Economic Development, Transportation, and Agriculture, and the director of the Salt Lake Airport Authority, all members shall be appointed by the governor with the advice and consent of the Senate.

(3) [~~No more~~] More than ten members may not belong to the same political party.

(4) Each member shall be a resident of the state and shall be a qualified voter in the state.

(5) Each member shall serve for a term of four years and until their respective successors are appointed and qualified, except that those members first appointed by the governor shall continue in office for terms expiring, in the case of four members on July 1, 1993, in the case of four other members on July 1, 1994, and in the case of four members on July 1, 1995. The term of each member of the authority board first appointed in this manner shall be designated by the governor.

(6) Vacancies shall be filled in the same manner as the original appointment and the person appointed to fill the vacancy shall be appointed to serve only for the unexpired term.

(7) Any member is eligible for reappointment but may not serve more than two full consecutive terms.

(8) The authority board shall elect one of its members as chairman and may employ an executive director who is not a member of the authority board.

(9) Eleven members of the authority board constitute a quorum and the affirmative vote of at least ten members is necessary for any official action to be taken by the authority board.

(10) Except members who are state employees, each member of the authority board may receive travel expenses at the [same rate] rates established by the director of the Division of Finance under Sections [63-1-14.5] 63A-3-106 and [63-1-15] 63A-3-107.

Section 9. Section Amended.

Section 17A-2-1704, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

17A-2-1704. Creation of authority — Members.

(1) (a) The authority comprises ten members. If the requirements of Section 17A-2-1703 are met, the governor shall, with the advice and consent of the Senate, appoint six members of the authority from the public-at-large.

(b) The remaining four members of the authority are:

(i) the executive director of the Department of Environmental Quality;

(ii) the executive director of the Department of Community and Economic Development;

(iii) the executive director of the Department of Natural Resources; and

(iv) the executive director of the Department of Transportation.

(2) Public-at-large members, no more than three of whom shall be from the same political party, shall be appointed to six-year terms of office, subject to removal by the governor with or without cause.

(3) The governor shall name one public-at-large member as chairman of the authority responsible for the call and conduct of authority meetings.

(4) The authority may elect other officers as necessary.

(5) Five members of the authority present at a properly noticed meeting constitute a quorum for the transaction of official authority business.

(6) Public-at-large members are entitled to per diem and expenses, for each day devoted to authority business at the [same rate provided in] rates established by the director of the Division of Finance under Sections [63-1-14.5] 63A-3-106 and [63-1-15] 63A-3-107.

Section 10. Section Amended.

Section 19-2-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-2-103. Members of board — Appointment — Terms — Organization.

(1) The board comprises 11 members, one of whom shall be the executive director and ten of whom shall be appointed by the governor with the advice and consent of the Senate.

(2) The members shall be knowledgeable of air pollution matters and shall be:

(a) a practicing physician and surgeon licensed in the state not connected with industry;

(b) a registered professional engineer who is not from industry;

(c) a representative from municipal government;

(d) a representative from county government;

(e) a representative from agriculture;

(f) a representative from the mining industry;

(g) a representative from manufacturing;

(h) a representative from the fuel industry; and

(i) two representatives of the public not representing or connected with industry, at least one of whom represents organized environmental interests.

(3) No more than five of the appointed members shall belong to the same political party.

(4) The majority of the members may not derive any significant portion of their income from persons subject to permits or orders under this chapter. Any potential conflict of interest of any member or the executive secretary, relevant to the interests of the board, shall be adequately disclosed.

(5) Members serving on the Air Conservation Committee created by Chapter 126, Laws of Utah 1981, as amended, shall serve as members of the board throughout the terms for which they were appointed.

(6) Members shall be appointed for a term of four years.

(7) Members may serve more than one term.

(8) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(9) The board shall elect annually a chairman and a vice-chairman from its members.

(10) (a) The board shall meet at least quarterly, and special meetings may be called by the chairman upon his own initiative, upon the request of the executive secretary or upon the written request of three members of the board.

(b) Three days' notice shall be given to each member of the board prior to any meeting.

(11) Six members constitute a quorum at any meeting, and the action of a majority of members present is the action of the board.

(12)(a) The appointed members of the board shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties and may receive a per diem allowance at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

(b) [~~No members~~] Members on the public payroll on a full-time basis may not receive further compensation for services on the board.

Section 11. Section Amended.

Section 19-3-103, Utah Code Annotated 1953, as enacted by Chapter 112, Laws of Utah 1991, is amended to read:

19-3-103. Radiation Control Board — Members — Organization — Meetings — Per diem.

(1) The board created under Section 19-1-106 comprises 11 members, one of whom shall be the executive director, or his designee, and the remainder of whom shall be appointed by the governor, with the advice and consent of the Senate.

(2) No more than five appointed members shall be from the same political party.

(3) The appointed members shall be knowledgeable about radiation protection and shall be as follows:

(a) one physician;

(b) one dentist;

(c) one health physicist or other professional employed in the field of radiation safety;

(d) two representatives of regulated industry, at least one of whom represents a nondestructive testing discipline;

(e) one registrant or licensee representative from academia;

(f) one representative of a local health department;

(g) one elected county official; and

(h) two members of the general public, at least one of whom represents organized environmental interests.

(4) Members shall be appointed for a four-year term.

(5) The board shall annually elect a chairman and vice-chairman from its members.

(6) The board shall meet at least quarterly. Other meetings may be called by the chairman, by the executive secretary, or upon the request of three members of the board.

(7) Reasonable notice shall be given each member of the board prior to any meeting.

(8) Six members constitute a quorum. The action of a majority of the members present is the action of the board.

(9)(a) The appointed members of the board shall be paid their actual and necessary expenses incurred in the performance of their duties and a per diem allowance at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

(b) [~~No members~~] Members on the public payroll on a full-time basis may not receive further compensation for services on the board.

Section 12. Section Amended.

Section 19-4-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-4-103. Drinking Water Board — Members — Organization — Meetings — Per diem.

(1) The board created under Section 19-1-106 comprises 11 members, one of whom is the executive director and the remainder of whom shall be appointed by the governor, with the advice and consent of the Senate.

(2) No more than five appointed members shall be from the same political party.

(3) The appointed members shall be knowledgeable about drinking water and public water systems and shall represent different geographical areas within the state insofar as practicable.

(4) The ten appointed members shall be appointed from the following areas:

(a) two elected officials of municipal government or their representatives involved in management or operation of public water systems;

(b) two representatives of improvement districts, water conservancy districts, or metropolitan water districts;

(c) one representative from an industry which manages or operates a public water system;

(d) one registered professional engineer with expertise in civil or sanitary engineering;

(e) one representative from the state water research community or from an institution of higher education which has comparable expertise in water research;

(f) two representatives of the public, one of whom is a member of the Water Quality Board, who do not represent other interests named in this section and who do not receive, and have not received during the past two years, a significant portion of their income, directly or indirectly, from suppliers; and

(g) one representative from a local health department.

(5) Members of the Utah Safe Drinking Water Committee created by Chapter 126, Laws of Utah

1981, shall serve as members of the board throughout the terms for which they were appointed. Thereafter, members appointed to the board, except those appointed to complete the term of a former member, shall be appointed for terms of four years.

(6) The board shall elect annually a chairman and a vice-chairman from its members.

(7) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chairman upon his own initiative, upon the request of the executive secretary, or upon the written request of three members of the board.

(c) Reasonable notice shall be given each member of the board prior to any meeting.

(8) Six affirmative votes shall be necessary for any determination of the board.

(9) (a) The appointed members of the board shall be paid their actual and necessary expenses incurred in the performance of their respective duties and a per diem allowance at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

(b) No member on the public payroll on a full-time basis may receive further compensation for his services on the board.

Section 13. Section Amended.

Section 19-5-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-5-103. Water Quality Board — Members of board — Appointment — Terms — Organization — Meetings — Per diem.

(1) Committee members currently serving on the Water Pollution Control Committee created under Chapter 126, Laws of Utah 1981, shall serve on the board throughout the terms for which they were appointed.

(2) The board comprises the executive director and ten members appointed by the governor, with the advice and consent of the Senate.

(3) No more than five of the appointed members may be from the same political party.

(4) The appointed members, insofar as practicable, shall include the following:

(a) one member representing the mineral industries;

(b) one member representing the food processing industries;

(c) one member representing other manufacturing industries;

(d) two members who are officials of municipal government or their representatives involved in the management or operation of wastewater treatment facilities;

(e) one member representing agricultural and livestock interests;

(f) one member representing fish, wildlife, and recreation interests;

(g) one member representing improvement and service districts; and

(h) two members at large, one of whom represents organized environmental interests, selected with due consideration of the areas of the state affected by water pollution and not representing other interests named in this subsection.

(5) Vacancies shall be filled by the appointment of another person by the governor, with the advice and consent of the Senate, for the unexpired term of the person whose office was vacated.

(6) Members shall be appointed for terms of four years and are eligible for reappointment.

(7) Members shall hold office until the expiration of their terms and until their successors are appointed, not to exceed 90 days after the formal expiration of their terms.

(8) The board shall:

(a) organize and annually select one of its members as chairman and one of its members as vice-chairman;

(b) hold at least four regular meetings each calendar year; and

(c) keep minutes of its proceedings which shall be open to the public for inspection.

(9) Special meetings may be called by the chairman and must be called by him upon receipt of a written request for a special meeting signed by three or more members of the board.

(10) Each member of the board and the executive secretary shall be notified in writing of the time and place of each meeting.

(11) Six members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.

(12) Board members serve without compensation, but may receive a per diem allowance and be reimbursed for actual and necessary expenses incurred in the performance of their official duties at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

Section 14. Section Amended.

Section 19-6-103, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-6-103. Solid and Hazardous Waste Control Board — Members — Terms — Organization — Meetings.

(1) The Solid and Hazardous Waste Control Board created by Section 19-1-106 comprises the executive director and ten members appointed by the governor with the advice and consent of the Senate.

(2) The appointed members shall be knowledgeable about solid and hazardous waste matters and consist of:

(a) one representative of municipal government;

(b) one representative of county government;

(c) one representative of the manufacturing or fuel industry;

(d) one representative of the mining industry;

(e) one representative of the private solid waste disposal or solid waste recovery industry;

(f) one registered professional engineer;

(g) one representative of a local health department; and

(h) three representatives of the public, at least one of whom is a representative of organized environmental interests.

(3) Not more than five of the appointed members may be from the same political party.

(4) Members shall be appointed for terms of four years each.

(5) Each member is eligible for reappointment.

(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) Vacancies shall be filled through appointment by the governor, after considering recommendations of the board and with the consent of the Senate, for the unexpired term of the person whose office was vacated.

(8) The board shall elect a chairman and vice-chairman on or before April 1 of each year from its membership.

(9) The board members shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties, and shall receive a per diem allowance at the [~~same rate provided in~~] rates established by the director of the Division of Finance under Sections [~~63-1-14.5~~] 63A-3-106 and [~~63-1-15~~] 63A-3-107.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chairman, the executive secretary, or any three of the members.

(11) Six members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Section 15. Section Amended.

Section 31A-12-101, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-12-101. Definitions.

As used in this chapter:

(1) "Risk Management Fund" means the fund created under Section [~~63-1-47~~] 63A-4-201.

(2) "Risk manager" means the person appointed under Section [~~63-1-45~~] 63A-4-101.

Section 16. Section Amended.

Section 31A-12-103, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-12-103. Rates charged to school districts.

The rates charged to school districts for policies issued under Section [~~63-1-50~~] 63A-4-204 are not subject to Chapter 19, except for the filing requirement of Subsection 31A-19-203 (1) and the public availability requirement of Section 31A-19-204. Rate filing fees under Section 31A-3-103 shall be paid to the department by the Risk Management Fund.

Section 17. Section Amended.

Section 31A-12-104, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-12-104. Insurance policies issued to school districts.

Insurance policies issued by the Risk Management Fund to school districts under Section [~~63-1-50~~] 63A-4-204 shall conform to Chapters 21 and 22. Policy forms issued to the school district shall be filed under Section 31A-21-201. The policy form filing fees of Section 31A-3-103 shall be paid to the Insurance Department by the Risk Management Fund.

Section 18. Section Amended.

Section 31A-23-220, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

31A-23-220. Insurance Marketing Licensing Board.

(1) There is hereby created the Insurance Marketing Licensing Board. The board shall be appointed by the commissioner and consists of eight members. Board members shall serve two year terms, subject to removal at the commissioner's pleasure. If reappointed, board members may serve two or more consecutive terms. The board shall include:

(a) two persons who are employees of the Insurance Department;

(b) two persons who are employed by insurers;

(c) one person who is a property and casualty insurance agent;

(d) one person who is a life insurance agent;

(e) one person who is a title insurance agent; and

(f) one person who is a member of the general public.

(2) The Insurance Marketing Licensing Board shall make recommendations to the commissioner concerning:

(a) classes of persons to be exempted from the licensing requirement of Subsection 31A-23-201 (1), as permitted under Subsection 31A-23-201 (2);

(b) the recognition of license classifications other than those specified under Subsection 31A-23-204 (1), as permitted under Subsection 31A-23-204 (4);

(c) educational prerequisites for licensure under Section 31A-23-206;

(d) examination requirements under Section 31A-23-207, including license classes to be subject to examination, examination content, examination administration and correction, and fees to be imposed for the examination; and

(e) other matters of interest related to the board or the commissioner.

(3) Board members shall serve without compensation but shall receive, at per diem rates, subsistence expenses and other expenses under Section [~~63-1-14.5~~] 63A-3-106, chargeable to the department budget. Except to the extent an Insurance Department employee actually incurs expenses in connection with service on the committee, no Insurance Department employee may receive any payment under this subsection.

Section 19. Section Amended.

Section 35-3-5, Utah Code Annotated 1953, as last amended by Chapter 201, Laws of Utah 1992, is amended to read:

35-3-5. Board of directors.

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

(2) The board shall consist of seven directors.

(3) One of the directors shall be the executive director of the Department of Administrative Services or his designee.

(4) One of the directors shall be the chief executive officer of the fund.

(5) The governor, with the advice and consent of the Senate, shall appoint:

(a) three directors who are owners, officers, or employees of policyholders other than the state that have been insured by the Workers' Compensation Fund for at least one year before their appointment; and

(b) two directors from the public in general.

(6) No two directors may represent the same policyholder.

(7) At least four directors appointed by the governor shall have had previous experience in investments, risk management, occupational safety, casualty insurance, or law.

(8) Any director who represents a policyholder that fails to maintain workers' compensation insurance through the Workers' Compensation Fund shall immediately resign from the board.

(9) A person may not be a director if he:

(a) has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier providing workers' compensation insurance in Utah;

(b) fails to meet or comply with the conflict of interest policies established by the board; or

(c) is not bondable.

(10) After notice and a hearing, the governor may remove any director for neglect of duty, inefficiency, or malfeasance.

(11) The term of office of the directors appointed by the governor shall be four years, beginning July 1 of the year of appointment. The appointments shall be staggered so that no more than two terms expire each year on June 30.

(12) Each director shall hold office until his successor is appointed and qualified.

(13) Any vacancy on the board shall be filled by appointment of the governor for the remainder of any unexpired term.

(14) The board shall annually elect a chairman and other officers as needed from its membership.

(15) The board may not provide or pay any compensation except for these responsibilities as set forth in Subsection (20).

(16) The board shall meet at least quarterly at a time and place designated by the chairman.

(17) The chairman may call board meetings more frequently than quarterly and shall call additional board meetings if requested to do so by a majority of the board.

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

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

(20) Directors appointed to the board shall:

(a) receive actual and reasonable travel expenses for meetings of the board; and

(b) receive a per diem allowance and reimbursement for actual and necessary expenses incurred in carrying out official duties established by the director of the Division of Finance under the authority of Section [~~63-1-14.5~~] 63A-3-106.

(21) The fund shall pay the per diem allowance and expenses from the Injury Fund upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.

(22) The executive director of the Department of Administrative Services, or his designee, and the chief executive officer of the Workers' Compensation Fund shall serve on the board without a per diem allowance.

Section 20. Section Amended.

Section 41-3-106, Utah Code Annotated 1953, as renumbered and amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-3-106. Board — Creation and composition — Appointment, terms, compensation, and expenses of members — Meetings — Quorum — Powers and duties — Officers' election and duties — Voting.

(1) (a) There is created an advisory board of five members that shall assist and advise the administrator in the administration and enforcement of this chapter.

(b) The members shall be appointed by the governor from among the licensed motor vehicle manufacturers, distributors, factory branch and distributor branch representatives, dealers, dismantlers, transporters, remanufacturers, and body shops.

(c) (i) Each member shall be appointed for a term of five years or until his successor is appointed and qualified.

(ii) The terms of the members shall each expire at one year intervals.

(d) Three members of the board shall be selected as follows:

(i) one from new motor vehicle dealers;

(ii) one from used motor vehicle dealers; and

(iii) one from manufacturers, transporters, dismantlers, crushers, remanufacturers, and body shops.

(e) (i) The board members shall receive a per diem established by the director of the Division of Finance under Section [~~63-1-14.5~~] 63A-3-106 for not more than 12 days in any fiscal year.

(ii) Board members shall receive reasonable traveling expenses incurred in the performance of their duties [~~as provided in~~] established by the director of the Division of Finance under Section [~~63-1-15~~] 63A-3-107.

(f) A majority of the members of the board constitutes a quorum and may act upon and resolve in the name of the board any matter, thing, or question referred to it by the administrator, or that the board has power to determine.

(2) (a) The board shall on the first day of each July, or as soon thereafter as practicable, elect a chairman, vice-chairman, secretary, and assistant secretary from among its members, who shall each hold office until his successor is elected.

(b) As soon as the board elects its officers, the elected secretary shall certify the results of the election to the administrator.

(c) The chairman shall preside at all meetings of the board and the secretary shall make a record of the proceedings, which shall be preserved in the office of the administrator.

(d) If the chairman is absent from any meeting of the board, his duties shall be discharged by the vice-chairman, and if the secretary is absent, his duties shall be discharged by the assistant secretary.

(e) All members of the board may vote on any question, matter, or thing that properly comes before it.

Section 21. Section Amended.

Section 41-12a-103, Utah Code Annotated 1953, as last amended by Chapter 203, Laws of Utah 1991, is amended to read:

41-12a-103. Definitions.

As used in this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Judgment" means any judgment which is final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(3) "License" or "license certificate" have the same meanings as under Section 41-2-102.

(4) "Motor vehicle" means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

(5) "Nonresident" means every person who is not a resident of Utah.

(6) "Nonresident's operating privilege" means the privilege conferred upon a person who is not a resident of Utah by the laws of Utah pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in Utah.

(7) "Operator" means every person who is in actual physical control of a motor vehicle.

(8) "Owner" means a person who holds legal title to a motor vehicle, is a lessee in possession, or if a motor vehicle is the subject of a conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession in the conditional vendee or lessee, or is the subject of a mortgage with the mortgagor entitled to possession, then the conditional vendee, lessee, or mortgagor is considered to be the owner for the purposes of this chapter.

(9) "Owner's or operator's security," "owner's security," or "operator's security" means any of the following:

(a) an insurance policy or combination of policies conforming to Section 31A-22-302 which is issued by an insurer authorized to do business in Utah;

(b) a surety bond issued by an insurer authorized to do a surety business in Utah in which the surety is subject to the minimum coverage limits and other requirements of policies conforming to Section

31A-22-302, which names the department as a creditor under the bond for the use of persons entitled to the proceeds of the bond;

(c) a deposit with the state treasurer of cash or securities complying with Section 41-12a-406;

(d) maintaining a certificate of self-funded coverage under Section 41-12a-407;

(e) a policy conforming to Section 31A-22-302 issued by the Risk Management Fund created in Section [63-1-47] 63A-4-201.

(10) "Registration" means the issuance of the certificates and registration plates issued under the laws of Utah pertaining to the registration of motor vehicles.

(11) "Self insurance" has the same meaning as provided in Section 31A-1-301.

Section 22. Section Amended.

Section 51-5-6, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1991, is amended to read:

51-5-6. Accounting principles and specific accounting and financial reporting procedures.

(1) The Division of Finance shall use generally accepted accounting principles applicable to governmental units in its accounting procedures and in its reports of the state's financial position and results of operations in each fiscal period.

(2) Unless otherwise required by generally accepted accounting principles, the following specific procedures shall be implemented:

(a) The Division of Finance shall use the basis of accounting established by GASB to account for each fund type.

(b) The Division of Finance shall:

(i) calculate the liabilities associated with post-employment benefits by applying GASB standards;

(ii) recognize all liabilities associated with post-employment benefits in the General Fund or other funds as required by GASB;

(iii) recognize the initial post-employment liabilities in the year new GASB standards for revenue recognition become effective;

(iv) provide for an ongoing labor additive to charge all federal, state, or other programs at a rate sufficient to cover the annual change in the post-employment benefits liabilities; and

(v) provide for ongoing payments against the post-employment liabilities as employees qualify for receiving the post-employment benefits after post-employment liabilities are recognized.

(c) The Division of Finance shall post receipts of revenues and other resources of each fund when collected directly to the fund designated to receive them.

(d) The Division of Finance shall use budgetary accounts to:

(i) account for budgetary funds to the extent necessary to reflect the budget position and budget operations; and

(ii) account for the remaining funds when administrative expenses of the remaining funds are subject to appropriations, in order to fully reflect the various budgetary commitments as provided by law.

(e) The Division of Finance shall prepare statements of revenues and expenditures in a form that accurately reflects the results of operations for a particular fiscal period.

(f) The Division of Finance shall determine:

(i) all costs associated with all internal service funds that are eligible for federal reimbursement; and

(ii) all costs that are required to be included in the funds to comply with generally accepted accounting principles.

(g) (i) All costs currently borne by a fund or an account that is not an internal service fund that should be allocated to an internal service fund may be charged as an expense to the internal service fund, paid to the fund bearing the costs, and recorded as interfund revenue in that fund.

(ii) The Division of Finance may transfer the interfund revenue recorded in funds or accounts that are not internal service funds to the internal service fund as contributed working capital.

(h) The Division of Finance shall record revenue in the various funds and accounts in accordance with GASB standards.

(i) (i) The Division of Finance and each administrative unit of state government shall record accrued revenue net of any liabilities for revenue refunds occurring at the time of a change in accounting standards by recording accrual of net revenue to the specific revenue account and designating it as an accrual equity account of the fund.

(ii) Before changing the accrual equity account of the General Fund, any increases in accrued equity may be used to offset actuarial deficits of the State Risk Management Fund, created in Section [63-1-47] 63A-4-201, and the State Post-Employment Benefit Account.

Section 23. Section Amended.

Section 62A-2-104, Utah Code Annotated 1953, as last amended by Chapter 172, Laws of Utah 1991, is amended to read:

62A-2-104. Human Services Licensing Committee — Composition — Meetings — Reimbursement.

(1) There is established the Human Services Licensing Committee, composed of seven members who shall be appointed by the executive director. Members of that committee shall be representative of consumers of social service programs, public and

private providers of human services programs who are subject to licensure under this chapter, and the general public.

(2) Of the initial members of the licensing committee, three shall be appointed to terms of four years, two to terms of three years, and two to terms of two years. Thereafter, members, except those appointed to complete the term of a former member, shall be appointed for terms of four years. The committee shall annually elect a chairman from its membership.

(3) The licensing committee shall meet at least quarterly, or more frequently as determined by the director, the chairman, or three or more members of the committee. Four members constitute a quorum and a vote of the majority of the members present constitutes an action of the committee.

(4) Licensing committee members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as [~~approved~~] established by the director of the Division of Finance under Section [~~63-1-15~~] 63A-3-107.

Section 24. Section Amended.

Section 63-9-64, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1989, is amended to read:

63-9-64. Definitions.

As used in Sections 63-9-63, 63-9-64, and 63-9-65:

(1) "Division" means the Division of Facilities Construction and Management established by Section [~~63-1-36~~] 63A-5-201.

(2) "Energy conservation activity" means the technical evaluation and installation or modification of equipment, building components, and operations in a facility. These activities shall primarily reduce energy consumption or allow the use of an alternative energy source. Energy conservation activities include, but are not limited to, installation of insulation, storm windows and doors, energy control systems, solar heating, cogeneration facilities and heat recovery systems, and replacement of boilers and incandescent lights.

(3) "Energy management plans" includes timelines, projected costs, energy saving goals, and delegated responsibilities for identifying and completing energy conservation activities.

(4) "Facility" means a building or group of buildings served by a central energy distribution system, or components of a central energy distribution system and which are owned by, or leased to, a state department, agency, or institution.

(5) "Lease-purchase agreement" means an agreement under which a private firm leases energy conservation equipment to a building user with lease payments being paid with any energy cost savings attributable to the equipment.

(6) "Responsible state agency" means any state agency responsible for utility payments for a state-owned or controlled facility.

(7) "Shared savings agreement" means an agreement under which a private firm provides capital for energy conservation improvements in a building at no initial cost to the building user. All energy cost savings are shared between the building user and the private firm.

Section 25. Section Amended.

Section 63-11-17.7, Utah Code Annotated 1953, as last amended by Chapter 167, Laws of Utah 1986, is amended to read:

63-11-17.7. Riverway Enhancement Advisory Council created — Composition — Terms — Vacancies — Chairman — Quorum — Council payment.

(1) There is created in the Division of Parks and Recreation a Riverway Enhancement Advisory Council for the purpose of advising the Division and the Board of Parks and Recreation regarding the purposes of this chapter.

(2) The advisory council is comprised of 11 members appointed as follows:

(a) [~~seven~~] Seven members who are elected municipal officers shall be selected by the governor. The governor shall appoint one member from each of the following planning districts:

(i) Bear River - Box Elder, Cache, and Rich Counties;

(ii) Five County - Beaver, Garfield, Iron, Kane, and Washington Counties;

(iii) Mountainland - Summit, Utah, and Wasatch Counties;

(iv) Six County - Juab, Millard, Piute, Sanpete, Sevier, and Wayne Counties;

(v) Southeast - Carbon, Emery, Grand, and San Juan Counties;

(vi) Uintah Basin - Daggett, Duchesne, and Uintah Counties; and

(vii) Wasatch Front - Davis, Morgan, Salt Lake, Tooele, and Weber Counties.

(b) Four members shall be appointed by the governor from among the residents of cities and towns in the state.

(3) Of the members first appointed to the advisory council, the terms of office of the first six appointed members expire on March 1, 1990, and the terms of office of the remaining members first appointed expire on March 1, 1992. Each successor shall be appointed for terms of office of four years each.

(4) Any vacancy occurring in the advisory council shall be filled by a person having the same qualifications as the person whose office has been vacated. The person appointed to fill the vacancy shall be appointed by the governor for the unexpired term of his predecessor-in-office.

(5) The advisory council shall appoint a chairman from its membership, who shall serve for a term of office of two years but may be reelected for subsequent terms. Six members of the council constitutes a quorum.

(6) Members of the advisory council shall be paid a per diem allowance and expenses as provided in the rules adopted under Section [~~63-1-15~~] 63A-3-107.

Section 26. Section Amended.

Section 63-55-263, Utah Code Annotated 1953, as last amended by Chapters 7 and 241, Laws of Utah 1992, is amended to read:

63-55-263. Repeal dates, Title 63.

(1) Sections [~~63-1-50~~] 63A-4-204 and [~~63-1-50.1~~] 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 1996.

(2) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(3) Title 63, Chapter 25, State Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(4) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 1994.

(5) The Utah Fire Prevention Board, created in Section 63-27-104, is repealed July 1, 1993.

(6) The Liquefied Petroleum Gas Board, created in Section 63-29a-103, is repealed July 1, 1997.

(7) (a) The Department of Natural Resources, created in Section 63-34-3, is repealed July 1, 1999.

(b) The Board of Water Resources, created in Sections 63-34-3 and 73-10-1.5, is repealed July 1, 2001.

(c) The Board of State Lands and Forestry, created in Sections 63-34-3 and 65A-1-2, is repealed July 1, 1999.

(d) The Board of Oil, Gas and Mining, created in Sections 40-6-4 and 63-34-3, is repealed July 1, 1993.

(e) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(f) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(g) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

(h) The Riverway Enhancement Advisory Council, created in Section 63-34-3, is repealed July 1, 1999.

(i) The Great Salt Lake Advisory Council, created in Sections 63-34-3 and 65A-10-5, is repealed July 1, 1999.

(j) The Board of the Utah Geological Survey, created in Sections 63-34-3 and 63-73-2, is repealed July 1, 1999.

(k) The Water Development Coordinating Council, created in Sections 63-34-3 and 73-10c-3, is repealed July 1, 2001.

(l) The Division of Water Rights, created in Sections 63-34-3 and 73-2-1.1, is repealed July 1, 2001.

(m) The Division of Water Resources, created in Sections 63-34-3 and 73-10-18, is repealed July 1, 2001.

(n) The Division of Parks and Recreation, created in Section 63-34-3, is repealed July 1, 1997.

(o) The Division of Oil, Gas and Mining, created in Sections 63-34-3 and 40-6-15, is repealed July 1, 1993.

(p) The Division of Geological Survey, created in Section 63-34-3 and Title 63, Chapter 73, is repealed July 1, 1999.

(q) The Division of Energy, created in Sections 63-34-3 and 63-53-2, is repealed July 1, 2001.

(r) The Energy Advisory Council, created in Sections 63-34-3 and 63-53-4, is repealed July 1, 2001.

(8) (a) The Office of Internal Audit, created in Section 63-49-7, is repealed July 1, 2001.

(b) The Office of Comptroller, created in Section 63-49-7, is repealed July 1, 2001.

(c) The Office of Planning and Programming, created in Section 63-49-7, is repealed July 1, 2001.

(d) The Office of Community Relations, created in Section 63-49-7, is repealed July 1, 2001.

(e) The Maintenance Division, created in Section 63-49-8, is repealed July 1, 1995.

(f) The Construction Division, created in Section 63-49-8, is repealed July 1, 1997.

(g) The Preconstruction Division, created in Section 63-49-8, is repealed July 1, 1997.

(h) The Safety Division, created in Section 63-49-8, is repealed July 1, 1999.

(i) The Right-of-way Division, created in Section 63-49-8, is repealed July 1, 1995.

(j) The Aeronautical Operations Division and Utah Aeronautical Committee, created in Sections 2-1-12 and 63-49-8, are repealed July 1, 1995.

(k) District management offices, created in Section 63-49-9, are repealed July 1, 2001.

(l) The Utah Transportation Commission, created in Section 63-49-10, is repealed July 1, 1995.

(9) The Utah Constitutional Revision Study Commission, created in Section 63-54-1, is repealed July 1, 1993.

(10) The Crime Victims' Reparations Board, created in Section 63-63-4, is repealed July 1, 1997.

Section 27. Section Amended.

Section 63-56-5, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1988 Second Special Session, is amended to read:

63-56-5. Definitions.

As used in this chapter:

(1) "Architect–engineer services" are those professional services within the scope of the practice of architecture as defined in Section 58–3–2, or professional engineering as defined in Section 58–22–2.

(2) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(3) "Change order" means a written order signed by the procurement officer, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the procurement officer to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(4) (a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work.

(b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(5) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(6) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

(7) "Cost–reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(8) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(9) "External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

(10) "Grant" means the furnishing by the state or by any other public or private source assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from the award is not a grant but a procurement contract.

(11) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(12) "Local public procurement unit" means any political subdivision or institution of higher education of the state or public agency of any subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties, municipalities, political subdivisions created by counties or municipalities under the Interlocal Cooperation Act, the Utah Housing Finance Agency, the Utah Technology Finance Corporation, or the Legislature and its staff offices. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals, not including a state agency or a local public procurement unit.

(14) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(15) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

(16) "Procurement officer" means any person or board duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority.

(17) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(18) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

(19) "Purchasing agency" means any state agency other than the purchasing division which is authorized by this chapter or its implementing regulations, or by way of delegation from the chief procurement officer, to enter into contracts.

(20) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(21) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

(22) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(23) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

(24) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(25) "State agency" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment or official of this state.

(26) "State public procurement unit" means the purchasing division and any other purchasing agency of this state.

(27) "Supplies" means all property, including but not limited to equipment, materials, and printing, excluding leases of real property, and land or a permanent interest in land which shall be procured according to Section [~~63-1-38.3~~] 63A-5-202.

(28) "Surplus supplies" means any supplies that are no longer needed for public use. It includes expendable supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(29) "Using agency" means any state agency which utilizes any supplies, services, or construction procured under this chapter.

Section 28. Section Amended.

Section 63-56-13, Utah Code Annotated 1953, as last amended by Chapter 87, Laws of Utah 1991, is amended to read:

63-56-13. Specific statutory authority.

(1) The authority to procure certain supplies, services, and construction given the public procurement units governed by the following provisions shall be retained:

(a) Title 27, Chapter 12, Highway Code;

(b) Title 53B, State System of Higher Education;

(c) [~~Sections 63-1-33 through 63-1-44~~] Title 63A, Chapters 5 and 6;

(d) Title 64, Chapter 1;

(e) Title 67, Chapter 5, Attorney General; and

(f) Title 78, Chapter 3, District Courts.

(2) This authority extends only to supplies, services, and construction to the extent provided in the cited provisions. Except as otherwise provided in Sections 63-56-2 and 63-56-3, the respective purchasing agencies shall procure supplies, services, and construction in accordance with this chapter.

(3) Notwithstanding Subsections (1) and (2), the Utah Transportation Commission has authority to establish rules governing the procurement of highway construction or improvement.

(4) The Legislature has the authority to procure supplies and services for its own needs.

Section 29. Section Amended.

Section 63-63-4, Utah Code Annotated 1953, as last amended by Chapter 46, Laws of Utah 1989, is amended to read:

63-63-4. Crime Victims' Reparations Board — Members.

(1) (a) A Crime Victims' Reparations Board is created, consisting of seven members appointed by the governor with the advice and consent of the Senate.

(b) The membership of the board shall consist of a member of the bar of this state, a victim of violent crime, a licensed member of the medical profession, a representative of law enforcement, a mental health care provider, and two other private citizens.

(c) The governor may appoint a chairman of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the chairman's term. The board may elect a vice-chairman to serve in the absence of the chairman.

(d) The chairman of the board may hear appeals from administrative decisions, as provided in Section 63-63-15.

(2) (a) The term of office of each member is six years.

(b) A member resigning from the board shall serve until his successor is appointed and qualified, except that of the members first appointed two each shall be appointed to serve for a term of two, three, and four years. A person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

(3) Members serve part time, without pay, but are entitled to a per diem reimbursement and actual and necessary expenses incurred in the performance of their duties as [~~provided by~~] established by the director of the Division of Finance under Section [~~63-1-14.5~~] 63A-3-106.

(4) The board shall meet at least once quarterly but may meet more frequently as necessary.

Section 30. Section Renumbered and Amended.

Section 63A-1-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-1, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

CHAPTER 1. DEPARTMENT OF ADMINISTRATIVE SERVICES

Part 1. General Provisions

[~~63-1-1~~] 63A-1-101. Short title.

This [~~act shall be~~] title is known [~~and may be cited~~] as the "Utah Administrative Services [~~Act~~] Code."

Section 31. Section Renumbered and Amended.

Section 63A-1-102, Utah Code Annotated 1953, which is renumbered from Section 63-1-2, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-2~~] 63A-1-102. **Purposes.**

The [~~purpose of this act is to~~] department shall:

(1) provide specialized agency support services commonly needed;

(2) provide effective, coordinated management of state administrative services;

[~~(3) clarify the powers and duties of the various administrative service agencies;~~]

[~~(4)~~] (3) serve the public interest by providing services in a cost-effective and efficient manner, eliminating unnecessary duplication;

[~~(5)~~] (4) enable administrators to respond effectively to technological improvements;

[~~(6)~~] (5) emphasize the service role of state administrative service agencies in meeting the service needs of user agencies;

[~~(7) permit~~] (6) use flexibility in meeting the service needs of state agencies; and

[~~(8)~~] (7) protect the public interest by insuring the integrity of the fiscal accounting procedures and policies [~~which~~] that govern the operation of agencies and institutions to assure that funds are expended properly and lawfully.

Section 32. Section Renumbered and Amended.

Section 63A-1-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-3, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

[~~63-1-3~~] 63A-1-103. **Definitions.**

As used in this [~~chapter~~] title:

(1) "Department" means the Department of Administrative Services.

(2) "Executive director" means the executive director of the Department of Administrative Services.

Section 33. Section Renumbered and Amended.

Section 63A-1-104, Utah Code Annotated 1953, which is renumbered from Section 63-1-4, Utah Code Annotated 1953, as last amended by Chapter 114, Laws of Utah 1991, is amended to read:

[~~63-1-4~~] 63A-1-104. **Creation of department.**

[~~(1)~~] There is created within state government the Department of Administrative Services, to be administered by an executive director.

[~~(2) The executive director shall be appointed by the governor, with the advice and consent of the Senate, and shall serve at the pleasure of the governor.~~]

[~~(3) The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Chapter 22, Title 67, State Officer Compensation.~~]

Section 34. Section Enacted.

Section 63A-1-105, Utah Code Annotated 1953, is enacted to read:

63A-1-105. Appointment of executive director — Compensation.

(1) The governor shall:

(a) appoint the executive director with the advice and consent of the Senate; and

(b) establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) The executive director shall serve at the pleasure of the governor.

Section 35. Section Renumbered and Amended.

Section 63A-1-106, Utah Code Annotated 1953, which is renumbered from Section 63-1-7, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-7~~] 63A-1-106. **Federal assistance — Acceptance — Approval of applications — Expenditures necessary for eligibility.**

(1) The executive director[~~,~~] with the approval of the governor[~~,~~] may accept on behalf of the state, and bind the state by that acceptance, any fund or service, advanced, offered, or contributed in whole or in part by the federal government for purposes consistent with the powers and duties of the department.

(2) All applications for federal grants or other federal assistance in support of any program of the department [~~shall be~~] are subject to the approval of the executive director [~~of administrative services~~].

(3) If any executive or legislative provisions of the federal government require [~~it~~] the expenditure of state funds as a condition to participation by the state [~~of Utah~~] in any fund, property, or service, the executive director, with the governor's approval, shall expend whatever funds are necessary out of the money provided by the Legislature for use and disbursement by the department.

Section 36. Section Renumbered and Amended.

Section 63A-1-107, Utah Code Annotated 1953, which is renumbered from Section 63-1-6, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

[~~63-1-6~~] 63A-1-107. **Administrative support to building board and building ownership authority.**

The executive director shall provide administrative support and staff services to the [Utah] State Building Board and the [Utah] State Building Ownership Authority.

Section 37. Section Renumbered and Amended.

Section 63A-1-108, Utah Code Annotated 1953, which is renumbered from Section 63-1-10, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1988, is amended to read:

[~~63-1-10~~] 63A-1-108. Powers and duties of other agencies assigned to executive director.

Powers and duties assigned by other provisions of this [~~code~~] title to the Division of Finance, the State Building Board, the Division of [~~Telecommunications~~] Information Technology Services, or other agencies or divisions of the department, and not specifically assigned by this chapter, shall be assigned to the executive director with the approval of the governor.

Section 38. Section Renumbered and Amended.

Section 63A-1-109, Utah Code Annotated 1953, which is renumbered from Section 63-1-5, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

[~~63-1-5~~] 63A-1-109. Divisions of department — Control by division directors.

(1) The department shall be composed of the following divisions:

[~~(i)~~] (a) administrative rules[~~;~~];

[~~(e)~~] (b) archives and records;

[~~(b)~~] (c) central services;

(d) facilities construction and management;

[~~(a)~~] (e) finance;

(f) fuel dispensing;

[~~(c)~~] (g) information technology services;

[~~(f)~~] (h) purchasing;

[~~(h)~~] (i) risk management; and

[~~(g)~~] (j) surplus property[~~;~~].

(2) Each division shall be administered under the immediate direction and control of a division director.

Section 39. Section Renumbered and Amended.

Section 63A-1-110, Utah Code Annotated 1953, which is renumbered from Section 63-1-8, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-8~~] 63A-1-110. Advisory committee — Rules and regulations.

(1) (a) The executive director shall appoint an advisory committee composed of representatives of user agencies.

(b) The advisory committee shall recommend policies and practices for the efficient and effective delivery of administrative services.

(2) The executive director shall, upon the recommendation of the appropriate division directors and the advisory committee, [~~prescribe~~] make rules [~~and regulations. The rules and regulations prescribed shall be~~] consistent with state and federal law governing:

(a) administrative services; and [~~governing~~]

(b) the provision and use of administrative services furnished to state agencies and institutions.

Section 40. Section Renumbered and Amended.

Section 63A-1-111, Utah Code Annotated 1953, which is renumbered from Section 63-1-9, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-9~~] 63A-1-111. Service plans established by each division — Contents — Distribution.

(1) Each division of the department shall formulate and establish service plans for each fiscal year.

(2) The service plans shall describe:

(a) the services to be rendered to state agencies[~~;~~];

(b) the methods of providing those services[~~;~~];

(c) the standards of performance[~~;~~]; and

(d) the performance measures [~~utilized~~] used to gauge compliance with those standards.

[~~(2) Prior to~~] (3) Before the beginning of each fiscal year, the service plans shall be distributed to each state agency and institution [~~which~~] that uses the services provided by [~~the department~~] that division.

Section 41. Section Renumbered and Amended.

Section 63A-1-112, Utah Code Annotated 1953, which is renumbered from Section 63-1-8.5, Utah Code Annotated 1953, as enacted by Chapter 148, Laws of Utah 1985, is amended to read:

[~~63-1-8.5~~] 63A-1-112. Certificates of participation — Legislative approval required — Definition.

(1) [~~No certificates~~] (a) Certificates of participation for either capital facilities or capital improvements may not be issued by the department, its subdivisions, or any other state agency after July 1, 1985 without prior legislative approval.

(b) Nothing in this section affects the rights and obligations surrounding certificates of participation [~~which are~~] that were issued prior to July 1, 1985.

(2) As used in this section, "certificate of participation" means an instrument [~~which~~] that acts as evidence of the certificate holder's undivided interest in property being lease-purchased, the payment on which is subject to appropriation by the Legislature.

Section 42. Section Renumbered and Amended.

Section 63A-1-113, Utah Code Annotated 1953, which is renumbered from Section 63-1-10.5, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1990, is amended to read:

[~~63-1-10.5~~] 63A-1-113. Agencies exempt from act.

The Utah Housing Finance Agency and the Utah Technology Finance Corporation are exempt from this [act] title.

Section 43. Section Renumbered and Amended.

Section 63A-2-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-24, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

CHAPTER 2. DIVISION OF CENTRAL SERVICES

Part 1. General Provisions

[~~63-1-24~~] 63A-2-101. Creation.

[~~(1)~~] There is created within the department [~~of administrative services~~] the Division of Central Services, to be administered by a director.

[~~(2) The director of central services shall be appointed by the executive director of the department with the approval of the governor.~~]

Section 44. Section Enacted.

Section 63A-2-102, Utah Code Annotated 1953, is enacted to read:

63A-2-102. Director of division — Appointment.

The executive director of the department shall appoint the director of the Division of Central Services with the approval of the governor.

Section 45. Section Renumbered and Amended.

Section 63A-2-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-25, Utah Code Annotated 1953, as last amended by Chapter 271, Laws of Utah 1991, is amended to read:

[~~63-1-25~~] 63A-2-103. Central services provided — Subscription by state departments and agencies and certain local governmental entities — Fee schedule.

(1) (a) The director of the Division of Central Services shall operate and maintain:

(i) a central mailing service;

(ii) a central motor pool; and

(iii) a central store for all state departments and agencies.

(b) The director may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) All state departments and agencies shall subscribe to these services unless the director delegates his authority to a department or agency under Section [~~63-1-26~~] 63A-2-104.

(b) An institution of higher education may subscribe to one or more of these services if, and to the extent that, the president of the institution recommends and the State Board of Regents determines that the performance of the services by the director of the Division of Central Services will result in substantial cost savings or increased efficiency to the institution.

(c) Local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act, local substance abuse authorities as defined in Section 17A-3-701, and local mental health authorities as defined in Section 17A-3-602 may subscribe to the central motor pool service provided by the Division of Central Services if the director of the local health department, local substance abuse authority, or local mental health authority determines it will result in substantial cost savings or increased efficiency to the local health department, local substance abuse authority, or the local mental health authority.

(3) (a) The director shall prescribe a schedule of fees to be charged for all services rendered by the division to any department or agency after receiving prior approval of the fee schedule from the director of the Division of Finance.

(b) Where practicable, fees prescribed by the director of the Division of Central Services shall be commensurate with the cost of providing the services.

Section 46. Section Renumbered and Amended.

Section 63A-2-104, Utah Code Annotated 1953, which is renumbered from Section 63-1-26, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

[~~63-1-26~~] 63A-2-104. Delegation of central services to departments or agencies — Writing required — Contents — Termination.

(1) The director of the Division of Central Services[,] with the approval of the executive director[,] may delegate, in writing, his authority to perform or control central services functions to other state agencies and institutions by contract or other means authorized by law[,] if:

(a) in the judgment of the executive director, the state department or agency has requested the authority; and

(b) the state department or agency has the necessary resources and skills to perform or control the functions.

(2) The director may delegate his authority only when the delegation would result in net cost savings or improved service delivery to the state as a whole.

(3) The written delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated;

(c) a provision for periodic administrative audits by the department; and

(d) a date on which the agreement shall terminate if not previously terminated or renewed.

(4) An agreement to delegate functions to a state agency or institution may be terminated by the department if the results of administrative audits conducted by the department reveal lack of compliance with the terms of the agreement.

Section 47. Section Renumbered and Amended.

Section 63A-3-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-12, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

CHAPTER 3. DIVISION OF FINANCE

Part 1. General Procedures

[~~63-1-12~~] 63A-3-101. Creation.

[~~(1)~~] There is created within the department [of ~~administrative services~~] the Division of Finance, to be administered by a director.

[~~(2) The director of finance shall be appointed by the executive director with the approval of the governor and shall serve at the pleasure of the executive director. The director of finance shall be the state's chief fiscal officer and ex officio, the state's accounting officer.~~]

Section 48. Section Enacted.

Section 63A-3-102, Utah Code Annotated 1953, is enacted to read:

63A-3-102. Director of division — Appointment.

(1) The executive director shall appoint the director of the Division of Finance with the approval of the governor.

(2) The director of the Division of Finance shall serve at the pleasure of the executive director.

(3) The director of the Division of Finance is the state's chief fiscal officer and the state's accounting officer.

Section 49. Section Renumbered and Amended.

Section 63A-3-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-13, as last amended by Chapter 30, Laws of Utah 1992, is renumbered and amended to read:

[~~63-1-13~~] 63A-3-103. Fiscal procedures provided by director of division — Application to institutions of higher education.

(1) The director of the Division of Finance shall:

(a) define fiscal procedures relating to approval and allocation of funds;

(b) provide for the accounting control of funds;

(c) approve proposed expenditures for the purchase of supplies and services;

(d) promulgate rules that:

(i) establish procedures for maintaining detailed records of all types of leases;

(ii) account for all types of leases in accordance with generally accepted accounting principles;

(iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and

(iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance; and

(e) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.

(2) (a) Institutions of higher education [~~shall be~~] are subject to the provisions of [~~Sections 63-1-12 through 63-1-21~~] Title 63A, Chapter 3, Parts 1 and 2 only to the extent expressly authorized or required by the State Board of Regents [~~pursuant to the Higher Education Act of 1969~~] under Title 53B, State System of Higher Education.

(b) Institutions of higher education shall submit financial data for the past fiscal year conforming to generally accepted accounting principles to the director of the Division of Finance.

Section 50. Section Renumbered and Amended.

Section 63A-3-104, Utah Code Annotated 1953, which is renumbered from Section 63-1-21, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-21~~] 63A-3-104. Appropriation for contingency purposes — Procedure for allotment — Legislative intent.

(1) (a) The Legislature shall determine the amount to be appropriated for contingency purposes, as well as the limits on the amount of any one allotment or total allotments to any one department or agency.

(b) In advance of making any such allotment, the governor shall notify the Legislature through the Office of the Legislative Fiscal Analyst, of his or her intent to do so, of the amount to be allotted, and the justification for the allotment.

(2) It is the intent of the Legislature that such transfers be made only for unforeseeable emergencies, and allotments shall not be made to correct poor budgetary practices or for purposes having no existing appropriation or authorization.

Section 51. Section Renumbered and Amended.

Section 63A-3-105, Utah Code Annotated 1953, which is renumbered from Section 63-1-17, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

[~~63-1-17~~] 63A-3-105. Securities deposited with state treasurer — Release.

(1) The director of the Division of Finance shall collect and deposit with the state treasurer all stocks, evidences of indebtedness, bonds, and securities of every kind and nature belonging to the state or any of its departments.

(2) The state treasurer shall keep a complete record of the items deposited under Subsection (1) and credit each to the proper fund or account. The treasurer shall release the items only upon the order of the director.

Section 52. Section Renumbered and Amended.

Section 63A-3-106, Utah Code Annotated 1953, which is renumbered from Section 63-1-14.5, Utah Code Annotated 1953, as enacted by Chapter 320, Laws of Utah 1983, is amended to read:

[~~63-1-14.5~~] 63A-3-106. Per diem rates for state officers and employees.

Subject to approval by the executive director, the director of the Division of Finance shall establish per diem rates for all state officers and employees of the executive branch, except officers and employees of higher education, to meet subsistence expenses for attendance at official meetings.

Section 53. Section Renumbered and Amended.

Section 63A-3-107, Utah Code Annotated 1953, which is renumbered from Section 63-1-15, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

[~~63-1-15~~] 63A-3-107. Travel expenses of executive branch officers and employees.

(1) Subject to approval by the executive director, the director of the Division of Finance shall adopt rules [~~covering~~] governing in-state and out-of-state travel and travel expenses of all state officers and employees of the executive branch, except officers and employees of higher education.

(2) The travel expense rules shall be based upon:

(a) per diem rates of payment for subsistence expenses, subject to modification, when justified, to meet special circumstances encountered in official attendance at conferences, conventions, and other official meetings;

(b) a mileage allowance; and

(c) reimbursement for other travel expenses incurred.

[~~(2)~~] (3) (a) [~~No obligation shall be incurred for travel outside of the state by an officer or employee~~] Officers and employees of the executive branch, except officers or employees of higher education[~~,~~] may not incur obligations for travel outside Utah without the advance approval of the director of the Division of Finance.

(b) The director of the Division of Finance may delegate the authority to approve travel outside the state to the directors of the state departments and agencies.

(c) This approval shall include a certification as to the availability of funds.

Section 54. Section Renumbered and Amended.

Section 63A-3-108, Utah Code Annotated 1953, which is renumbered from Section 63-1-18, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-18~~] 63A-3-108. Designation of state officers and employees required to give surety bonds — Form of bonds — Competitive bidding.

(1)(a) The director of the Division of Finance shall designate the officers and employees of the state who shall give surety bonds for the faithful performance of their official duties.

(b) The surety bonds shall be paid by the state and shall be in such form and in such amounts and with such surety or sureties as the director [~~shall determine~~] requires.

(c) The director may require that the surety bonds[~~, in the discretion of the director, shall~~] be obtained by competitive bidding.

(2) If the Legislature or the State Money Management Council determines that certain officers and employees of the state furnish bond for the faithful performance of their official duties and fixes the amount [~~thereof~~] of these surety bonds, the director of the Division of Finance shall [~~proceed to~~] determine only the form and kind of [~~surety or~~] sureties to be obtained.

Section 55. Section Renumbered and Amended.

Section 63A-3-201, Utah Code Annotated 1953, which is renumbered from Section 63-1-14, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

Part 2. Accounting System

[~~63-1-14~~] 63A-3-201. Appointment of accounting and other officers and employees by director of the Division of Finance — Delegation of powers and duties by director.

(1) With the approval of the executive director, the director of the Division of Finance shall appoint an accounting officer and [~~such~~] other administrative officers [~~as may be~~] that are necessary to efficiently and economically perform the functions of the Division of Finance.

(2) The director of the Division of Finance may:

(a) organize the division and employ other assistants to discharge the functions of the division[~~. The director may~~];

(b) delegate to assistants, officers, and employees any of the powers and duties of the office subject to his or her control and subject to any conditions he [~~or she~~] may prescribe[~~. The director may~~]; and

(c) delegate the powers and duties of the office only by written order filed with the lieutenant governor.

Section 56. Section Renumbered and Amended.

Section 63A-3-202, Utah Code Annotated 1953, which is renumbered from Section 63-1-20, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-20~~] 63A-3-202. Comprehensive state accounting system — Approval of agency accounting systems — Cost accounting systems required.

(1) The director of the Division of Finance shall establish a comprehensive state accounting system. [~~Accounting systems may be maintained by officers~~]

(2) Officers, departments, agencies, and institutions of [~~the state~~] Utah may create and maintain accounting systems only with the approval of the director [~~of finance~~].

(3) The director [~~of finance~~] may, with the approval of the executive director, require any department or institution to install and maintain a cost accounting system [~~which~~] that will disclose the unit cost of material or service produced or performed by a department.

Section 57. Section Renumbered and Amended.

Section 63A-3-203, Utah Code Annotated 1953, which is renumbered from Section 63-1-19, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

[~~63-1-19~~] 63A-3-203. Accounting control over state departments and agencies — Prescription and approval of financial forms, accounting systems, and fees.

(1) The director of the Division of Finance shall:

(a) exercise accounting control over all state departments and agencies except institutions of higher education; and [~~shall~~]

(b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.

(2) The director [~~of the Division of Finance~~] shall audit all claims against the state for which an appropriation has been made.

(3) (a) The director shall:

(i) prescribe all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies;

(ii) prescribe the forms, procedures, and records to be maintained by all departmental, institutional, or agency store rooms;

(iii) exercise inventory control over the store rooms; and

(iv) prescribe all forms to be used by the division [~~of Finance~~].

(b) Before approving the forms in Subsection (a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.

(4) Before implementation by any state department or agency, the director of the Division of Finance shall review and approve:

(a) any accounting system developed by a state department or agency; and

(b) any fees established by any state department or agency to recover the costs of operations.

Section 58. Section Renumbered and Amended.

Section 63A-3-204, Utah Code Annotated 1953, which is renumbered from Section 63-1-16, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1986, is amended to read:

[~~63-1-16~~] 63A-3-204. Financial control system — Financial reports as to state funds — Information required of directors of state departments.

(1) The director of the Division of Finance shall:

(a) maintain a financial control system according to generally accepted accounting principles;

(b) record the constituent elements of the General Fund and of each special fund in proper relationship to each other; and

(c) keep all accounts in balance.

(2) The director of the Division of Finance shall prepare and submit to the governor and to the Legislature, when requested, reports showing:

(a) the condition of the General Fund and each special fund of the state;

(b) the available cash resources of the General Fund and each special fund of the state;

(c) as to each fund:

(i) the estimated revenue and anticipated time of collection;

(ii) the current encumbrances, future obligations, and estimated date they accrue;

(iii) appropriations;

(iv) obligations;

(v) monthly allotments;

(vi) unencumbered allotments; and

(vii) reserves and surpluses;

(d) the capital assets and liability accounts of the state; and

(e) the valuation account of all other state property.

(3) The executive director of each department of state government and all institutions of higher education shall submit statements containing the information and data necessary to enable the director of the Division of Finance to submit to the governor the reports required by Subsection (2).

Section 59. Section Renumbered and Amended.

Section 63A-3-301, Utah Code Annotated 1953, which is renumbered from Section 63-1a-1, Utah Code Annotated 1953, as enacted by Chapter 96, Laws of Utah 1985, is amended to read:

Part 3. Accounts Receivable Collection

[~~63-1a-1~~] 63A-3-301. Definitions.

[~~(1) If any account receivable has been unpaid for more than 90 days, any agency, department, division, commission, committee, board, council, institution, or any other authority of state government responsible for collection of the account may proceed under this chapter to collect the delinquent amount.~~]

[~~(2)~~] As used in this [~~chapter~~] part, "account receivable" means any amount due the state for which materials or services have been provided but for which payment has not been received by the servicing unit.

Section 60. Section Enacted.

Section 63A-3-302, Utah Code Annotated 1953, is enacted to read:

63A-3-302. Unpaid account receivable due the state.

If any account receivable has been unpaid for more than 90 days, any agency, department, division, commission, committee, board, council, institution, or any other authority of state government responsible for collection of the account may proceed under this part to collect the delinquent amount.

Section 61. Section Renumbered and Amended.

Section 63A-3-303, Utah Code Annotated 1953, which is renumbered from Section 63-1a-2, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

[~~63-1a-2~~] 63A-3-303. Notice to debtor — Contents.

(1) Upon default in payment of any account receivable, the entity responsible for collecting the account shall send a notice[,] by certified mail[,] to the debtor at the debtor's last-known address.

(2) The notice shall state:

(a) the date and amount of the receivable;

(b) a demand for immediate payment of the amount;

(c) a statement of the right of the debtor to file a written response to the notice, to have a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner;

(d) the time within which a written response must be filed; and

(e) a statement notifying the debtor [~~of the power of~~] that the state[~~, upon the failure of the debtor to respond, or upon a decision of the hearing examiner adverse to the debtor, to~~] may obtain an order under this [~~chapter~~] part and [~~to~~] execute upon income tax overpayments or refunds of the debtor[,] if:

(i) the debtor fails to respond to the notice; or

(ii) a hearing is held and the hearing officer decides against the debtor.

Section 62. Section Renumbered and Amended.

Section 63A-3-304, Utah Code Annotated 1953, which is renumbered from Section 63-1a-3, Utah Code Annotated 1953, as enacted by Chapter 96, Laws of Utah 1985, is amended to read:

[~~63-1a-3~~] 63A-3-304. Payment by debtor or collection by state.

If a written response or payment of delinquent receivable is not received by the state within 15 days from the date of receipt of the notice by the debtor, the state may determine the balance due and [~~proceed to~~] collect the balance as provided in Section [~~63-1a-6~~] 63A-3-307.

Section 63. Section Renumbered and Amended.

Section 63A-3-305, Utah Code Annotated 1953, which is renumbered from Section 63-1a-4, Utah Code Annotated 1953, as enacted by Chapter 96, Laws of Utah 1985, is amended to read:

[~~63-1a-4~~] 63A-3-305. Hearing requested — Notice to debtor.

If a written response is received by the state and a hearing is requested, the state shall:

(1) set a hearing date [~~shall be set~~] within 30 days of the receipt of the response[~~. Written~~]; and

(2) mail written notice of the hearing [~~shall be mailed~~] to the debtor at least 15 days before the date of the hearing.

Section 64. Section Renumbered and Amended.

Section 63A-3-306, Utah Code Annotated 1953, which is renumbered from Section 63-1a-5, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~63-1a-5~~] 63A-3-306. Hearing examiner — Procedures — Adjudicative proceedings.

(1) (a) The hearing shall be held before a hearing examiner designated by the state.

(b) The hearing examiner may not be an officer or employee of the entity in state government responsible for collecting or administering the account.

(2) The state shall comply with the procedures and requirements of Title 63, Chapter 46b, Administra-

tive Procedures Act, in [it] its adjudicative proceedings.

Section 65. Section Renumbered and Amended.

Section 63A-3-307, Utah Code Annotated 1953, which is renumbered from Section 63-1a-6, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1987, is amended to read:

[~~63-1a-6~~] 63A-3-307. Abstract of order is a lien.

(1) An abstract of an order of a hearing examiner stating a default may be filed with the State Tax Commission, and when filed, constitutes a lien to the extent of the receivable plus interest against any state income tax refund or overpayment due or to become due the debtor for a period of eight years from the date of the order, unless satisfied or otherwise released in writing by the state.

(2) The lien created by this section shall, for the purposes of Section 59-10-529 only, be considered a judgment, but no credit of a tax refund or overpayment may be made on account of this lien until 20 days after the date of the hearing examiner's order.

Section 66. Section Renumbered and Amended.

Section 63A-3-308, Utah Code Annotated 1953, which is renumbered from Section 63-1a-7, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~63-1a-7~~] 63A-3-308. Judicial review — Effect on lien.

(1) A judicial review of an order of a hearing examiner may be obtained by any party filing a complaint with the district court.

(2) (a) A notice of the filing of a complaint may be filed with the State Tax Commission.

(b) If notice is filed, the tax commission may take no action with respect to the lien created by Section [~~63-1a-6~~] 63A-3-307 until the matter is finally disposed of by the courts, except as provided in this [~~chapter~~] part.

Section 67. Section Renumbered and Amended.

Section 63A-3-309, Utah Code Annotated 1953, which is renumbered from Section 63-1a-8, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

[~~63-1a-8~~] 63A-3-309. Bond required — Terms — Expenses of debtor.

(1) (a) If a complaint is filed by the debtor for [a] judicial review of an order entered under this [~~chapter~~] part, the debtor shall furnish a bond to the State Tax Commission, with good and sufficient sureties, in the amount of the delinquent receivable or the amount of any overpayment or refund due, whichever is less, unless waived by the court.

(b) The lien created by Section [~~63-1a-6~~] 63A-3-307 is then dissolved as to that overpayment or refund and the overpayment or refund shall be released to the debtor.

(2) The bond shall provide that the surety will pay, upon a final determination adverse to the debtor, the amount of the bond or any other lesser amount as the court may determine, to the State Tax Commission for the use and benefit of the entity of state government obtaining the order.

(3) If the judicial review finds the claim of the state invalid, the state shall reimburse the debtor all reasonable expenses and attorney's fees incurred.

Section 68. Section Renumbered and Amended.

Section 63A-3-310, Utah Code Annotated 1953, which is renumbered from Section 63-1a-9, Utah Code Annotated 1953, as enacted by Chapter 96, Laws of Utah 1985, is amended to read:

[~~63-1a-9~~] 63A-3-310. Rules for implementing part.

The Board of Examiners may adopt rules for the implementation of this [~~chapter~~] part, including rules for the conduct of hearings and appointment of hearing examiners.

Section 69. Section Renumbered and Amended.

Section 63A-4-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-45, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

CHAPTER 4. RISK MANAGEMENT

Part 1. Risk Manager

[~~63-1-45~~] 63A-4-101. Risk manager — Appointment — Duties.

(1) The executive director shall appoint a risk manager, who shall be qualified by education and experience in the management of general property and casualty insurance.

(2) The risk manager shall:

(a) acquire and administer all property, casualty insurance, and workers' compensation insurance purchased by the state;

(b) recommend that the executive director make rules:

(i) prescribing reasonable and objective underwriting and risk control standards for state agencies;

(ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;

(iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the fund;

(iv) prescribing procedures for making claims and proof of loss; and

(v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration.

(c) implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents, and losses to assist state officers and employees in fulfilling their responsibilities for risk control and safety;

(d) coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including the state fire marshal, the director of the Division of Facilities Construction and Management, the Department of Public Safety, and institutions of higher education;

(e) maintain records necessary to fulfill the requirements of this section;

(f) present an annual report to the executive director describing the execution of risk management responsibilities in the state;

(g) manage the fund in accordance with economically and actuarially sound principles to produce adequate reserves for the payment of contingencies, including unpaid and unreported claims, and may purchase any insurance or reinsurance considered necessary to accomplish this objective; and

(h) inform the agency's governing body and the governor when any agency fails or refuses to comply with reasonable risk control recommendations made by the risk manager.

(3) Before the effective date of any rule, the risk manager shall provide a copy of the rule to each agency affected by it.

Section 70. Section Renumbered and Amended.

Section 63A-4-102, Utah Code Annotated 1953, which is renumbered from Section 63-1-46, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-46~~] 63A-4-102. Risk manager — Powers.

(1) The risk manager may:

(a) enter into contracts;

(b) purchase insurance;

(c) adjust, settle, and pay claims;

(d) pay expenses and costs;

(e) study the risks of all state agencies and properties;

(f) issue certificates of coverage to state agencies for any risks covered by Risk Management Fund;

(g) make recommendations about risk management and risk reduction strategies to state agencies;

(h) in consultation with the attorney general, prescribe insurance and liability provisions to be included in all state contracts;

(i) review agency building construction, major remodeling plans, agency program plans, and make recommendations to the agency about needed changes to address risk considerations;

(j) attend agency planning and management meetings when necessary;

(k) review any proposed legislation and communicate with legislators and legislative committees about the liability or risk management issues connected with any legislation; and

(l) solicit any needed information about agency plans, agency programs, or agency risks necessary to perform his responsibilities under this part.

(2) (a) The risk manager may expend monies from the Risk Management Fund to procure and provide coverage to all state agencies and their indemnified employees, except those agencies or employees specifically exempted by statute.

(b) The risk manager shall apportion the costs of that coverage according to the requirements of this part.

Section 71. Section Renumbered and Amended.

Section 63A-4-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-46.1, Utah Code Annotated 1953, as enacted by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-46.1~~] 63A-4-103. Risk management — Duties of state agencies.

(1) (a) Unless specifically authorized by statute to do so, [~~no~~] a state agency may not:

(i) purchase insurance or self-fund any risk unless authorized by the risk manager; or

(ii) procure or provide liability insurance for the state.

(b) (i) Notwithstanding the provisions of Subsection (a), the State Board of Regents may authorize higher education institutions to purchase insurance for, or self-fund, risks associated with their programs and activities that are not covered through the risk manager.

(ii) The State Board of Regents shall provide copies of those purchased policies to the risk manager.

(iii) The State Board of Regents shall ensure that the state [~~of Utah~~] is named as additional insured on any of those policies.

(2) Each state agency shall:

(a) comply with reasonable risk related recommendations made by the risk manager;

(b) participate in risk management training activities conducted or sponsored by the risk manager;

(c) include the insurance and liability provisions prescribed by the risk manager in all state contracts, together with a statement certifying to the other party to the contract that the insurance and liability provisions in the contract are those prescribed by the risk manager;

(d) at each principal design stage, provide written notice to the risk manager that construction and major remodeling plans relating to agency buildings and facilities to be covered by the fund are available for review, for risk control purposes, and

make them available to the risk manager for his review and recommendations; and

(e) cooperate fully with requests from the risk manager for agency planning, program, or risk related information, and allow the risk manager to attend agency planning and management meetings.

(3) Failure to include in the contract the provisions required by Subsection (2)(c) does not make the contract unenforceable by the state.

Section 72. Section Renumbered and Amended.

Section 63A-4-201, Utah Code Annotated 1953, which is renumbered from Section 63-1-47, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

Part 2. Risk Management Fund

[~~63-1-47~~] 63A-4-201. Risk Management Fund created — Administration — Use.

(1) (a) There is created the Risk Management Fund, which shall be administered by the risk manager.

(b) The fund shall cover property, liability, fidelity, and other risks as determined by the risk manager in consultation with the executive director [~~of the Department of Administrative Services~~].

(2) The risk manager may only use the fund to pay:

(a) insurance or reinsurance premiums;

(b) costs of administering the fund;

(c) loss adjustment expenses;

(d) risk control and related educational and training expenses; and

(e) loss costs which at the time of loss were eligible for payment under rules previously issued by the executive director [~~of the Department of Administrative Services~~] under the authority of Section [~~63-1-45~~] 63A-4-101.

(3) In addition to any monies appropriated to the fund by the Legislature, the risk manager shall deposit with the state treasurer for credit to the fund:

(a) any insured loss or loss expenses paid by insurance or reinsurance companies;

(b) the gross amount of all premiums and surcharges received under Section [~~63-1-48~~] 63A-4-202;

(c) the net refunds from cancelled insurance policies necessary to self-insure previously insured risks, with the balance of the proceeds to be refunded to the previously insured agencies;

(d) all refunds, returns, or dividends from insurance carriers not specifically covered in Subsections (3)(a), (b), and (c);

(e) savings from amounts otherwise appropriated for participation in the fund; and

(f) all net proceeds from sale of salvage and subrogation recoveries from adverse parties related to losses paid out of the fund.

(4) All monies deposited in the fund are nonlapsing.

(5) (a) Pending disbursement, the risk manager shall provide surplus monies in the fund to the state treasurer for investment as provided in Title 51, Chapter 7, [the] State Money Management Act [~~of 1974~~].

(b) The state treasurer shall deposit all interest earned on invested fund monies into the fund.

Section 73. Section Renumbered and Amended.

Section 63A-4-202, Utah Code Annotated 1953, which is renumbered from Section 63-1-48, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-48~~] 63A-4-202. Determination of insurance premiums — Information furnished by agencies — Notice to agencies.

(1) Each agency shall provide the risk manager with all reasonable information necessary to compute insurance premiums whenever he requests that information from them.

(2) (a) The risk manager shall charge to each agency that receives insurance coverage from the Risk Management Fund its proportionate share of the cost incurred based upon actuarially sound rating techniques.

(b) That premium shall include all costs of operating the fund as stated in Section [~~63-1-47~~] 63A-4-201.

(3) To enable each participating agency to meet its budgeting requirements, the risk manager shall provide each participating agency with projected insurance costs for the next two fiscal years within the time limits required.

Section 74. Section Renumbered and Amended.

Section 63A-4-203, Utah Code Annotated 1953, which is renumbered from Section 63-1-49, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-49~~] 63A-4-203. Refusal of agency to pay charges — Notice to the Division of Finance for collection.

(1) If any agency of the state refuses to remit any payment as charged by the risk manager within 30 days after the date due, the risk manager may certify to the director of the Division of Finance the fact of the refusal and the amount of the delinquent payment, together with a request that the amount be transferred from funds of the delinquent agency to the Risk Management Fund.

(2) The risk manager shall mail a copy of the certification and request to the delinquent agency.

(3) The risk manager shall resolve claims against the fund in an expeditious manner.

Section 75. Section Renumbered and Amended.

Section 63A-4-204, Utah Code Annotated 1953, which is renumbered from Section 63-1-50, Utah Code Annotated 1953, as last amended by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-50~~] 63A-4-204. School district participation in Risk Management Fund.

(1)(a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of its board of education.

(b) Upon the approval of the state risk manager and the board of education of the school district, a public school district may participate in the [~~state~~] Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3)(a) The state risk manager shall treat each participating public school district as a state agency when participating in the [~~state~~] Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

Section 76. Section Renumbered and Amended.

Section 63A-4-205, Utah Code Annotated 1953, which is renumbered from Section 63-1-50.1, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

[~~63-1-50.1~~] 63A-4-205. Risk management — Coverage of local health departments.

(1)(a) A local health department established under the authority of Title 26A, Chapter 1, Part 1, may participate in the [~~state~~] Risk Management Fund by:

(i) obtaining the approval of the state risk manager; and

(ii) obtaining a resolution from its governing board of health authorizing its participation in the fund.

(b) The state risk manager or the local health department may terminate the local health department's participation in the Risk Management Fund according to guidelines specified in the contract between the parties.

(c) The state risk manager may set individual premium rates for each local health department.

(2) For purposes of administration, the state risk manager shall treat each local health department participating in the fund as a state agency.

(3) The counties of the state shall contribute to the fund amounts assessed by the risk manager if the fund is unable to meet its payments as a result of local health department coverage.

Section 77. Section Renumbered and Amended.

Section 63A-4-206, Utah Code Annotated 1953, which is renumbered from Section 63-1-50.2, Utah Code Annotated 1953, as enacted by Chapter 97, Laws of Utah 1990, is amended to read:

[~~63-1-50.2~~] 63A-4-206. Limits on use of risk management data as evidence.

Notwithstanding any other provisions of law, any reports, recommendations, surveys, schedules, lists, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Risk Management Fund may not be admitted into evidence in any court, or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those reports, recommendations, surveys, schedules, lists, or data.

Section 78. Section Renumbered and Amended.

Section 63A-5-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-33, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1986, is amended to read:

CHAPTER 5. STATE BUILDING BOARD/DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

Part 1. State Building Board

[~~63-1-33~~] 63A-5-101. Creation — Composition — Appointment — Compensation — Administrative services.

(1) There is created a State Building Board composed of six members, five of whom shall be appointed by the governor for staggered terms of four years.

(2) Members of the State Building Board serving on the effective date of this act shall serve the terms for which they were appointed, but new appointments shall be in accordance with the provisions of this part.

(3) The state budget director or designee, shall be a nonvoting member of the board.

(4) Each member shall hold office until a successor is appointed and qualified, but no member shall serve more than two consecutive terms.

(5) One member shall be designated by the governor as chairperson.

(6) The members of the board [shall] may not receive salaries, but shall be paid a per diem and their actual traveling expenses, as [determined by the

governor] established by the director of the Division of Finance under Section 63A-3-106.

(7) The members of the board [shall] are not [be] required to give bond for the performance of their official duties.

(8) The department shall provide administrative and staff services to enable the board to exercise its powers and discharge its duties, and shall provide necessary space and equipment for the board.

Section 79. Section Renumbered and Amended.

Section 63A-5-102, Utah Code Annotated 1953, which is renumbered from Section 63-1-34, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-34~~] 63A-5-102. Meetings of board — Calling — Rules of procedure — Quorum.

(1) The chairperson or any two members may call meetings of the State Building Board.

(2) The board shall adopt rules of procedure for the conduct of its meetings.

(3) Three members of the board shall constitute a quorum for the transaction of business.

(4) All meetings of the board shall be conducted in accordance with [~~the Utah~~] Title 52, Chapter 4, Open and Public Meetings Act.

Section 80. Section Renumbered and Amended.

Section 63A-5-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-35, as last amended by Chapter 255, Laws of Utah 1992, is renumbered and amended to read:

[~~63-1-35~~] 63A-5-103. Board — Powers.

(1) The [~~board~~] State Building Board shall:

(a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;

(b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);

(c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;

(d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;

(e) make rules necessary to discharge its duties and the duties of the Division of Facilities Construction and Management by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for the use of state agencies and institutions in the planning for new state buildings and facilities including life-cycle costing, cost-effectiveness studies, and other methods and procedures that demonstrate:

(i) the need for the building or facility;

(ii) the effectiveness of its design;

(iii) the efficiency of energy use; and

(iv) the usefulness of the building or facility over its lifetime;

(g) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year; and

(h) assure the efficient use of all building space.

(2) (a) The [~~building board~~] State Building Board shall ensure that the five-year building plan required by Subsection (1)(b) includes:

(i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's, department's, commission's, and institution's present and future needs;

(ii) all buildings that will be constructed wholly or in part with state funds;

(iii) all buildings that will use state funds for maintenance and operations;

(iv) maps, information, and space use data for all state-owned and leased facilities;

(v) substantiating data to support the adequacy of any projected plans;

(vi) detailed estimates of the cost of each project; and

(vii) a summary of all contingency fund balances as of the end of the most recent fiscal year.

(b) The [~~building board~~] State Building Board may make rules prescribing the format for submitting the information required by this subsection.

(3) (a) As used in this Subsection (3), "capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of $1,000,000 or more;

(ii) addition of new space that will cost more than $100,000; or

(iii) land acquisition where an appropriation is requested.

(b) The [~~building board~~] State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

(4) (a) As used in this Subsection (4), "capital improvements" means any:

(i) remodeling, alteration, repair project with a total cost of less than $1,000,000; or

(ii) site and utility improvement with a total cost of less than $1,000,000.

(b) (i) The [~~building board~~] State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) Unless otherwise directed by the Legislature, the building board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(5) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the [~~building board~~] State Building Board may, notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

(i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

(ii) the Legislature at its next annual general session.

(6) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

Section 81. Section Renumbered and Amended.

Section 63A-5-201, Utah Code Annotated 1953, which is renumbered from Section 63-1-36, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

Part 2. Division of Facilities Construction and Management

[~~63-1-36~~] 63A-5-201. Creation — Administration.

There is created within the department [~~of administrative services~~] the Division of Facilities Construction and Management, to be administered by a director.

Section 82. Section Enacted.

Section 63A-5-202, Utah Code Annotated 1953, is enacted to read:

63A-5-202. Definitions.

As used in this part:

(1) "Director" means director of the Division of Facilities Construction and Management.

(2) "Division" means Division of Facilities Construction and Management.

Section 83. Section Renumbered and Amended.

Section 63A-5-203, Utah Code Annotated 1953, which is renumbered from Section 63-1-37, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-37~~] 63A-5-203. Director of division — Appointment.

The executive director shall appoint the director of the division [~~of Facilities Construction and Management shall be appointed by the executive director~~] with the approval of the governor.

Section 84. Section Renumbered and Amended.

Section 63A-5-204, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.8, Utah Code Annotated 1953, as last amended by Chapter 195, Laws of Utah 1992, is amended to read:

[~~63-1-38.8~~] 63A-5-204. Specific powers and duties of director.

(1) The director shall:

(a) recommend rules to the executive director for the use and management of facilities and grounds owned or occupied by the state for the use of its departments and agencies;

(b) supervise and control the allocation of space, in accordance with legislative directive through the appropriations act or other specific legislation, to the various departments, commissions, institutions, and agencies in the capitol, the state office building, and all other buildings or space owned, leased, or rented by or to the state, except as otherwise provided by law;

(c) lease, in accordance with the Utah Procurement Code, and legislative directive through the appropriations act or other specific legislation, in the name of the division [~~of Facilities Construction and Management~~], all leasehold space in real property to be occupied by the state or any department, commission, institution, or agency of the state except the State Office of Education and institutions of higher education;

(d) acquire, as authorized by the Legislature through the appropriations act or other specific legislation, and hold title to, in the name of the division [~~of Facilities Construction and Management~~], all real property, buildings, fixtures, or appurtenances owned by the state or any of its agencies;

(e) recommend to the executive director rules to govern traffic flow and vehicle parking on roadways and parking lots which surround the capitol and that are a part of Utah State Highway 293; [and]

(f) adopt and use a common seal, of a form and design determined by the director, and of which courts shall take judicial notice;

(g) file a description and impression of the seal with the Division of Archives;

(h) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or interest in property belonging to the state or any of its departments, except institutions of higher education;

(i) report all properties acquired by the state, except those acquired by institutions of higher education, to the director of the Division of Finance for inclusion in the state's financial records; and

[~~(f)~~] (j) take all other action necessary for carrying out the purposes of this chapter.

(2)(a) The director shall direct or delegate maintenance and operations, preventive maintenance, and facilities inspection programs and activities for any department, commission, institution, or agency except state institutions of higher or public education.

(b) For functions other than administration, the following agencies are also exempt from the provisions of this Subsection (2):

(i) the Department of Transportation;

(ii) the Board of State Lands and Forestry;

(iii) the Division of Expositions;

(iv) the Department of Corrections;

(v) the Department of Natural Resources; and

(vi) the Utah National Guard.

(3) (a) In making any allocations of space under Subsection (1), the director shall:

(i) conduct studies to determine the actual needs of each department, commission, institution, or agency; and

(ii) comply with the restrictions contained in Subsection (3).

(b) The supervision and control of the legislative area is reserved to the Legislature.

(c) The supervision and control of the judicial area is reserved to the judiciary for trial courts only.

(d) The director may not supervise or control the allocation of space for entities in the public and higher education systems.

(4) The director may:

(a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;

(b) sue and be sued in the name of the division; and

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature through an appropriations act or other specific legislation, whatever real or personal property that is necessary for the discharge of the director's duties.

[~~(4)~~] (5) Notwithstanding the provisions of Subsection (1)(c), the Division of Indian Affairs, the Department of Transportation, the Board of State Lands and Forestry, the Division of Expositions, the Department of Natural Resources, and the Utah National Guard may lease real property, buildings, fixtures, or appurtenances for purposes other than administration.

[~~(5)~~] (6) Notwithstanding the provisions of Subsection (1)(d), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

(a) the Office of Trust Administrator;

(b) the Department of Transportation;

(c) the Board of State Lands and Forestry;

(d) the Division of Expositions;

(e) the Department of Natural Resources;

(f) the Utah National Guard;

(g) any area vocational center or other institution administered by the State Board of Education; and

(h) any institution of higher education.

Section 85. Section Renumbered and Amended.

Section 63A-5-205, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.2, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1983, is amended to read:

[~~63-1-38.2~~] 63A-5-205. Contracting powers of director — Retainage escrow.

(1) In accordance with [~~the~~] Title 63, Chapter 56, Utah Procurement Code, the director:

(a) may enter into contracts for any work or professional services which the division or the State Building Board may do or have done; [~~however, the director~~]

(b) may, as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work;

[~~(b) Shall~~] (c) shall let to the lowest responsible and qualified bidder any contract, except those for professional services[~~; the~~].

(2) The judgment of the [~~division~~] director as to the responsibility and qualifications of a bidder [~~shall be~~] is conclusive, except in case of fraud or bad faith.

[~~(2)~~] (3) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the director. [~~It is the responsibility of the~~] The contractor [~~to~~] shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

Section 86. Section Renumbered and Amended.

Section 63A-5-206, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.1, as last amended by Chapters 30 and 255, Laws of Utah 1992, is renumbered and amended to read:

[~~63-1-38.1~~] 63A-5-206. **Construction, alteration, and repair of state facilities — Powers of director — Expenditure of appropriations.**

(1) As used in this section:

(a) "Analysis" means an economic assessment of competing design and maintenance alternatives, the object of which is to reduce cost and conserve energy.

(b) "Capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of $1,000,000 or more;

(ii) addition of new space that will cost more than $100,000; or

(iii) land acquisition where an appropriation is requested.

(c) "Capital improvements" means any:

(i) remodeling, alteration, repair project with a total cost of less than $1,000,000; or

(ii) site and utility improvement with a total cost of less than $1,000,000.

(d) "Life cycle cost-effective" means the lowest cost of owning and operating a facility over a 25-year period, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(f) "State-owned facilities" means those facilities identified in Section [~~63-1-38.7~~] 63A-5-212.

(2) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the various buildings and improvements, and other work carried out by the division.

(3) (a) (i) Except as provided in Subsection (a)(ii), the director shall recommend the need for and exercise direct supervision over the design and construction of all alterations, repairs, and improvements to all existing facilities of the state, its departments, commissions, institutions, and agencies if the total project construction cost is greater than $100,000.

(ii) The director may:

(A) authorize a department, commission, institution, or agency to control design and construction of alterations, repairs, and improvements when the total project construction cost is greater than $100,000 by following the delegation requirements and procedures of Subsection (c); or

(B) by rule, authorize a particular department, commission, institution, or agency to control design and construction on projects within a particular dollar range and a particular project type.

(b) Except for the placement or installation of works of art through [~~the~~] Title 9, Chapter 6, Part 4, Utah Percent-for-Art [~~Program, under Title 64, Chapter 2a~~] Act, an existing facility may not be altered, repaired, or improved on the property of any state institution, department, commission, or agency if the total project construction cost exceeds $100,000 until the location, design, plans, and specifications are approved by the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency.

(c) (i) The director may delegate control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis if the state entity requests that delegation in writing and the State Building Board approves the delegation.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not have access to the building board contingency funds authorized in Section [~~63-1-38.4~~] 63A-5-209 for the delegated project.

(4) (a) The director shall be responsible to ensure that state-owned facilities are life cycle cost-effective.

(b) The estimated cost of the analysis shall be included in each program budget document and in the project funding request submitted to the State Building Board, the governor, and the Legislature.

(c) The final cost estimate shall reflect the most life cycle cost-effective building.

(d) The director, in consultation with the State Building Board and Division of Energy, shall make rules to implement this subsection by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) The State Building Board may exempt a facility from being life cycle cost-effective pursuant to rules, after reviewing and concurring with a written request and justification from the director.

(5) (a) The director shall recommend the need for and exercise direct supervision over the design and construction of all new facilities of the state, its departments, commissions, institutions, and agencies

if the total project construction cost is in excess of $100,000.

(b) (i) Except for the placement or installation of works of art [~~through the Percent-for-Art Program~~] under Title [~~64~~] 9, Chapter [~~2a~~] 6, Part 4, Utah Percent-for-Art Act a new facility may not be constructed on the property of any state department, commission, institution, or agency if the total project construction cost of the facility, regardless of the funding source, exceeds $100,000, until the construction of the facility has been approved by the Legislature in an appropriations act or by other specific legislation, and the location, design, plans, and specifications are approved by the director and the official charged with the administration of the affairs of the particular department, commission, institution, or agency.

(ii) Facilities to be built with nonstate funds and owned and occupied by nonstate entities within research park areas are exempt from this Subsection (5)(b).

(iii) Facilities to be built for the Utah National Guard for which the funding for construction, operations, and maintenance are derived totally from the United States Government are exempt from the requirement of obtaining legislative approval required by this Subsection (5)(b).

(c) (i) The director may delegate control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis if the state entity requests that delegation in writing and the State Building Board approves the delegation.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not have access to the building board contingency funds authorized in Section [~~63-1-38.4~~] 63A-5-209 for the delegated project.

(6) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(7) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

(8) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

Section 87. Section Renumbered and Amended.

Section 63A-5-207, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.6, Utah Code Annotated 1953, as last amended by Chapter 170, Laws of Utah 1985, is amended to read:

[~~63-1-38.6~~] 63A-5-207. Director to have plans prepared and award contracts for facilities — Prerequisites — Availability of appropriated funds — Excessive obligations prohibited — Exceptions.

(1) The director may have plans prepared for a facility for which an appropriation has been made by the Legislature, and shall pay for the preparation from the planning fund as soon as:

(a) the measures passed by the Legislature are approved by the governor;

(b) the director receives the written request of the sponsoring institution; and

(c) the state fiscal officer certifies that the Legislature has made an appropriation for the project indicated.

(2) The director may proceed to award contracts for construction of any project if the written request by a sponsoring institution directs the director to proceed and if the state fiscal officer has certified that the Legislature has made an appropriation for the purpose. The director shall promptly notify the director of the Division of Fine Arts, Department of Community and Economic Development, of each request by a sponsoring institution and of each certification by the state fiscal officer.

(3) The funds shall be available upon demand within the year to which the appropriation applies. The director is not required to delay action until the full amount of the appropriation is transferred. However, the state fiscal officer shall make the amount available at times as the director may require to meet the obligations incurred in the development of building projects authorized by the Legislature.

(4) (a) The director shall assure, unless otherwise specifically instructed by the terms of the appropriation of a particular project, that no obligations beyond the appropriation are incurred in the construction of any project authorized by the Legislature.

(b) The director may consent to the drafting of any plan or the awarding of any contract that will exceed in cost the appropriation currently available for the project in question only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.

[~~(4)~~] (5) (a) The director shall request the state fiscal officer to certify the amount of any funds set aside in an appropriation for deposit in the Percent-for-Art Account at the beginning of the percent-for-art project for which the appropriation is made.

(b) The certified amount shall be released to the director of the Division of Fine Arts, who shall use the fund to administer the Percent-for-Art Program established under Title 64, Chapter 2a.

Section 88. Section Renumbered and Amended.

Section 63A-5-208, Utah Code Annotated 1953, which is renumbered from Section 63-1-44, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1990, is amended to read:

[~~63-1-44~~] 63A-5-208. Public construction bids to list subcontractors — Changing subcontractors — Bidders as subcontractors.

(1) (a) (i) On each public construction project the director shall require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each subcontractor's name and bid amount.

(ii) On projects where the contractor's total bid is less than $250,000, subcontractors whose bid is less than $5,000 need not be listed.

(iii) On projects where the contractor's total bid is $250,000 or more, subcontractors whose bid is less than $25,000 need not be listed.

(b) This list shall be submitted within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays. This does not limit the director's right after that time to authorize a change in the listing of any subcontractor.

(c) After the lapse of the 24 hours from the bid opening, the contractor may change his subcontractors only with permission of the director and after having established that the change is considered to be in the best interest of the state or that there exists a good and sufficient reason for the change, [~~such as~~] including, error in bid figures, financial irresponsibility, inability of a subcontractor to perform, or other good reason. Any approved changes in subcontractors that result in a net lower contract price for subcontracted work shall accordingly reduce the total sum of the prime contract.

(2) (a) Bidders may not list themselves or "self" under any category as subcontractor unless they intend to perform, and are currently licensed to perform, those portions of the work for which they list themselves or "self."

(b) If a bidder lists himself, rather than a subcontractor, for a portion of the work, the director may require the bidder to submit, within three business days of the bidder's receipt of the director's written request for such information, written information indicating the bidder's previous experience in and qualifications for performing such work.

(c) If the bidder's submitted information causes the director to reasonably believe that self-performance of the portion of the work by the bidder is likely to yield a substandard finished product, the director shall:

(i) require the bidder to utilize a subcontractor for the portion of the work in question; or

(ii) reject the bidder's bid.

Section 89. Section Renumbered and Amended.

Section 63A-5-209, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.4, Utah Code Annotated 1953, as last amended by Chapters 170 and 258, Laws of Utah 1985, is amended to read:

[~~63-1-38.4~~] 63A-5-209. Building appropriations supervised by director — Disposition of surplus.

(1) The director shall:

(a) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made and shall specifically allocate money appropriated when more than one project is included in any single appropriation without legislative directive[~~. The director shall~~];

(b) (i) expend the amount necessary from appropriations for planning, engineering, and architectural work[~~. Amounts~~]; and

(ii) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund in the preparation of plans, engineering, and specifications shall be returned to the fund[~~. The director shall~~];

(c) (i) hold in reserve a reasonable percentage not to exceed 2-1/2% of the total amount appropriated for the construction or remodeling of buildings, for contingencies which may be over and above all amounts obligated by contract for planning, engineering, and architectural work, sites, and construction contracts[~~. The~~];

(ii) reserve funds shall be held by the director to cover unforeseen contingencies, and shall be used only if:

[~~(a)~~] (A) the board or head of the sponsoring agency for which the Legislature made an appropriation for a building project makes an official request to the director;

[~~(b)~~] (B) the director investigates the nature of the expenditure and concurs in the necessity of the proposed expenditure; and

[~~(c)~~] (C) the director authorizes the expenditure.

(2) In the event any part of the appropriation for a building project, other than the part set aside for the

Percent-for-Art Program, under Title [64] 9, Chapter [2a] 6, Part 4, remains unencumbered after the award of construction and professional service contracts, and establishing a reserve for fixed and moveable equipment, the balance of the appropriation shall be dedicated to the contingency fund described in this section and shall not revert to the General Fund.

(3) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside in an appropriation administered by the Division of Fine Arts under Title 64, Chapter 2a. Funds from appropriations for any state building or facility of which any part is derived from the issuance of bonds, to the extent it would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds, shall not be set aside.

Section 90. Section Renumbered and Amended.

Section 63A-5-210, Utah Code Annotated 1953, which is renumbered from Section 63-1-44.5, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1988, Fourth Special Session, is amended to read:

[~~63-1-44.5~~] 63A-5-210. Division of Facilities Construction and Management Liquidation of assets.

(1) For purposes of this section[~~: (a) "Assets"~~] "assets" means all of the proceeds from the $5,000,000 appropriated by Chapter 1, Laws of Utah 1986, Fourth Special Session that are in the possession of the division [~~of Facilities Construction and Management~~] or that are transferred to the division at any future time.

[~~(b) "Division" means the Division of Facilities Construction and Management.~~]

(2) The division shall:

(a) after complying with the requirements of Title 63, Chapter 56, [~~the~~] Utah Procurement Code, contract with a qualified person or entity to liquidate the assets;

(b) ensure that the assets are liquidated at prices and terms that are reasonable under the circumstances;

(c) convey or cause to be conveyed title to the assets or any portion of the assets to the purchasers of the assets upon receipt of the purchase price;

(d) deposit all proceeds from liquidation of the assets into a restricted account in the General Fund created for that purpose; and

(e) pay all costs incurred in performing its duties under this section from the proceeds from the liquidation of the assets.

(3) In fulfilling its responsibilities under this section, the division need not obtain the governor's signature or other approval before the assets are liquidated.

(4) This section does not limit the state's authority to exercise any other power it may have to hold, manage, or liquidate the assets.

Section 91. Section Renumbered and Amended.

Section 63A-5-211, Utah Code Annotated 1953, which is renumbered from Section 63-1-42, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1987, is amended to read:

[~~63-1-42~~] 63A-5-211. Planning Fund expenditures authorized — Ceiling on expenditures — Recovery — Not to revert to General Fund.

(1) The Planning Fund shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a meaningful cost estimate of any facility or improvement with a demonstrable or immediate need.

(2) (a) The director may make expenditures from the Planning Fund in order to provide planning information to the State Building Board, the governor, and the Legislature, up to a maximum of $350,000 in outstanding Planning Fund commitments.

(b) Planning Fund commitments made prior to February 28, 1987, will not require reimbursement, and any balance existing in the Planning Fund on that date beyond $350,000 shall be returned to the General Fund.

(3) (a) The director shall authorize all payments made from the Planning Fund.

(b) These payments shall be a charge on the project for which they were drawn.

(c) The amount paid shall be credited to the Planning Fund when the Legislature appropriates money for any building project for which planning costs have previously been paid from the Planning Fund.

(4) (a) Money may also be expended from the Planning Fund for architectural and engineering services incident to the planning and preparation of applications for funds on construction financed by other than state sources, including federal grants.

(b) However, upon approval of such financing, the money spent for architectural and engineering services shall be returned as a reimbursement to the Planning Fund.

(5) This fund does not lapse to the General Fund at the end of any year but shall remain as a permanent fund.

Section 92. Section Renumbered and Amended.

Section 63A-5-212, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.7, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-38.7~~] 63A-5-212. Buildings for which director responsible.

The director shall be responsible for the state capitol, the state capitol grounds, the state office build-

ing, other rooms or buildings hired to house state departments and agencies, and all other buildings owned by the state on capitol hill, and other facilities as assigned, and shall keep those facilities in good repair.

Section 93. Section Renumbered and Amended.

Section 63A-5-213, Utah Code Annotated 1953, which is renumbered from Section 63-1-39, Utah Code Annotated 1953, as last amended by Chapter 227, Laws of Utah 1988, is amended to read:

[~~63-1-39~~] 63A-5-213. Security for capitol complex — Traffic and parking rules enforcement for Division of Facilities Construction and Management — Security personnel.

(1) The Department of Public Safety, in cooperation with the director, shall:

(a) provide for the security of grounds and buildings of the capitol complex; and

(b) enforce traffic provisions under Title 41, Chapter 6, and parking rules, as adopted by the division, for all grounds and buildings under the jurisdiction of the division [~~of Facilities Construction and Management~~].

(2) Security personnel, as considered necessary by the commissioner of public safety under Subsection (1), shall be special function officers under Section 77-1a-4, or security guards under Title 41, Chapter 13a.

Section 94. Section Renumbered and Amended.

Section 63A-5-214, Utah Code Annotated 1953, which is renumbered from Section 63-1-38.9, Utah Code Annotated 1953, as last amended by Chapters 183 and 231, Laws of Utah 1990, is amended to read:

[~~63-1-38.9~~] 63A-5-214. Transfer of title to real property from DFCM to the State Board of Education.

(1) Title shall be held by and remain in the State Board of Education for the following:

(a) all real property, buildings, fixtures, and appurtenances held by the State Board of Education prior to November 10, 1983, which were transferred to the director [~~of the Division of Facilities Construction and Management~~] under Section [~~63-1-38.8~~] 63A-5-204, including:

(i) Uintah Basin [~~Area Vocational~~]
Applied Technology Center
1100 East Lagoon Street
Roosevelt, Utah 84066 (approximately 28 acres);

(ii) Sevier Valley [~~Area Vocational~~]
Applied Technology Center
800 West 200 South
Richfield, Utah 84701 (approximately 38 acres);

(iii) Davis [~~Area Vocational~~]
Applied Technology Center
550 East 300 South
Kaysville, Utah 84037 (approximately 25 acres);

(iv) Murray B. Allen Center for the Blind
309 East 100 South
Salt Lake City, Utah 84111 (approximately 1 acre);

(v) Utah Industries for the Blind
1595 West 500 South
Salt Lake City, Utah 84111 (approximately 6 acres);

(vi) Ogden Services for the Visually Handicapped
538 25th Street
Ogden, Utah 84401 (approximately 0.3 acre);

(vii) Utah Schools for the Deaf and Blind and Utah School for the Deaf
846 20th Street
Ogden, Utah 84401 (approximately 47 acres);

(viii) Utah School for the Blind
742 Harrison Boulevard
Ogden, Utah 84401 (approximately 28 acres); and

(ix) Utah Community Center for the Deaf
388 North 400 East
Bountiful, Utah 84010 (approximately 1 acre);

(b) all real property and improvements, buildings, roads, parking lots, utilities, and appurtenances acquired since November 10, 1983 for the purposes of the State Board of Education that are held by the director [~~of the Division of Facilities Construction and Management~~] under Section [~~63-1-38.8~~] 63A-5-204, including:

(i) Ogden-Weber Area Vocational Center, formerly known as the Youth Development Center with ownership formerly vested with Utah State Department of Human Services, Division of Youth Corrections 559 East AVC Lane Ogden, Utah 84404-6751 (approximately 90 acres) with the following boundaries: North Street and present state property line on the north; Monroe Boulevard on the east; the present state property line on the south; Washington Boulevard and present state property line on the west; and

(ii) Bridgerland Area Vocational Center, presently known as Logan Regional Center, formerly known as the Wurlitzer Manufacturing Company, provided that the allocations of space and standards for review and modification of the allocations set forth in [~~S.B.~~ 8] Chapter 5, Laws of Utah 1982, Third Special Session [~~1982~~], are confirmed:
1301 North 6th West
Logan, Utah 84321 (approximately 50.8 acres).

(2) Title subject to transfer to the State Board of Education under this section shall be transferred on April 29, 1985.

(3) (a) All obligations, leases, or agreements relative to property subject to transfer that were incurred or entered into before the effective date of this section are validated, ratified, and confirmed by the State Board of Education and constitute legally binding obligations of the board.

(b) Appropriations made to any agency, department, division, or governmental entity for the pur-

pose of fulfilling any obligation, lease, or agreement that is transferred to the State Board of Education under this section shall be made to the board.

(c) This Subsection (3) does not apply to construction contracts.

(4) Funds appropriated to the State Building Board for maintenance and operation, and industrial revenue bonds related to the Bridgerland Area Vocational Center for the fiscal year beginning July 1, 1985 shall be transferred to the State Board of Education for allocation to the Bridgerland Area Vocational Center.

(5) Funds appropriated, or to be appropriated, to complete the repurchase, on behalf of Utah State University, of 30 acres near the north end of Utah State University, previously designated for use by the Bridgerland Area Vocational Center, shall be restored to the State Board of Education to be used exclusively to remodel the Wurlitzer Building to house the programs of the Bridgerland Area Vocational Center authorized under [~~S.B. 8~~] Chapter 5, Laws of Utah 1982, Third Special Session [~~1982~~].

Section 95. Section Renumbered and Amended.

Section 63A-5-215, Utah Code Annotated 1953, which is renumbered from Section 63-1-40, Utah Code Annotated 1953, as last amended by Chapter 170, Laws of Utah 1985, is amended to read:

[~~63-1-40~~] 63A-5-215. Disposition of proceeds received by division from sale of property.

(1) The money received by the division from the sale or other disposition of property shall be paid into the state treasury and becomes a part of the funds provided by law for carrying out the building program of the state, and are appropriated for that purpose[~~; however the~~].

(2) The proceeds from sales of property belonging to or used by a particular state institution or agency shall, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of that institution or agency.

Section 96. Section Renumbered and Amended.

Section 63A-5-216, Utah Code Annotated 1953, which is renumbered from Section 63-1-41, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, is amended to read:

[~~63-1-41~~] 63A-5-216. Reception of gifts, grants and donations by division.

Gifts, grants, and donations may be received by the division or by the state to further the purposes of this part, and shall not revert to the General Fund.

Section 97. Section Renumbered and Amended.

Section 63A-5-217, Utah Code Annotated 1953, which is renumbered from Section 63-1-36.5, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1986, is amended to read:

[63-1-36.5] 63A-5-217. No unauthorized expenditures for facilities.

(1) The division [of Facilities Construction and Management] may not expend appropriated or nonappropriated funds to acquire or construct any facility for any state agency or instrumentality unless expressly authorized to do so by the Legislature through the appropriations act or other specific legislation.

(2) This section does not apply to the renovation, remodeling, or retrofitting of any existing building or facility with nonappropriated funds.

Section 98. Section Renumbered and Amended.

Section 63A-5-218, Utah Code Annotated 1953, which is renumbered from Section 63-1-44.8, Utah Code Annotated 1953, as enacted by Chapter 265, Laws of Utah 1992, is amended to read:

[~~63-1-44.8~~] 63A-5-218. Leases.

The division may:

(1) subject to legislative appropriation, enter into facility leases with terms of up to ten years when the length of the lease's term is economically advantageous to the state; and

(2) with the approval of the Building Board and subject to legislative appropriation, enter into facility leases with terms of more than ten years when the length of the lease's term is economically advantageous to the state.

Section 99. Section Renumbered and Amended.

Section 63A-5-219, Utah Code Annotated 1953, which is renumbered from Section 63-1-44.9, Utah Code Annotated 1953, as enacted by Chapter 265, Laws of Utah 1992, is amended to read:

[~~63-1-44.9~~] 63A-5-219. Statewide contingency fund transfer.

The division shall transfer at least $100,000 annually from the statewide Contingency Fund to the General Fund to pay for personal service expenses.

Section 100. Section Renumbered and Amended.

Section 63A-6-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-51, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

CHAPTER 6. DIVISION OF INFORMATION TECHNOLOGY SERVICES AND STATE INFORMATION TECHNOLOGY COORDINATOR

Part 1. Division of Information Technology Services

[63-1-51] 63A-6-101. Creation — Administration.

[~~(1)~~] There is created within the department [of Administrative Services] the Division of Information Technology Services, to be administered by a director.

[~~(2) The executive director of the Department of Administrative Services shall appoint a director of the Division of Information Technology Services with the approval of the governor.~~]

Section 101. Section Enacted.

Section 63A-6-102, Utah Code Annotated 1953, is enacted to read:

63A-6-102. Director of division — Appointment.

The executive director shall appoint a director of the Division of Information Technology Services with the approval of the governor.

Section 102. Section Renumbered and Amended.

Section 63A-6-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-54, Utah Code Annotated 1953, as last amended by Chapter 85, Laws of Utah 1991, is amended to read:

[~~63-1-54~~] 63A-6-103. Duties of the division — Advisory committee.

The Division of Information Technology Services shall:

(1) establish telecommunication system specifications and standards for use by state agencies;

(2) coordinate state telecommunication planning in cooperation with state telecommunication users and other departments and state agencies;

(3) coordinate the development and implementation of advanced state telecommunication systems;

(4) provide data processing and telecommunication technical assistance to state agencies;

(5) cooperate with other federal, state, county, or city data processing and telecommunication departments, divisions, sections, or units in the development, implementation, and maintenance of governmental data processing and telecommunication systems in a cooperative organization or otherwise;

(6) establish, operate, manage, and maintain the central state computer center and regional computer centers;

(7) design, implement, and manage all state-owned, leased, or rented land mobile or radio telecommunication systems which are used in the delivery of services for state government or its political subdivisions; and

(8) coordinate the implementation of minimum standards for compatibility of procedures, programming languages, codes, and media to facilitate the exchange of information within and among systems.

Section 103. Section Renumbered and Amended.

Section 63A-6-104, Utah Code Annotated 1953, which is renumbered from Section 63-1-55, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

[~~63-1-55~~] 63A-6-104. Delegation of division duties.

(1) The director of the Division of Information Technology Services, with the approval of the executive director [~~of the Department of Administrative Services~~], may delegate the division's authority to other state agencies and institutions by contract or other means authorized by law, if, in the judgment of the director:

(a) the state agency or institution has requested the authority; and

(b) the state agency or institution has the necessary resources and skills to perform or control the functions of the division.

(2) The director may delegate the division's authority only when the delegation results in net cost savings or improved service delivery to the state as a whole.

(3) The delegation shall contain the following:

(a) a precise definition of each function to be delegated;

(b) a clear description of the standards to be met in performing each function delegated;

(c) a provision for periodic administrative audits by the Department of Administrative Services; and

(d) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(4) An agreement to delegate functions to a state agency or institution may be terminated by the department [~~of Administrative Services,~~] if the results of administrative audits conducted by the department reveal lack of compliance with the terms of the agreement by the state agency or institution.

Section 104. Section Renumbered and Amended.

Section 63A-6-105, Utah Code Annotated 1953, which is renumbered from Section 63-1-53, as last amended by Chapter 257, Laws of Utah 1992, is renumbered and amended to read:

[~~63-1-53~~] 63A-6-105. Duties of director.

(1) The director of the Division of Information Technology Services shall:

(a) manage the delivery of efficient and cost-effective data processing and telecommunication services for all state agencies at the lowest practical cost; and

(b) provide priority service to public safety agencies.

(2) The director may negotiate the purchase, lease, or rental of private or public data processing or telecommunication services or facilities.

(3) Where practical, efficient, and economically beneficial, the director shall use existing private and public data processing or telecommunication resources.

(4) The director shall prescribe a schedule of fees to be charged for all services rendered to any state

agency by the division that are equitable and sufficient to recover all the costs of operation, including the cost of capital equipment and facilities.

(5) (a) The director shall provide the state information technology coordinator and the state information technology review committee a written analysis of each state agency's annual information technology plan.

(b) That analysis shall:

(i) include an assessment of how the implementation of each plan will affect the costs, operations, and the services of the Division of Information Technology Services and state government; and

(ii) where appropriate, make alternative recommendations.

(6) (a) Before charging the fees, the director shall obtain approval of the fee schedules from:

(i) the executive director [~~of the Department of Administrative Services~~];

(ii) the director of the Division of Finance;

(iii) the director of the Office of Planning and Budget; and

(iv) the state information technology coordinator.

(b) When modifying fees, the director shall attempt to provide sufficient notice to agencies and institutions so that they may reflect those fee changes in their budgets.

(7) (a) The director shall create advisory committees composed of representatives of user agencies.

(b) Those advisory committees may recommend policies and practices for the efficient and effective operation of the division.

(8) (a) The director shall create a Local Government Information Technology Review Committee whose membership shall include representatives from:

(i) the Chief of Police Association;

(ii) the Sheriff's Association;

(iii) the Associated Public Safety Communications Officers;

(iv) the Fire Chief Association; and

(v) the State School Bus Association.

(b) Representatives from additional agencies may be added upon a majority vote of the existing committee members.

Section 105. Section Renumbered and Amended.

Section 63A-6-106, Utah Code Annotated 1953, which is renumbered from Section 63-1-52, Utah Code Annotated 1953, as last amended by Chapter 57, Laws of Utah 1990, is amended to read:

[63-1-52] 63A-6-106. Subscription by state agencies and institutions.

(1) All state agencies shall subscribe to the telecommunications services provided by the Division of Information Technology Services unless the state agency or department complies with the requirements of Section [63-1-55] 63A-6-104.

(2) An institution of higher education may subscribe to the services provided by the division if:

(a) the president of the institution recommends that the institution subscribe to the services of the division; and

(b) the Board of Regents determines that subscription to the services of the division will result in cost savings or increased efficiency to the institution.

Section 106. Section Renumbered and Amended.

Section 63A-6-107, Utah Code Annotated 1953, which is renumbered from Section 63-1-56, Utah Code Annotated 1953, as last amended by Chapter 85, Laws of Utah 1991, is amended to read:

[63-1-56] 63A-6-107. Exception — Public safety dispatch.

(1) The operation of the Department of Public Safety's dispatch services is excluded from the management of the Division of Information Technology Services.

(2) The Department of Administrative Services and the Department of Public Safety shall meet on a regular basis to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunication operations.

Section 107. Section Renumbered and Amended.

Section 63A-6-201, Utah Code Annotated 1953, which is renumbered from Section 63-1-61, as last amended by Chapter 30, Laws of Utah 1992, is renumbered and amended to read:

[63-1-61] 63A-6-201. Automated Geographic Reference Center.

[~~(1)~~] As used in this [section] part:

[~~(a)~~] (1) "Center" means the Automated Geographic Reference Center created [~~by this section~~] in Section 63A-6-202.

(2) "Database" means the State Geographic Information Database created in Section 63A-6-203.

[~~(b)~~] (3) "Division" means the Division of Information Technology Services.

[~~(c)~~] (4) "Geographic Information System" means a computer driven data integration and map production system that interrelates disparate layers of data to specific geographic locations.

[~~(d)~~] (5) "State Geographic Information Database" means the database mandated by Section [63-1-62] 63A-6-202.

[~~(2) There is created the Automated Geographic Reference Center as part of the division.~~]

[~~(3) The center shall:~~]

[~~(a) provide geographic information system services to state agencies under rules and policies established by the division;~~]

[~~(b) provide geographic information system services to federal government, local political subdivisions, and private persons under rules and policies established by the division;~~]

[~~(c) manage the State Geographic Information Database; and~~]

[~~(d) establish standard format, lineage, and other requirements for the database.~~]

[~~(4) The division may:~~]

[~~(a) make rules and establish policies to govern the center and its operations; and~~]

[~~(b) set fees for the services provided by the center.~~]

Section 108. Section Enacted.

Section 63A-6-202, Utah Code Annotated 1953, is enacted to read:

63A-6-202. Automated Geographic Reference Center.

(1) There is created the Automated Geographic Reference Center as part of the division.

(2) The center shall:

(a) provide geographic information system services to state agencies under rules and policies established by the division;

(b) provide geographic information system services to federal government, local political subdivisions, and private persons under rules and policies established by the division;

(c) manage the State Geographic Information Database; and

(d) establish standard format, lineage, and other requirements for the database.

(3) The division may:

(a) make rules and establish policies to govern the center and its operations; and

(b) set fees for the services provided by the center.

Section 109. Section Renumbered and Amended.

Section 63A-6-203, Utah Code Annotated 1953, which is renumbered from Section 63-1-62, Utah Code Annotated 1953, as enacted by Chapter 56, Laws of Utah 1991, is amended to read:

[~~63-1-62~~] 63A-6-203. State Geographic Information Database.

[~~(1) As used in this section:~~]

[~~(a) "Center" means the Automated Geographic Reference Center.~~]

[~~(b) "Database" means the State Geographic Information Database created by this section.~~]

[~~(c) "Geographic Information System" means a computer-driven data integration and map production system that interrelates disparate layers of data to specific geographic locations.~~]

[~~(2)~~] (1) There is created a State Geographic Information Database to be managed by the [~~Automated Geographic Reference Center~~] center.

[~~(3)~~] (2) The database shall:

(a) serve as the central reference for all information contained in any GIS database by any state agency;

(b) serve as a clearing house and repository for all data layers required by multiple users; and

(c) serve as a standard format for geographic information acquired, purchased, or produced by any state agency.

[~~(4)~~] (3) Each state agency that acquires, purchases, or produces digital geographic information data shall:

(a) inform the center of the existence of the data layers and their geographic extent;

(b) allow the center access to all data classified public; and

(c) comply with any database requirements established by the center.

Section 110. Section Renumbered and Amended.

Section 63A-6-301, Utah Code Annotated 1953, which is renumbered from Section 63-1-32, as last amended by Chapter 257, Laws of Utah 1992, is renumbered and amended to read:

[~~63-1-32~~] 63A-6-301. State information technology coordinator — Appointment — Duties — Agencies exempt from authority — Policy Advisory Committee created — Duties of committee.

(1) As used in this section:

(a) "Information systems" means a collection of people, procedures, and equipment designed, built, operated, and maintained to collect, record, process, store, retrieve, and display information.

(b) "Information technology" means all computerized and auxiliary automated information handling, including:

(i) systems design and analysis;

(ii) conversion of data;

(iii) computer programming;

(iv) information storage and retrieval;

(v) voice, radio, video, and data communications;

(vi) requisite systems controls;

(vii) simulation; and

(viii) all related interactions between people and machines.

(c) "State agency" means every agency or administrative subunit of state government except:

(i) the legislative and judicial branches;

(ii) the State Board of Education;

(iii) the Board of Regents; and

(iv) institutions of higher education.

(d) "Telecommunications" means the transmission or reception of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means.

(2)(a) The governor shall appoint a state information technology coordinator who shall be located within the Office of Planning and Budget, unless otherwise determined by the governor.

(b) The information technology coordinator's authority as defined in this section applies to all state agencies.

(3) The information technology coordinator shall:

(a) develop specific objectives and policies to guide the development of information systems, procedures, and standards within state government to achieve maximum economy and quality while preserving optimum user flexibility;

(b) coordinate the preparation and review of agency information technology plans within state government, encompassing both short-term and long-term needs;

(c) facilitate the implementation of agency plans;

(d) require each state agency to submit annually an agency information technology plan containing the information required by Subsection (4) no later than the June 15 before the legislative session in which the budget request will be heard to the state information technology coordinator;

(e) upon receipt of a state agency's information technology plan, provide a complete copy of that plan to the director of the Division of Information Technology Services;

(f) establish uniform information technology standards and procedures for appropriate interchange of information, optimum service, and minimum cost;

(g) establish policies for costing all information technology services performed by any state information technology cost recovery center so that every cost recovery center charges its users a rate for services that is both equitable and sufficient to recover all the costs of its operation, including the cost of capital equipment and facilities;

(h) establish general policies governing coordination, cooperation, joint efforts, working relationships, and cost accounting relative to the development and maintenance of information technology and information systems;

(i) establish priorities in terms of both importance and time sequencing for the development and implementation of information systems;

(j) approve or disapprove of and coordinate the acquisition of information technology equipment, telecommunications equipment, and related services for all agencies of state government;

(k) monitor information systems development to promote maximum use of existing state information resources;

(l) develop policies to ensure the protection of individual privacy and guarantee the exclusive control to a user of its own data;

(m) advise the governor on information technology policy and make recommendations to the governor regarding requests for appropriations for information technology equipment and personnel;

(n) maintain liaison with the legislative and judicial branches, the Board of Regents, the State Board of Education, and local government to promote cooperation and make recommendations regarding information resources;

(o) conduct performance audits of state information technology resources in accordance with generally accepted auditing standards promulgated by the Institute of Internal Auditors and according to the generally accepted auditing standards contained in the Comptroller of the United States' "Standards for Audit of Governmental Organization, Programs, Activities, and Functions" and distribute copies of his audit reports as provided in Subsection (5); and

(p) prepare an annual report to the governor and to the Legislature's State and Local Affairs Interim Committee that:

(i) summarizes the state's current and projected use of information technology; and

(ii) includes a description of major changes in state policy and a brief description of each state agency's plan.

(4) Each state agency information technology plan shall include:

(a) detailed information specifying:

(i) the use of existing information technology;

(ii) the projected use of existing technology; and

(iii) the projected use of any newly requested or acquired information technology; and

(b) a detailed review of the agency's use of its information technology during the last calendar year and how that use compares to the plan for that information technology.

(5)(a) Upon completion of an audit report produced under authority of Subsection (3)(o), the coordinator shall:

(i) provide copies of all audit reports to:

(A) the agency audited;

(B) the governor; and

(C) the Office of Legislative Fiscal Analyst; and

(ii) present the performance audit findings to the Information Technology Review Committee at their next meeting.

(b) Each state agency shall provide the coordinator with complete access to all information technology records, documents, and reports, including electronic, analog, or digital, when requested for the purpose of a performance audit.

(6) The rate for services established by an information technology cost recovery center, and reviewed by the state information technology coordinator, may be lowered if the Legislature appropriates monies to the cost recovery center for the specific purpose of lowering rates.

(7) (a) The information technology coordinator shall create a Policy Advisory Committee composed of representatives of state agencies.

(b) The Policy Advisory Committee shall:

(i) evaluate and approve or disapprove recommended policies to govern the operation of information technology in state government;

(ii) review analyses, recommendations, and critiques of agency plans to ensure that these plans are the most economically viable and are the best solution to the agency's needs; and

(iii) after consideration of all analyses, recommendations, and critiques, approve or disapprove agency information technology plans.

(8) State agencies shall comply with the policies and standards established by the state information technology coordinator and approved by the Policy Advisory Committee under this section.

Section 111. Section Renumbered and Amended.

Section 63A-7-101, Utah Code Annotated 1953, which is renumbered from Section 63-1-57, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991, is amended to read:

CHAPTER 7. DIVISION OF FUEL DISPENSING SERVICES

Part 1. General Provisions

[~~63-1-57~~] 63A-7-101. Creation of division.

[~~(1)~~] There is created within the department [of ~~Administrative Services~~] the Division of Fuel Dispensing Services, to be administered by a director.

[~~(2) The executive director of the Department of Administrative Services shall appoint the director of the Division of Fuel Dispensing Services with the approval of the governor.~~]

Section 112. Section Enacted.

Section 63A-7-102, Utah Code Annotated 1953, is enacted to read:

63A-7-102. Director of division — Appointment.

The executive director of the Department of Administrative Services shall appoint the director of the Division of Fuel Dispensing Services with the approval of the governor.

Section 113. Section Renumbered and Amended.

Section 63A-7-103, Utah Code Annotated 1953, which is renumbered from Section 63-1-59, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991, is amended to read:

[~~63-1-59~~] 63A-7-103. Duties of the division.

The [~~division~~] Division of Fuel Dispensing Services shall:

(1) establish and administer a fuel dispensing program that:

(a) reduces the risk of environmental damage and subsequent liability for leaks involving state-owned underground storage tanks;

(b) eliminates fuel site duplication and reduces overall costs associated with fuel dispensing;

(c) provides efficient fuel management and efficient and accurate accounting of fuel-related expenses;

(d) where practicable, privatizes portions of the state's fuel dispensing system;

(e) provides central planning for fuel contingencies;

(f) establishes fuel dispensing sites that meet geographical distribution needs and that reflect usage patterns;

(g) where practicable, uses alternative sources of energy; and

(h) provides safe, accessible fuel supplies in an emergency;

(2) ensure that the state and each of its agencies comply with state and federal law and state and federal rules and regulations governing underground storage tanks;

(3) coordinate the installation of new state-owned underground storage tanks and the upgrading or retrofitting of existing underground storage tanks; and

(4) ensure that counties, municipalities, school districts, and special districts subscribing to services provided by the division sign a contract that:

(a) establishes the duties and responsibilities of the parties;

(b) establishes the cost for the services; and

(c) defines the liability of the parties.

Section 114. Section Renumbered and Amended.

Section 63A-7-104, Utah Code Annotated 1953, which is renumbered from Section 63-1-60, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991, is amended to read:

[~~63-1-60~~] 63A-7-104. Department to make rules.

The executive director [of the Department of Administrative Services] may make rules on behalf of the Division of Fuel Dispensing Services according

to the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 115. Section Renumbered and Amended.

Section 63A-7-105, Utah Code Annotated 1953, which is renumbered from Section 63-1-58, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1991, is amended to read:

[~~63-1-58~~] 63A-7-105. Subscription of state agencies and institutions.

(1) (a) All state agencies and all higher education institutions shall subscribe to the fuel dispensing services provided by the division.

(b) [~~No~~] A state agency may not provide or subscribe to any other fuel dispensing services, systems, or products other than those provided by the division.

(2) Counties, municipalities, school districts, and special districts may subscribe to the services provided by the division if:

(a) the county or municipal legislative body, or the school district, or the special district board recommends that the county, municipality, school district, or special district subscribe to the services of the division; and

(b) the division approves participation in the program by that government unit.

Section 116. Repealer.

Section 63-1-11, Evaluation of department organization and operation — Reports, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981;

Section 63-1-38.3, General powers and duties of director, Utah Code Annotated 1953, as last amended by Chapters 153 and 183, Laws of Utah 1986;

Section 63-1-38.5, Obligations exceeding construction appropriation prohibited — Exceptions, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981; and

Section 63-1-43, Planning fund not to revert to general fund, Utah Code Annotated 1953, as enacted by Chapter 257, Laws of Utah 1981, are repealed.

CHAPTER 213
H. B. No. 91
Passed March 1, 1993
Approved March 18, 1993
Effective May 3, 1993

COLLECTION AGENCY AMENDMENTS

By Melvin R. Brown

AN ACT RELATING TO COLLECTION AGENCIES; AMENDING THE AMOUNT OF A REQUIRED BOND; AMENDING PENALTIES; REPEALING A PROVISION RELATING TO CASH BONDS AND SURETIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
12-1-2, AS LAST AMENDED BY CHAPTER 66, LAWS OF UTAH 1984
12-1-6, UTAH CODE ANNOTATED 1953

REPEALS:
12-1-4, AS LAST AMENDED BY CHAPTER 66, LAWS OF UTAH 1984

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

Section 1. Section Amended.

Section 12-1-2, Utah Code Annotated 1953, as last amended by Chapter 66, Laws of Utah 1984, is amended to read:

12-1-2. Amount of bond — Conditions — Right of action.

[~~Such~~] (1) The bond shall be [~~made in~~] for the sum of [~~$5,000~~] $10,000, payable to the state of Utah[~~; and~~].

(2) The bond shall provide that the person giving [~~the same~~] it shall, upon written demand, [~~pay and turn over~~] remit the collection proceeds to or for the person for whom any account, bill, or other indebtedness is taken for collection [~~the proceeds of the collection~~] in accordance with [~~the terms of~~] the collection agreement [~~upon which the account, bill, or other indebtedness was received for collection~~]. [~~Such~~] The Division of Corporations and Commercial Code may specify the form of the bond [~~shall be in such form~~] and [~~shall~~] may require it to contain [~~such further~~] additional provisions and conditions [~~as the Division of Corporations and Commercial Code shall deem~~] it considers necessary or proper [~~for the protection of~~] to protect the persons for whom [~~accounts, bills, or other indebtedness are taken for~~] the collection is undertaken. [~~Whenever any~~]

(3) If a bond [~~herein provided for shall become~~] becomes forfeited or the sureties [~~thereon shall~~] for it become liable upon it, any person injured by the acts of forfeiture or by the [~~bringing about of such~~] acts resulting in the sureties' liability, or who by law is entitled to the benefit of the security, may maintain an action [~~thereon~~] on the bond in his own name against the person giving [~~such~~] the bond and against the sureties to recover the amount of the bond to which he may [~~by reason thereof~~] be entitled[~~, and one~~]. One recovery [~~shall~~] does not bar recoveries for other breaches of the bond[~~; provided, that~~] so long as the sureties [~~can be made~~] are liable in the aggregate only to the extent of the undertaking.

Section 2. Section Amended.

Section 12-1-6, Utah Code Annotated 1953, is amended to read:

12-1-6. Violation of title — Penalty.

Any person, member of a partnership, or officer of any association or corporation[~~,~~] who fails to comply with any [~~of the provisions~~] provision of this title is guilty of a class A misdemeanor[~~, and subject to a fine of not more than $500 or to imprisonment for not more than three months in the county jail, or to both such fine and imprisonment~~].

Section 3. Repealer.

Section 12-1-4, Sureties — Cash in lieu of, as last amended by Chapter 66, Laws of Utah 1984, is repealed.

CHAPTER 214
H. B. No. 95
Passed March 1, 1993
Approved March 18, 1993
Effective May 3, 1993

PUBLIC UTILITIES REGULATION FEE

By Michael G. Waddoups

AN ACT RELATING TO PUBLIC UTILITIES; CLARIFYING THE RESPONSIBILITY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF COMMERCE IN ASSESSING AND COLLECTING THE PUBLIC UTILITIES REGULATORY FEE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
54-5-2, UTAH CODE ANNOTATED 1953
54-5-3, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 54-5-2, Utah Code Annotated 1953, is amended to read:

54-5-2. How gross operating revenue is determined.

(1) Gross operating revenues of [~~said~~] public utilities shall be determined by the [~~State Tax Commission from the franchise tax returns of said utilities,~~] executive director of the Department of Commerce from:

(a) the annual gross revenue reports [~~to~~] filed with the Public Service Commission; and [~~from such~~]

(b) other sources of information as the [~~State Tax~~] Public Service Commission may by [~~rules and regulations~~] rule prescribe. [~~In case~~]

(2) If any public utility liable for the payment of [~~such~~] the fee [~~under the provisions of this act shall fail or refuse~~] assessed under Section 54-5-1.5 fails to file a [~~return with the state tax commission~~] report showing its gross operating revenue from business derived from its operations within [~~this~~] the state for the preceding calendar year on or before April 15th [~~in each year~~], the [~~tax commission~~] executive director of the Department of Commerce shall:

(a) compute or make an estimate of the amount of [~~such~~] the fee to be paid by [~~such~~] the utility [~~and assess the same against said utility~~] from [~~such~~] available information, records, and data [~~as it may possess or obtain~~]; and

(b) assess the fee against the utility.

Section 2. Section Amended.

Section 54-5-3, Utah Code Annotated 1953, is amended to read:

54-5-3. Default in payment of fee — Procedure to collect — Penalties.

(1) [~~In the event of default in the payment of such~~] If the public utility fee [~~by any public utility after the same shall become~~] is due and [~~[sic]~~] the [~~said fee shall constitute~~] payment is in default, a lien [upon] in the amount of the fee may be filed against the property of [~~said~~] the utility and may be foreclosed in an action brought by the [~~state tax commission~~] executive director of the Department of Commerce in the district court of any county in which property of the delinquent utility is located.

(2) (a) If the [~~fees~~] fee computed and imposed [~~hereunder are~~] under this chapter is not paid [~~for a period of sixty~~] within 60 days after [~~the same shall become~~] it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The [~~tax commission~~] executive director of the Department of Commerce shall transmit the name of [~~such~~] the utility to the Public Service Commission, which may immediately enter an order suspending the operating rights of [~~said~~] the utility.

CHAPTER 215
H. B. No. 98
Passed February 24, 1993
Approved March 18, 1993
Effective May 3, 1993

VEHICLE WIDTH AMENDMENTS

By Stephen M. Bodily

AN ACT RELATING TO HIGHWAYS; AMENDING FARM TRACTOR WIDTH LIMITATIONS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
27-12-149, AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 27-12-149, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1990, is amended to read:

27-12-149. Limitations as to vehicle width, height, length, and load extensions.

(1) (a) All state or federally approved safety devices and any other lawful appurtenant devices, including load securing devices, related to the safe operation of a vehicle are excluded for purposes of measuring the width and length of a vehicle under the provisions of this chapter, if the devices are not designed or used for carrying cargo.

(b) Load-induced tire bulge is excluded for purposes of measuring the width of vehicles under the provisions of this chapter.

(2) A vehicle unladen or with a load may not exceed a width of 8-1/2 feet[~~, except that the width of a farm tractor may not exceed nine feet~~].

(3) A vehicle unladen or with a load may not exceed a height of 14 feet.

(4) (a) (i) A single-unit vehicle, unladen or with a load, may not exceed a length of 45 feet including front and rear bumpers.

(ii) In this section, a truck tractor coupled to one or more semitrailers or trailers is not considered a single-unit vehicle.

(b) (i) A semitrailer, unladen or with a load, may not exceed a length of 48 feet excluding refrigeration units, hitches, air line connections, and safety appurtenances.

(ii) There is no overall length limitation on a truck tractor and semitrailer combination when the semitrailer length is 48 feet or less.

(c) (i) Two trailers coupled together, unladen or with a load, may not exceed an overall length of 61 feet, measured from the front of the first trailer to the rear of the second trailer excluding refrigeration units, hitches, air line connections, and safety appurtenances.

(ii) There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less excluding refrigeration units, hitches, air line connections, and safety appurtenances.

(d) All other combinations of vehicles, unladen or with a load, when coupled together, may not exceed a total length of 65 feet, except the length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated under an oversize permit under Section 27-12-155.

[~~(e) Notwithstanding the provisions of this chapter, any motor vehicle or combination of motor vehicles in excess of the limitations of this section, which were in legal operation on January 1, 1984, may continue in operation until December 31, 1990.~~]

(5) (a) Subject to [~~the provisions of~~] Subsection (4), a vehicle or combination of vehicles may not carry any load extending more than three feet beyond the front of the body of the vehicle or more than six feet beyond the rear of the bed or body of the vehicle.

(b) A passenger vehicle may not carry any load extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle.

(6) Any exception to this section must be authorized by an oversize permit as provided in Section 27-12-155.

(7) Any person who violates this section is guilty of a class B misdemeanor.

CHAPTER 216
H. B. No. 112
Passed March 3, 1993
Approved March 18, 1993
Effective July 1, 1993

MOTORCYCLE SAFETY EDUCATION PROGRAM

By Melvin R. Brown
Rob W. Bishop
Blake D. Chard
Mary Carlson
Steve Barth
Paul Shepherd
Don E. Bush
Doyle M. Mortimer
John B. Arrington
Jordan Tanner
Shirley V. Jensen
David M. Jones
Nancy S. Lyon
Christine R. Fox
John William Hickman
Judy Ann Buffmire
R. Lee Ellertson
James F. Yardley
John L. Valentine
Clark L. Reber
Pete Suazo
Phil H. Uipi
Gerry A. Adair
Nora B. Stephens
Ronald J. Greensides
James Gowans
Beverly Ann Evans
Robert H.M. Killpack
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Irby N. Arrington
Allan C. Rushton
Dan Q. Price
Arlo D. James
J. Brent Haymond
Fred R. Hunsaker
Russell A. Cannon
Michael R. Styler
Marda Dillree
Met Johnson
Brent H. Goodfellow
Daniel H. Tuttle
Kim R. Burningham

AN ACT RELATING TO MOTOR VEHICLES; CREATING A MOTORCYCLE SAFETY EDUCATION PROGRAM AND ADVISORY COMMITTEE; INCREASING CERTAIN MOTOR VEHICLE REGISTRATION AND LICENSE FEES; DEDICATING CERTAIN REVENUE TO THE MOTORCYCLE RIDER EDUCATION PROGRAM; MAKING EXCEPTIONS TO THE MOTORCYCLE TESTING AND COMMERCIAL DRIVER TRAINING SCHOOLS REQUIREMENT; EXEMPTING MOTORCYCLES FROM AUTOMOBILE DRIVER EDUCATION FEE; MAKING TECHNICAL CORRECTIONS; INCLUDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-1204, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 191, LAWS OF UTAH 1992
41-1A-1206, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 54 AND 95, LAWS OF UTAH 1992
41-2-103, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991

ENACTS:
41-26-101, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-901)
41-26-102, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-902)
41-26-103, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-903)
41-26-104, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-904)
41-26-105, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-905)
41-26-106, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-906)
41-26-107, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-907)
41-26-108, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-908)
41-26-109, UTAH CODE ANNOTATED 1953 (CODIFIED AS 53-3-909)

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

Section 1. Section Amended.

Section 41-1a-1204, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 191, Laws of Utah 1992, is amended to read:

41-1a-1204. Automobile driver education fee — Amount — When paid — Exception.

(1) Each year there is levied and shall be paid to the commission the automobile driver education fee.

(2) [~~The~~] (a) Except as provided in Subsection (b), the fee is $2.50 upon each motor vehicle to be registered.

(b) Motorcycle registration is exempt from the fee in Subsection (a).

Section 2. Section Amended.

Section 41-1a-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 54 and 95, Laws of Utah 1992, is amended to read:

41-1a-1206. Registration fees — Fees by gross laden weight.

(1) At the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) [~~$7.50~~] $12.50 for each motorcycle;

(b) $11 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) $10 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) $7.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) $14 for each farm truck of 10,000 pounds or less gross laden weight; plus

(ii) $8 for each 2,000 pounds over 10,000 pounds gross laden weight; and

(e) (i) $45 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) $16.50 for each 2,000 pounds over 14,000 pounds gross laden weight.

(2) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight exceeds 12,000 pounds.

(3) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

(4) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of $100.

(5) Except as provided in Section 41-6-163.6, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b) (i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division:

(A) a written statement indicating that the truck is used in combination with a semitrailer or trailer and the combined weight of the truck and the loaded semitrailer or trailer exceeds 12,000 pounds gross laden weight; and

(B) a certificate of emissions inspection or a waiver in compliance with Section 41-6-163.6.

(6) A violation of Subsection (5) is a class B misdemeanor that shall be punished by a fine of not less than $200.

Section 3. Section Amended.

Section 41-2-103, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

41-2-103. Fees — Schedule for operator licenses — Identification card.

The following fees apply under this chapter:

(1) An original class D license application under Section 41-2-112 is $15.

(2) An original class M license application under Section 41-2-112 is [~~$15~~] $17.50.

(3) An original provisional license application for a class D license under Section 41-2-112 is $20.

(4) An original provisional license application for a class M license under Section 41-2-112 is [~~$20~~] $22.50.

(5) An original application for a motorcycle endorsement under Section 41-2-112 is $7.50.

[~~(5)~~] (6) An original application for a [~~motorcycle or~~] taxicab endorsement under Section 41-2-112 is $5.

[~~(6)~~] (7) A renewal of a class D license under Section 41-2-125 is $15 unless Subsection (11) applies.

[~~(7)~~] (8) A renewal of a class M license under Section 41-2-125 is [~~$15~~] $17.50.

[~~(8)~~] (9) A renewal of a provisional license application for a class D license under Section 41-2-125 is $15.

[~~(9)~~] (10) A renewal of a provisional license application for a class M license under Section 41-2-125 is [~~$15~~] $17.50.

(11) A renewal of a motorcycle endorsement under Section 41-2-125 is $7.50.

[~~(10)~~] (12) A renewal of a [~~motorcycle or~~] taxicab endorsement under Section 41-2-125 is $5.

[~~(11)~~] (13) A renewal of a class D license for a person 65 and older under Section 41-2-125 is $5.

[~~(12)~~] (14) An extension of a class D license under Section 41-2-125 is $12 unless Subsection (17) applies.

[~~(13)~~] (15) An extension of a class M license under Section 41-2-125 is [~~$12~~] $14.50.

[~~(14)~~] (16) An extension of a provisional license application for a class D license under Section 41-2-125 is $12.

[~~(15)~~] (17) An extension of a provisional license application for a class M license under Section 41-2-125 is [~~$12~~] $14.50.

(18) An extension of a motorcycle endorsement under Section 41-2-125 is $7.50.

[~~(16)~~] (19) An extension of a [motorcycle or] taxicab endorsement under Section 41-2-125 is $5.

[(17)] (20) An extension of a class D license for a person 65 and older under Section 41-2-125 is $3.

[(18)] (21) An original or renewal application for a commercial class A, B, or C license or an original or renewal of a provisional commercial class A or B license under Part 7 of this chapter is:

(a) $30 for the written test; and

(b) $50 for the skills test.

[(19)] (22) Each original CDL endorsement for passengers, hazardous material, double or triple trailers, or tankers is $5.

[(20)] (23) An original CDL endorsement for a school bus under Part 7 of this chapter is $5.

[(21)] (24) A renewal of a CDL endorsement under Part 7 of this chapter is $5.

[(22)] (25) A retake of a CDL written or a CDL skills test provided for in Section 41-2-112 is $15.

[(23)] (26) A retake of a CDL endorsement test provided for in Section 41-2-112 is $5.

[(24)] (27) A duplicate class A, B, C, D, or M license certificate under Section 41-2-123 is $10.

[(25)] (28) (a) A license reinstatement application under Section 41-2-112 is $25.

(b) A license reinstatement application under Section 41-2-112 for an alcohol-related offense is $25 in addition to the fee under Subsection (a).

[(26)] (29) An administrative fee for license reinstatement after an alcohol-related offense under Section 41-2-130 or an alcohol, drug, or combination of alcohol and any drug-related offense under Section 41-6-44.10 is $25. This administrative fee is in addition to the fees under Subsection [(25)] (28).

[(27)] (30) An administrative fee for license reinstatement after an alcohol-related offense under Part 7 of this chapter is $25. This administrative fee is in addition to the fees under Subsection [(25)] (28).

[(28)] (31) An administrative fee for license reinstatement after confiscation under Section 41-2-134 is $25.

[(29)] (32) An administrative fee for providing the driving record of an operator under Section 41-2-119 or 41-2-719 is $3.

[(30)] (33) A rescheduling fee under Section 41-2-112 or 41-2-708 is $25.

[(31)] (34) An identification card application under Section 41-2-403 is $5.

Section 4. Section Enacted.

Section 41-26-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 26. MOTORCYCLE RIDER EDUCATION ACT

41-26-101. Short title.

This chapter is known as the "Motorcycle Rider Education Act."

Section 5. Section Enacted.

Section 41-26-102, Utah Code Annotated 1953, is enacted to read:

41-26-102. Definitions.

As used in this chapter:

(1) "Director" means the director of the Driver License Division.

(2) "Division" means the Driver License Division of the Department of Public Safety.

(3) "Motorcycle" has the same meaning as provided in Section 41-1a-102.

(4) "Program" means the motorcycle rider education program for training and information disbursement created under Section 41-26-103.

(5) "Rider training course" means a motorcycle rider education curriculum and delivery system approved by the division as meeting national standards designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation of a motorcycle.

Section 6. Section Enacted.

Section 41-26-103, Utah Code Annotated 1953, is enacted to read:

41-26-103. Motorcycle Rider Education Program.

(1)(a) The division shall develop standards for and administer the Motorcycle Rider Education Program.

(b) The division shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement this chapter.

(2) The program shall include:

(a) a novice rider training course;

(b) a rider training course for experienced riders; and

(c) an instructor training course.

(3) The division may expand the program to include:

(a) enhancing public awareness of motorcycle riders;

(b) increasing the awareness of motorcycle riders of the effects of alcohol and drugs;

(c) motorcycle rider skills improvement;

(d) program and other motorcycle safety promotion; and

(e) improvement of motorcycle licensing efforts.

(4) (a) Rider training courses shall be open to all residents of the state who either hold a valid driver's license for any classification or are eligible for a temporary motorcycle learner's permit.

(b) An adequate number of novice rider training courses shall be provided to meet the reasonably anticipated needs of all persons in the state who are eligible and who desire to participate in the program.

(c) Program delivery may be phased in over a reasonable period of time.

(5) (a) The division may enter into contracts with either public or private institutions to provide a rider training course approved by the division.

(b) The institution shall issue certificates of completion in the manner and form prescribed by the director to persons who satisfactorily complete the requirements of the course.

(c) An institution conducting a rider training course may charge a reasonable tuition fee to cover the cost of offering the course.

(d) (i) The division may use program funds to defray its own expenses in administering the program.

(ii) The division may reimburse entities that offer approved courses for actual expenses incurred in offering the courses, up to a limit established by the division based upon available program funds.

(iii) Any reimbursement paid to an entity must be entirely reflected by the entity in reduced course enrollment fees for students.

(6) (a) Standards for the motorcycle rider training courses, including standards for course curriculum, materials, and student evaluation, and standards for the training and approval of instructors shall meet or exceed established national standards for motorcycle rider training courses prescribed by the Motorcycle Safety Foundation.

(b) Motorcycle rider training courses shall be taught only by instructors approved under Section 41-26-104.

(c) Motorcycle rider training courses for novices shall include at least eight hours of practice riding.

(7) The commissioner shall appoint a full-time program coordinator to oversee and direct the program.

Section 7. Section Enacted.

Section 41-26-104, Utah Code Annotated 1953, is enacted to read:

41-26-104. Instructor training and approval.

(1) The program coordinator shall approve instructors for the motorcycle rider training courses.

(2) A person may not be approved as an instructor unless the person holds a current instructor certification issued by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instructor certifying body.

(3) (a) The program shall include instructor training courses as necessary.

(b) Prior to completion of an instructor training course, the participant shall demonstrate:

(i) knowledge of the course material;

(ii) knowledge of proper motorcycle operation;

(iii) proficiency in riding motorcycles; and

(iv) the necessary aptitude for instructing students.

(4) An applicant for an instructor training course shall:

(a) have a high school diploma or its equivalent;

(b) be at least 18 years of age;

(c) have a valid endorsement to his driver's license for motorcycles; and

(d) have at least two years of recent motorcycle riding experience.

(5) The division shall refuse to certify or revoke certification of an instructor if the applicant:

(a) has had his driver's license suspended or revoked during the preceding two years or within the preceding five years if the suspension or revocation was for an alcohol or drug-related offense;

(b) fails to successfully complete an instructor course or required course updates; or

(c) no longer meets the requirements of this section.

Section 8. Section Enacted.

Section 41-26-105, Utah Code Annotated 1953, is enacted to read:

41-26-105. Dedication of fees.

(1) Five dollars of the annual registration fee imposed under Section 41-1a-1206 for each registered motorcycle and $2.50 of the fee imposed under Section 41-2-103 for an original, renewal, or extension of a class M license or provisional class M license application shall be deposited as dedicated credits in the Transportation Fund to be used by the division for the program.

(2) Appropriations to the program are nonlapsing.

(3) Appropriations may not be used for assistance to, advocacy of, or lobbying for any legislation unless the legislation would enhance or affect the financial status of the program or the program's continuation.

Section 9. Section Enacted.

Section 41-26-106, Utah Code Annotated 1953, is enacted to read:

41-26-106. Reporting.

(1) The director shall prepare biennially a report on the program to be submitted to the governor and to an appropriate legislative interim committee assigned by the legislative management committee, by the September interim meeting.

(2) The report shall include:

(a) the number and location of the various motorcycle rider training courses offered;

(b) the number of instructors approved;

(c) the number of students trained in each of the types of courses;

(d) an accounting of the funds generated for and used in the program; and

(e) other information the director finds appropriate.

Section 10. Section Enacted.

Section 41-26-107, Utah Code Annotated 1953, is enacted to read:

41-26-107. Licensing skills test exemption.

(1) The division may exempt an applicant for a motorcycle operator license or endorsement from the licensing skills test if he presents proof of successful completion of a rider training course approved by the division that includes a similar test of skills.

(2) The exemption provided in Subsection (1) applies only if the applicant applies for a motorcycle operator license or endorsement within six months of completion of an approved rider training course.

Section 11. Section Enacted.

Section 41-26-108, Utah Code Annotated 1953, is enacted to read:

41-26-108. Advisory committee.

(1) The governor shall appoint a five-member program advisory committee to assist in the development and implementation of the program.

(2) The committee members shall be appointed by the governor as follows:

(a) one representative of motorcycle retail dealers;

(b) one representative of peace officers;

(c) one citizen not affiliated with a motorcycle dealer, manufacturer, or association;

(d) one motorcycle safety foundation instructor or chief instructor; and

(e) one member of an incorporated motorcycle rider organization.

(3) All members of the advisory committee shall be licensed motorcyclists.

(4) (a) Of the five members first appointed to the advisory committee, three shall serve for a term of three years and two shall serve for a term of two years.

(b) Subsequent members of the advisory committee shall serve three-year terms.

(c) The committee shall meet at the call of the director.

(d) Members shall serve without compensation but may be reimbursed for their actual and necessary expenses while engaged in the business of the advisory committee at the same rate provided in Sections 63-1-14.5 and 63-1-15.

Section 12. Section Enacted.

Section 41-26-109, Utah Code Annotated 1953, is enacted to read:

41-26-109. Program Exemption.

An entity offering a motorcycle rider training course approved by the division and an instructor providing instruction as part of an approved motorcycle rider training course are exempt from the requirements of Title 41, Chapter 2, Part 3, Commercial Driver Training Schools.

Section 13. Effective Date.

This act takes effect on July 1, 1993.

Section 14. Coordinating Clause.

If this bill and S.B. 19, Public Safety Reorganization, both pass in the 1993 General Session, it is the intent of the Legislature that the following amendments be made in this bill:

(1) Section 41-26-101 shall be renumbered as Section 53-3-901;

(2) Section 41-26-102 shall be renumbered as Section 53-3-902;

(3) Section 41-26-103 shall be renumbered as Section 53-3-903;

(4) Section 41-26-104 shall be renumbered as Section 53-3-904;

(5) Section 41-26-105 shall be renumbered as Section 53-3-905;

(6) Section 41-26-106 shall be renumbered as Section 53-3-906;

(7) Section 41-26-107 shall be renumbered as Section 53-3-907;

(8) Section 41-26-108 shall be renumbered as Section 53-3-908;

(9) Section 41-26-109 shall be renumbered as Section 53-3-909;

(10) "Chapter 26" shall be deleted and "Part 9" inserted;

(11) in Section 41-26-102, "(1) "Director" means the director of the Driver License Division." and "(2) "Division" means the Driver License Division of the Department of Public Safety." shall be deleted and the following subsections renumbered accordingly; and

(12) cross references to the sections renumbered by this coordinating clause shall be correspondingly renumbered.

CHAPTER 217
H. B. No. 161
Passed March 3, 1993
Approved March 18, 1993
Effective March 18, 1993

TASK FORCE ON MASTER PLANNING FOR INTERPRETIVE SERVICES FOR THE DEAF

By Melvin R. Brown

AN ACT RELATING TO REHABILITATION; CREATING THE TASK FORCE ON MASTER PLANNING FOR INTERPRETIVE SERVICES FOR THE DEAF; DEFINING TASK FORCE MEMBERSHIP AND DUTIES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A REPEAL DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Task force membership.

There is established the Task Force on Master Planning for Interpretive Services for the Deaf consisting of the following:

(1) two members of the Senate, appointed by the President of the Senate;

(2) two members of the House of Representatives, appointed by the Speaker of the House of Representatives;

(3) the executive director of the Department of Human Services or his designee;

(4) the executive director of the Department of Health or his designee;

(5) the executive director of the Utah State Office of Rehabilitation or his designee;

(6) the director of the Division of Rehabilitation, within the Utah State Office of Rehabilitation, or his designee;

(7) the director of the Division of Services to the Deaf and Hard of Hearing, within the Utah State Office of Rehabilitation, or his designee;

(8) the superintendent of the Utah Schools for the Deaf and Blind or his designee;

(9) the state planning coordinator or his designee;

(10) a freelance provider of interpretive services, appointed by the executive director of the Utah State Office of Rehabilitation;

(11) a parent of a child who is deaf, uses interpretive services, and attends a public school for children without disabilities. That parent shall be appointed by the executive director of the Utah State Office of Rehabilitation;

(12) four persons who are deaf, appointed by the executive director of the Utah State Office of Rehabilitation;

(13) the state director of special education, or his designee;

(14) an instructor from the Salt Lake Community College Interpreter Training Program, appointed by the president of Salt Lake Community College;

(15) two employers appointed by the executive director of the Utah State Office of Rehabilitation;

(16) two interpreters appointed by the executive director of the Utah State Office of Rehabilitation;

(17) a representative of a local school district appointed by the state superintendent of public instruction; and

(18) the commissioner of higher education or his designee.

Section 2. Cochair designations.

The president of the Senate and the speaker of the House of Representatives shall designate one of the legislative members of the task force, appointed under Section 1, to be one cochair of the task force. The executive director of the Utah State Office of Rehabilitation shall be the other cochair of the task force.

Section 3. Quorum — Task force action.

Thirteen members of the task force constitute a quorum at any meeting and the action of the majority of members present shall be the action of the task force.

Section 4. Duties and responsibilities.

The task force shall:

(1) develop a master plan to meet interpreting needs for persons who are deaf and who require communication access;

(2) develop educational and professional standards for certification or licensure of interpreters;

(3) develop a code of ethics for interpreters and recommend ways to enforce that code;

(4) study ways to overcome the shortage of qualified interpreters needed to fully implement the Americans with Disabilities Act;

(5) study ways to attract more people into the profession of interpreting for the deaf;

(6) study issues related to the compensation and reimbursement of interpreters;

(7) develop ways to encourage public schools to offer American Sign Language as a language taught in the schools; and

(8) report its findings and recommendations to the Legislative Education Interim Committee before October 31, 1993.

Section 5. Task force staff.

The Utah State Office of Rehabilitation shall provide all staff support for the task force.

Section 6. Salaries and expenses.

Salaries and expenses of legislators appointed to the task force shall be in accordance with Section 36-2-2. Members of the task force who are not leg-

islators shall serve without additional compensation for their work associated with the task force.

Section 7. Repeal Date.

This act is repealed on December 31, 1993.

Section 8. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 218
H. B. No. 163
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

INTERLOCAL COOPERATION ACT AMENDMENTS

By J. Brent Haymond

AN ACT RELATING TO INTERLOCAL COOPERATION AGREEMENTS; AUTHORIZING UTAH AGENCIES TO ENTER INTO INTERLOCAL AGREEMENTS WITH INTERLOCAL COOPERATION OR JOINT POWERS AGENCIES FORMED UNDER ANOTHER STATE'S LAWS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
11-13-3, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 11-13-3, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1992, is amended to read:

11-13-3. Definitions.

As used in this chapter:

(1) "Board" means the Permanent Community Impact Fund Board created by Section 9-4-304, and its successors.

(2) "Candidate" means the state of Utah and any county, municipality, school district, special district, or any other political subdivision of the state of Utah or its authorized agent or any one or more of them.

(3) "Direct impacts" means an increase in the need for any public facilities or services that is attributable to the project, except impacts resulting from the construction or operation of any facility owned by others that is used to furnish fuel, construction, or operation materials for use in the project.

(4) (a) "Facilities," "services," or "improvements" mean facilities, services, or improvements of any kind or character provided by a candidate with respect to any one or more of the following:

(i) flood control;

(ii) storm drainage;

(iii) government administration;

(iv) planning and zoning;

(v) buildings and grounds;

(vi) education;

(vii) health care;

(viii) parks and recreation;

(ix) police and fire protection;

(x) transportation;

(xi) streets and roads;

(xii) utilities;

(xiii) culinary water;

(xiv) sewage disposal;

(xv) social services;

(xvi) solid waste disposal; and

(xvii) economic development or new venture investment fund.

(b) "Facilities" and "improvements" includes entire facilities and improvements or interests in facilities or improvements.

(5) "Project" means an electric generating and transmission project owned by a legal or administrative entity created under this chapter and shall include any electric generating facilities, transmission facilities, fuel or fuel transportation facilities, or water facilities owned by that entity and required for that project.

(6) "Project entity" means a legal or administrative entity created under this chapter which owns a project and which sells the capacity, services, or other benefits from it.

(7) "Public agency" means:

(a) any political subdivision of this state including, but not limited to, cities, towns, counties, school districts, and special districts of various kinds;

(b) the state of Utah or any department, division, or agency of the state of Utah;

(c) any agency of the United States; and

(d) any political subdivision or agency of another state including any interlocal cooperation or joint powers agency formed under the authority of the laws of another state.

(8) "State" means a state of the United States and the District of Columbia.

CHAPTER 219
H. B. No. 184
Passed March 2, 1993
Approved March 18, 1993
Effective March 18, 1993

EXECUTIVE DIRECTOR OF HEALTH QUALIFICATIONS

By Martin R. Stephens
Rob W. Bishop
Christine R. Fox
Melvin R. Brown
John L. Valentine

AN ACT RELATING TO HEALTH; MODIFYING THE QUALIFICATIONS FOR EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-1-9, AS LAST AMENDED BY CHAPTER 270, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 26-1-9, Utah Code Annotated 1953, as last amended by Chapter 270, Laws of Utah 1992, is amended to read:

26-1-9. Executive director — Qualifications.

(1) The executive director shall:

(a)(i) be a physician who is a graduate of a regularly chartered and legally constituted medical school, licensed to practice medicine and surgery in all branches in the state and who shall have successfully completed [~~at least one year's graduate work in an accredited school of public health or accredited program of public health, or shall have successfully completed a master's degree of public health from an accredited school of public health or from an accredited program of public health~~] a master's degree of public health from an accredited school of public health or from an accredited program of public health and have at least three years professional full-time experience in a senior level administrative capacity;

[~~(b) have at least five years professional full-time experience, of which at least three years have been in public health in a senior level administrative capacity; and~~]

(ii) be a physician who is a graduate of a regularly chartered and legally constituted medical school, licensed to practice medicine and surgery in all branches in the state and who shall have successfully completed at least one year's graduate work in an accredited school of public health and have at least five years professional full-time experience, of which at least three years have been in public health in a senior level administrative capacity;

(iii) have successfully completed a master's degree of public health from an accredited school of public health or from an accredited program of public health and have at least five years of professional full-time experience, of which at least three years have been in public health in a senior level administrative capacity; or

(iv) have at least seven years of professional full-time experience in public health programs, of which at least five years have been in a senior level administrative capacity; and

[~~(c)~~] (b) be thoroughly informed and experienced in all aspects of public health work.

(2) If the executive director is not a physician [who ~~has successfully completed at least one year's graduate work in an accredited school of public health or an accredited program of public health~~], the deputy director of the department shall be a physician who has successfully completed at least one year's graduate work in an accredited school of public health or an accredited program of public health.

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 220
H. B. No. 210
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

OFFENDER FEES

By Grant D. Protzman

AN ACT RELATING TO CORRECTIONS; PROVIDING THAT AN OFFENDER ON PROBATION OR PAROLE MAY BE ASSESSED A SUPERVISION FEE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
64-13-21, AS LAST AMENDED BY CHAPTER 116, LAWS OF UTAH 1987
77-18-1, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1992
77-27-10, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1986

ENACTS:
64-13-21.5, UTAH CODE ANNOTATED 1953 (CODIFIED AS 64-13-21.2)

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

Section 1. Section Amended.

Section 64-13-21, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1987, is amended to read:

64-13-21. Supervision of sentenced offenders placed in community — Standards — Fees.

(1) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(2) Standards for the supervision of offenders shall be established by the department, giving priority, based on available resources, to felony offenders.

(3) (a) A monthly supervision fee of $30 shall be collected from each offender on probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee, and the circumstances under which an offender may request a hearing. In determining whether the imposition of the fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

Section 2. Section Enacted.

Section 64-13-21.5, Utah Code Annotated 1953, is enacted to read:

64-13-21.5. Offender supervision dedicated credits.

All money received from the monthly supervision fee established in Subsection 64-13-21(3) shall be deposited in the General Fund as a parole and probation dedicated credit and shall be used to cover costs incurred in the collection of the fee and in the development of offender supervision programs. These funds shall be nonlapsing.

Section 3. Section Amended.

Section 77-18-1, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1992, is amended to read:

77-18-1. Suspension of sentence — Probation — Supervision — Presentence investigation — Standards — Confidentiality — Terms and conditions — Restitution — Termination, revocation, modification, or extension — Hearings.

(1) "Confidential" as used in this section means that the disclosure of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, is limited to:

(a) the court, prosecutor, and the defendant or his counsel for sentencing purposes only;

(b) law enforcement agencies and other agencies approved by the Department of Corrections in the supervision, confinement, and treatment of the offender; and

(c) the Board of Pardons in its decision-making process.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the Department of Corrections.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court. The court has continuing jurisdiction over all probationers.

(3) (a) The Department of Corrections shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the Department of Corrections to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and Board of Pardons on an annual basis for review and comment prior to adoption by the Department of Corrections.

(c) The Judicial Council and department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the Department of Corrections is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions, or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) (i) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the Department of Corrections or information from other sources about the defendant.

(ii) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the Department of Corrections regarding the payment of restitution by the defendant.

(iii) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are confidential and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the Department of Corrections.

(b) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(c) After the sentencing, the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, and all copies of the presentence investigation report, become the property of the Department of Corrections and are for internal use of the department only.

(6) While on probation, and as a condition of probation, the defendant may be required to perform any or all of the following:

(a) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(b) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(c) provide for the support of others for whose support he is legally liable;

(d) participate in available treatment programs;

(e) serve a period of time in the county jail not to exceed one year;

(f) serve a term of home confinement;

(g) participate in community service restitution programs, including the community service program provided in Section 78-11-20.7;

(h) pay for the costs of investigation, probation, and treatment services;

(i) make restitution or reparation to the victim or victims in accordance with Subsections 76-3-201 (3) and (4); and

(j) comply with other terms and conditions the court considers appropriate.

(7) (a) The Department of Corrections is responsible, upon order of the court, for the collection of fines [and], restitution, and any other costs assessed under Section 64-13-21 during the probation period in cases for which the court orders supervised probation by the department.

(b) The prosecutor shall provide notice of the restitution order to the clerk of the court.

(c) The clerk shall place the order on the civil docket and shall provide notice of the order to the parties.

(d) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure.

(8) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) If the defendant, upon expiration or termination of the probation period, [has] owes outstanding fines [or], restitution [owing], or other assessed costs, the court may retain jurisdiction of the case and continue the defendant on bench probation or place the defendant on bench probation for the limited purpose of enforcing the payment of fines [and], restitution, and other amounts outstanding.

(iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may require the de-

fendant to show cause why his failure to pay should not be treated as contempt of court or why the suspended jail or prison term should not be imposed.

(b) The Department of Corrections shall notify the sentencing court and prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law. The notification shall include a probation progress report and complete report of details on outstanding fines [~~and~~], restitution [~~orders~~], and other amounts outstanding.

(9)(a)(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(10) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d)(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e)(i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(11) Restitution imposed under this chapter is considered a debt for willful and malicious injury for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11, Section 523, U.S.C.A. 1985.

(12) The court may order the defendant to commit himself to the custody of the Division of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) that persons described in Subsection 62A-12-209 (2)(g) are receiving priority for treatment over the defendants described in this subsection.

(13)(a) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, regarding disclosure of presentence diagnostic evaluation and investigation reports to maintain confidentiality of the report.

(b) Disclosure of a presentence investigation report, including any supplemental diagnostic evaluation report, is exempt from the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

Section 4. Section Amended.

Section 77-27-10, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1986, is amended to read:

77-27-10. Conditions of parole.

(1) When the Board of Pardons releases an offender on parole, it shall issue to the parolee a certificate setting forth the conditions of parole which he shall accept and agree to as evidenced by his signature affixed to the agreement. A copy of the agreement shall be delivered to the Department of Corrections

and a copy shall be given to the parolee. The original shall remain with the board's file.

(2) If an offender convicted of violating or attempting to violate Section 76-5-301.1, Subsection 76-5-302 (1), Sections 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, is released on parole, the board shall order outpatient mental health counseling and treatment as a condition of parole.

(3) During the time the offender is on parole, the department shall collect from the offender the monthly supervision fee authorized by Section 64-13-21.

CHAPTER 221
H. B. No. 229
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

MOTOR VEHICLE AMENDMENTS

By Stephen M. Bodily

AN ACT RELATING TO MOTOR VEHICLES; AMENDING DEFINITIONS; AMENDING PROVISIONS FOR TEMPORARY PERMITS; INCREASING NUMBER OF APPLICANTS REQUIRED FOR SPECIAL GROUP LICENSE PLATES; DELETING A REQUIREMENT FOR A SIGNATURE AND NOTARY WITNESS; TRANSFERRING RESPONSIBILITY REGARDING UNBRANDING TITLES; AMENDING FARM TRUCK REGISTRATION REQUIREMENTS; AUTHORIZING REVOCATION OF VINTAGE VEHICLE REGISTRATION UNDER CERTAIN CIRCUMSTANCES; CLASSIFYING CERTAIN VEHICLE RECORDS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-102, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-110, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-116, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 232, LAWS OF UTAH 1992
41-1A-211, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
41-1A-213, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-408, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 30, 152, 174, AND 218, LAWS OF UTAH 1992
41-1A-512, AS ENACTED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-519, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-702, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 218 AND 234, LAWS OF UTAH 1992
41-1A-709, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-802, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1001, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 234 AND 239, LAWS OF UTAH 1992
41-1A-1002, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 239, LAWS OF UTAH 1992
41-1A-1003, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 239, LAWS OF UTAH 1992
41-1A-1206, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 54 AND 95, LAWS OF UTAH 1992
41-3-501, AS RENUMBERED AND AMENDED BY CHAPTER 234 AND LAST AMENDED BY CHAPTER 54, LAWS OF UTAH 1992
41-3-701, AS RENUMBERED AND AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
41-6-163.6, AS LAST AMENDED BY CHAPTERS 95, 111, AND 276, LAWS OF UTAH 1992
41-22-3, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1989
73-18-7, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

ENACTS:
41-21-6, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 41-1a-102, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-102. Definitions.

As used in this chapter:

(1) "Actual miles" means the actual distance a vehicle has traveled while in operation.

(2) "Actual weight" means the actual unladen weight of a vehicle or combination of vehicles as operated and certified to by a weighmaster.

(3) "Affidavit of Mobile Home Affixture" means the affidavit of affixture described in Title 59, Chapter 2, Part 6, Mobile Homes.

(4) "All-terrain type I vehicle" has the same meaning provided in Section 41-22-2.

(5) "All-terrain type II vehicle" has the same meaning provided in Section 41-22-2.

(6) "Amateur radio operator" means any person licensed by the Federal Communications Commission to engage in private and experimental two-way radio operation on the amateur band radio frequencies.

(7) "Branded title" means a title certificate that is labeled:

(a) rebuilt and restored to operation;

(b) flooded and restored to operation; or

(c) not restored to operation.

(8) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(9) "Certificate of title" means a document issued by a jurisdiction to establish a record of ownership between an identified owner and the described vehicle, vessel, or outboard motor.

(10) "Certified scale weigh ticket" means a weigh ticket that has been issued by a weighmaster.

(11) "Commercial vehicle" means a motor vehicle, trailer, or semitrailer used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(12) "Commission" means the State Tax Commission.

(13) "Dealer" means a person engaged or licensed to engage in the business of buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.

(14) "Division" means the Motor Vehicle Division of the commission, created in Section 41-1a-106.

(15) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered in this state, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(16) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(17)(a) "Farm truck" means a truck [~~registered to~~ and] used by the owner or operator of a farm solely for his own use in the transportation of:

(i) farm products, including livestock and its products, poultry and its products, floricultural and horticultural products;

(ii) farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production; and

(iii) livestock, poultry, and other animals and things used for breeding, feeding, or other purposes connected with the operation of a farm.

(b) "Farm truck" does not include the operation of trucks by commercial processors of agricultural products.

(18)(a) "Fleet" means one or more commercial vehicles that supply motive power and contain a compartment for the driver.

(b) "Fleet" also means not less than ten commercial vehicles that are trailers or semitrailers.

(19) "Foreign vehicle" means a vehicle of a type required to be registered, brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this state.

(20) "Gross laden weight" means the actual weight of a vehicle or combination of vehicles, equipped for operation, to which shall be added the maximum load to be carried.

(21) "Highway" or "street" means the entire width between property lines of every way or place of whatever nature when any part of it is open to the public, as a matter of right, for purposes of vehicular traffic.

(22)(a) "Identification number" means the identifying number assigned by the manufacturer or by the division for the purpose of identifying the vehicle, vessel, or outboard motor.

(b) "Identification number" includes a vehicle identification number, state assigned identification number, hull identification number, and motor serial number.

(23) "Implement of husbandry" means every vehicle exclusively used by the owner in the conduct of his agricultural operations.

(24)(a) "In-state miles" means the total number of miles operated in this state during the preceding year by fleet power units.

(b) If fleets are composed entirely of trailers or semitrailers, "in-state miles" means the total number of miles that those vehicles were towed on Utah highways during the preceding year.

(25) "Interstate commercial vehicles" means vehicles used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and operated in more than one jurisdiction.

(26) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.

(27) "Lienholder" means a person with a security interest in particular property.

(28) "Manufactured home" means a structure that is built on a permanent chassis, transportable in one or more sections, and is designed to be used as a dwelling with or without a permanent foundation when connected to required utilities.

(29) "Manufacturer" means a person engaged in the business of constructing, manufacturing, assembling, producing, or importing new or unused vehicles, vessels, or outboard motors for the purpose of sale or trade.

(30) "Mobile home" means a structure transportable in one or more sections with the plumbing,

heating, and electrical systems contained intact within the structure.

(31) "Motorboat" has the same meaning as provided in Section 73-18-2.

(32)(a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(b) "Motor vehicle" does not include an off-highway vehicle.

(33) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(34)(a) "Nonresident" means a person who is not a resident of this state and who does not engage in intrastate business within this state and operate in that business any motor vehicle, trailer, or semitrailer within this state.

(b) A person who engages in intrastate business within this state and operates in that business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in interstate commerce, maintains any vehicle in this state as the home station of that vehicle is considered a resident of this state, insofar as that vehicle is concerned in administering this chapter.

(35) "Odometer" means a device for measuring and recording the actual distance a vehicle travels while in operation, but does not include any auxiliary odometer designed to be periodically reset.

(36) "Off-highway implement of husbandry" has the same meaning as provided in Section 41-22-2.

(37) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

(38) "Operate" means to drive or be in actual physical control of a vehicle or to navigate a vessel.

(39) "Outboard motor" means a detachable self-contained propulsion unit, excluding fuel supply, used to propel a vessel.

(40) (a) "Owner" means a person, other than a lienholder, holding title to a vehicle, vessel, or outboard motor whether or not the vehicle, vessel, or outboard motor is subject to a security interest.

(b) If a vehicle is the subject of an agreement for the conditional sale or installment sale or mortgage of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this chapter.

(c) If a vehicle is the subject of an agreement to lease, the lessor is considered the owner until the lessee exercises his option to purchase the vehicle.

(41) "Personalized license plate" means a license plate that has displayed on it a combination of letters, numbers, or both as requested by the owner of the vehicle and assigned to the vehicle by the division.

(42) (a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable top, or similar structure.

(43) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(44) "Preceding year" means a period of 12 consecutive months fixed by the division that is within 16 months immediately preceding the commencement of the registration or license year in which proportional registration is sought. The division in fixing the period shall conform it to the terms, conditions, and requirements of any applicable agreement or arrangement for the proportional registration of vehicles.

(45) "Public garage" means every building or other place where vehicles or vessels are kept and stored and where a charge is made for the storage and keeping of vehicles and vessels.

(46) "Reconstructed vehicle" means every vehicle of a type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(47) "Registration" means a document issued by a jurisdiction that allows operation of a vehicle or vessel on the highways or waters of this state for the time period for which the registration is valid and that is evidence of compliance with the registration requirements of the jurisdiction.

(48) (a) "Registration year" means a 12 consecutive month period commencing with the completion of all applicable registration criteria.

(b) For administration of a multistate agreement for proportional registration the division may prescribe a different 12-month period.

(49) "Repair or replacement" means the restoration of vehicles, vessels, or outboard motors to a sound working condition by substituting any inoperative part of the vehicle, vessel, or outboard motor, or by correcting the inoperative part.

(50) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry any load either independently or any part of the weight of a vehicle or load that is drawn.

(51) "Sailboat" has the same meaning as provided in Section 73-18-2.

(52) "Security interest" means an interest that is reserved or created by a security agreement to secure the payment or performance of an obligation and that is valid against third parties.

(53) "Semitrailer" means every vehicle without motive power designed for carrying persons or prop-

erty and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(54) "Special group license plate" means a type of license plate designed for a particular group of people or a license plate authorized and issued by the division in accordance with Section 41-1a-408.

(55)(a) "Special interest vehicle" means a vehicle used for general transportation purposes and that is:

(i) 20 years or older from the current year; or

(ii) a make or model of motor vehicle recognized by the division director as having unique interest or historic value.

(b) In making his determination under Subsection (a), the division director shall give special consideration to:

(i) a make of motor vehicle that is no longer manufactured;

(ii) a make or model of motor vehicle produced in limited or token quantities;

(iii) a make or model of motor vehicle produced as an experimental vehicle or one designed exclusively for educational purposes or museum display; or

(iv) a motor vehicle of any age or make that has not been substantially altered or modified from original specifications of the manufacturer and because of its significance is being collected, preserved, restored, maintained, or operated by a collector or hobbyist as a leisure pursuit.

(56) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers.

(57) "Specially constructed vehicle" means every vehicle of a type required to be registered in this state, not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles, and not materially altered from its original construction.

(58) "Title" means the right to or ownership of a vehicle, vessel, or outboard motor.

(59)(a) "Total fleet miles" means the total number of miles operated in all jurisdictions during the preceding year by power units.

(b) If fleets are composed entirely of trailers or semitrailers, "total fleet miles" means the number of miles that those vehicles were towed on the highways of all jurisdictions during the preceding year.

(60) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(61) "Transferee" means a person to whom the ownership of property is conveyed by sale, gift, or any other means except by the creation of a security interest.

(62) "Transferor" means a person who transfers his ownership in property by sale, gift, or any other means except by creation of a security interest.

(63) "Travel trailer" means a trailer designed as a temporary dwelling for travel, recreational, and vacation use that does not require special highway movement permits when drawn by a motor vehicle.

(64) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(65) "Vehicle" includes a motor vehicle, trailer, semitrailer, off-highway vehicle, manufactured home, and mobile home.

(66) "Vessel" has the same meaning as provided in Section 73-18-2.

(67) "Vintage vehicle" has the same meaning as provided in Section 41-21-1.

(68) "Waters of this state" has the same meaning as provided in Section 73-18-2.

(69) "Weighmaster" means a person, association of persons, or corporation permitted to weigh vehicles under this chapter.

Section 2. Section Amended.

Section 41-1a-110, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-110. Authority of division to suspend or revoke registration, certificate of title, license plate, or permit.

(1) Except as provided in Subsections (2)[~~,~~] and (3)[~~, and (4)~~] the division may suspend or revoke a registration, certificate of title, license plate, or permit if:

(a) the division is satisfied that a registration, certificate of title, license plate, or permit was fraudulently procured or erroneously issued;

(b) the division determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(c) a registered vehicle has been dismantled;

(d) the division determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand;

(e) a registration decal, license plate, or permit is knowingly displayed upon a vehicle other than the one for which issued; or

(f) the division determines that the owner has committed any offense under this chapter involving the registration, certificate of title, registration card, license plate, registration decal, or permit.

(2) The division may not suspend or revoke the registration of a vessel or outboard motor unless authorized under Section 73-18-7.3.

(3) The division may not suspend or revoke the registration of an off-highway vehicle unless authorized under Section 41-22-17.

Section 3. Section Amended.

Section 41-1a-116, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 232, Laws of Utah 1992, is amended to read:

41-1a-116. Records — Telephone requests for records — Search fee.

(1) All records of the division are public unless the division determines based upon a written request by the [~~individual in~~] subject of the record that the record is protected.

(2) Access to public records is determined by Section 63-2-201.

(3) Access to protected records, except as provided in Subsection (4), is determined by Section 63-2-202.

(4) In addition to those persons granted access to protected records under Section 63-2-202, the division may disclose a protected record to a person with a bona fide security interest or for purposes of safety, product recall, advisory notices, or statistical reports only upon receipt of a signed acknowledgment that the person receiving that protected record may not:

(a) disclose information from that record to any other person; or

(b) use information from that record for advertising or solicitation purposes.

(5) The division may provide protected information to a statistic gathering entity under Subsection (4) only in summary form.

(6) A person allowed access to protected records under Subsection (4) may request motor vehicle title or registration information from the division regarding any person, entity, or motor vehicle by submitting in person or by mail a written application on a form provided by the division.

(7) If a person regularly requests information for business purposes, the division may by rule allow the information requests to be made by telephone and fees as required under Subsection (8) charged to a division billing account to facilitate division service. The rules shall require that the:

(a) division determine if the nature of the business and the volume of requests merit the dissemination of the information by telephone;

(b) division determine if the credit rating of the requesting party justifies providing a billing account; and

(c) the requestor submit to the division an application that includes names and signatures of persons authorized to request information by telephone and charge the fees to the billing account.

(8) (a) The division shall charge a reasonable search fee determined under Subsection 63-38-3(2) for the research of each record requested.

(b) Fees may not be charged for furnishing information to persons necessary for their compliance with this chapter.

(c) Law enforcement agencies have access to division records free of charge.

Section 4. Section Amended.

Section 41-1a-211, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-1a-211. Temporary permit pending registration — Other laws applied.

(1) (a) The division may grant a temporary permit to operate a vehicle for which:

(i) application for registration has been made, or, in the case of a newly purchased vehicle, will be made;

(ii) evidence of ownership is provided; and

(iii) the proper fees have been paid.

(b) The temporary permit allows the vehicle to be operated pending complete registration by displaying:

(i) the temporary permit; or

(ii) other evidence of the application under rules made by the commission.

(2) If a vehicle is operated on a temporary permit issued under this section or Section 41-3-302, that vehicle is subject to all other statutes, rules, and regulations intended to control the use and operation of vehicles on the highways.

Section 5. Section Amended.

Section 41-1a-213, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-213. Contents of registration cards.

(1) The registration card shall be delivered to the owner and shall contain:

(a) the date issued;

(b) the name and address of the owner;

(c) a description of the vehicle registered including the year, the make, the identification number, and the license plate assigned to the vehicle;

(d) the expiration date; and

(e) other information as determined by the commission.

(2) If a vehicle is leased for a period in excess of 30 days, the registration shall contain:

(a) the owner's name;

(b) the name of the lessee; and

(c) the bona fide residence address of the lessee.

(3) On all vehicles [~~used or designed for use in the transportation of persons for hire or the transportation of property~~] registered under Section 41-1a-1206, the registration card shall also contain the gross laden weight as given in the application for registration.

Section 6. Section Amended.

Section 41-1a-408, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 30, 152, 174, and 218, Laws of Utah 1992, is amended to read:

41-1a-408. Special group license plates — Design — Application — Issuance.

(1) As used in this section:

(a) "Collegiate license plates" means license plates issued under this section to a contributor after payment of the appropriate fees.

(b) "Contributor" means a person who has donated or in whose name at least $25 has been donated to a scholastic scholarship fund of a single institution in the 12 months prior to registration and who has received a completed contribution verification form.

(c) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(d) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (b).

(b) Each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) [~~(i)~~] The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

[~~(ii)~~] (b) Collegiate license plates may not be redesigned under this section more frequently than every five years.

[~~(b) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.~~]

(4) Subject to [Subsection] Subsections (8) and (10), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a handicapped person or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) licensing a special interest vehicle;

(j) licensing a vintage vehicle;

(k) a licensed amateur radio operator; or

(l) [~~licensing~~] registering a farm [~~vehicle~~] truck.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection [~~(12)~~] (10), the division shall issue a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying disabled person; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a handicapped special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a handicapped special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a handicapped spe-

cial group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form to the division at the time of application.

[~~(8)~~] (b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

[~~(a)~~] (i) the name of the contributor;

[~~(b)~~] (ii) the institution to which a donation was made;

[~~(c)~~] (iii) the date of the donation; and

[~~(d)~~] (iv) an attestation that the donation was for a scholastic scholarship.

[~~(9)~~] (c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

[~~(10)~~] (8) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of [~~50~~] 500 applications with the fees required under Section 41-1a-1216.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

[~~(11)~~] (9) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

[~~(12)~~] (10) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

[~~(ii)~~] (iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and one year for a removable windshield placard; and

(C) the seal or other identifying mark of the division[~~; and~~].

[~~(iii) establish the maximum number of numerals or characters for special group license plates.~~]

(b) The qualifying criteria under Subsection (a) for a handicapped special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a disabled person be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

[~~(13) All existing temporary removable windshield placards and removable windshield placards shall be returned to the division by January 1, 1993, to implement the provisions of Subsection (12)(a)(ii).~~]

Section 7. Section Amended.

Section 41-1a-512, Utah Code Annotated 1953, as enacted by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-512. Application for title.

(1) The application for a certificate of title shall include:

(a) the signature in ink of each person to be recorded on the certificate as owner;

[~~(b) the signature on the application for title acknowledged by a person authorized to administer oaths;~~]

[~~(c)~~] (b) the name, bona fide residence and mailing address of the owner, or business address of the owner if the owner is a firm, association, or corporation;

[~~(d)~~] (c) a description of the vehicle, vessel, or outboard motor, including the make, model, type of body, the model year as specified by the manufacturer, the number of cylinders, the identification number of the vehicle, vessel, or outboard motor, as applicable, and other information the division may require;

[~~(e)~~] (d) other information required by the division to enable it to determine whether the owner is entitled to a certificate of title;

[(f)] (e) a statement of one lien or encumbrance, if any, upon the vehicle, vessel, or outboard motor; and

[(g)] (f) the names and addresses of all persons having any ownership interest in the vehicle, vessel, or outboard motor and the nature of the ownership interest.

(2) An application for a certificate of title for a new vehicle, vessel, or outboard motor purchased from a dealer shall be accompanied by a statement by the dealer or a bill of sale showing any lien retained by the dealer.

Section 8. Section Amended.

Section 41-1a-519, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-519. Dealer requirements for certificate of title or Affidavit of Mobile Home Affixture.

(1) If a dealer delivers a new off-highway vehicle, vessel, or outboard motor to the purchaser, the dealer shall apply for issuance of a certificate of title or Affidavit of Mobile Home Affixture, as appropriate, in the purchaser's name within 30 days of the date of sale.

(2) A dealer who purchases or takes in trade a used off-highway vehicle, vessel, or outboard motor on which a certificate of title has previously been issued is not required to apply for a certificate of title.

Section 9. Section Amended.

Section 41-1a-702, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 218 and 234, Laws of Utah 1992, is amended to read:

41-1a-702. Endorsement of assignment and warranty of title — Co-owners.

(1) (a) To transfer a vehicle, vessel, or outboard motor the owner shall endorse the certificate of title issued for the vehicle, vessel, or outboard motor in the space for assignment and warranty of title.

(b) The endorsement and assignment shall include a statement of all liens or encumbrances on the vehicle, vessel, or outboard motor [~~and shall be verified under oath by the owner before a notary public or other person authorized by law to administer oaths~~].

(2) (a) If a title certificate reflects the names of two or more people as co-owners in the alternative by use of the word "or" or "and/or," each co-owner is considered to have granted the other co-owners the absolute right to endorse and deliver title and to dispose of the vehicle, vessel, or outboard motor.

(b) If the title certificate reflects the names of two or more people as co-owners in the conjunctive by use of the word "and," or the title does not reflect any alternative or conjunctive word, the endorsement of each co-owner is required to transfer title to the vehicle, vessel, or outboard motor.

(3) The owner shall deliver the certificate of title containing the odometer disclosure statement required under Section 41-1a-902 and the certificate of registration to the purchaser or transferee at the time of, or within 48 hours after delivering the vehicle, vessel, or outboard motor, as applicable, except as provided for under Sections 41-3-301, 41-1a-519, and 41-1a-709.

Section 10. Section Amended.

Section 41-1a-709, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is amended to read:

41-1a-709. Dealer transfer of used off-highway vehicle, vessel, or outboard motor.

Upon the resale or subsequent transfer by a dealer of a used off-highway vehicle, vessel, or outboard motor, the dealer shall endorse the certificate of title and forward it, accompanied by the transferee's application for a certificate of title, or if desired by the purchaser, and as applicable, an affidavit of Mobile Home Affixture, to the division.

Section 11. Section Amended.

Section 41-1a-802, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-802. Identification number inspectors — Duties.

(1) The commission, designated officers and employees of the division, a person operating an official inspection station under Sections 41-6-160 and 41-6-161, an official inspection station certified inspector, and all peace officers of the state are qualified identification number inspectors.

(2) The qualified identification number inspectors shall, upon the application for the first registration in this state of any vehicle:

(a) inspect the identification number of the vehicle;

(b) make a record of the identification number inspection upon an application form provided by the division; and

(c) verify the facts in the application.

Section 12. Section Amended.

Section 41-1a-1001, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 234 and 239, Laws of Utah 1992, is amended to read:

41-1a-1001. Definitions.

As used in Sections 41-1a-1001 through 41-1a-1008:

(1) "Certified vehicle inspector" means a person employed by the Motor Vehicle Enforcement Division as qualified through experience, training, or both to identify and analyze damage to vehicles with either unibody or conventional frames.

(2) "Major component part" means:

(a) the front body component of a motor vehicle consisting of the structure forward of the firewall;

(b) the passenger body component of a motor vehicle including the firewall, roof, and extending to and including the rear-most seating;

(c) the rear body component of a motor vehicle consisting of the main cross member directly behind the rear-most seating excluding any auxiliary seating and structural body assembly rear of the cross members; and

(d) the frame of a motor vehicle consisting of the structural member that supports the auto body.

(3) (a) "Major damage" means damage to a major component part of the motor vehicle requiring ten or more hours to repair or replace, as determined by a collision estimating guide recognized by the Motor Vehicle Enforcement Division.

(b) For purposes of Subsection (a) repair or replacement hours do not include time spent on cosmetic repairs.

(4) "Owner" means the person who has the legal right to possession of the vehicle.

(5) (a) "Salvage certificate" means a certificate of ownership issued for a salvage vehicle before a new certificate of title is issued for the vehicle.

(b) A salvage certificate is not valid for registration purposes.

(6) (a) "Salvage vehicle" means any vehicle:

(i) damaged by collision, flood, or other occurrence to the extent that the cost of repairing the vehicle for safe operation exceeds its fair market value; or

(ii) that has been declared a salvage vehicle by an insurer or other state or jurisdiction, but is not precluded from further registration and titling.

(b) "Salvage vehicle" does not include a vehicle seven years old or older.

(7) "Unbranded title" means a certificate of title for a previously damaged motor vehicle without any designation that the motor vehicle has been damaged.

(8) "Vehicle damage disclosure statement" means the form designed and furnished by the [~~division~~] Motor Vehicle Enforcement Division for a damaged motor vehicle inspection under Section 41-1a-1002.

Section 13. Section Amended.

Section 41-1a-1002, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 239, Laws of Utah 1992, is amended to read:

41-1a-1002. Unbranded title — Prerepair inspections — Interim repair inspections — Repair.

(1) To obtain an unbranded title to a salvage vehicle:

(a) the vehicle must:

(i) be a motor vehicle;

(ii) (A) have an unbranded Utah title or a Utah salvage certificate issued to replace an unbranded Utah title at the time the motor vehicle is inspected under Subsection (iii); or

(B) have an unbranded title from another jurisdiction and the motor vehicle shall have been damaged in Utah as evidenced by an accident report;

(iii) be inspected by a certified vehicle inspector prior to any repairs on the motor vehicle following any major damage; and

(iv) have major damage in no more than one major component part;

(b) the major damage identified by a certified vehicle inspector under Subsection (a) must be repaired in accordance with standards established by the Motor Vehicle Enforcement Division;

(c) any interim inspection required by a certified vehicle inspector must be completed in accordance with the directions of the initial certified vehicle inspector and to the satisfaction of the interim certified vehicle inspector; and

(d) the owner must apply to the [~~division~~] Motor Vehicle Enforcement Division for authorization to obtain an unbranded title under Section 41-1a-1003.

(2) A flood damaged motor vehicle does not qualify for an unbranded title.

(3) The prerepair motor vehicle inspection required under Subsection (1) shall include examination of the motor vehicle and its major component parts to determine:

(a) the extent and location of the major damage to the motor vehicle;

(b) that the identification numbers of the vehicle or its parts have not been removed, falsified, altered, defaced, or destroyed; and

(c) there are no indications that the vehicle or any of its parts are stolen.

(4) If the certified vehicle inspector determines in an inspection under Subsection (1) that the motor vehicle has major damage:

(a) in more than one major component part, the certified vehicle inspector shall notify the [~~division~~] Motor Vehicle Enforcement Division and the owner that the motor vehicle does not qualify for an unbranded title; or

(b) requiring repair or replacement in one or no major component part he shall:

(i) record on the vehicle damage disclosure statement the:

(A) date of the inspection;

(B) description of the motor vehicle including its vehicle identification number, make, model, and year of manufacture;

(C) owner of the motor vehicle and name of the lienholder, if any, shown on the salvage certificate; and

(D) major damage to the motor vehicle requiring repair or replacement;

(ii) indicate that the motor vehicle may qualify for an unbranded title if the major damage is repaired or the damaged part is replaced;

(iii) sign the vehicle damage disclosure statement and attest to the information's accuracy;

(iv) indicate whether an interim inspection of the motor vehicle damage repairs is required and which repairs require inspection prior to completion of repair work;

(v) give to the owner a copy of the vehicle damage disclosure statement and deliver or mail a copy of the statement to the lienholder, if any, shown on the salvage certificate; and

(vi) file [~~a copy of~~] the original vehicle damage disclosure statement with the [~~division~~] Motor Vehicle Enforcement Division.

(5)(a) Upon receipt by the [~~division~~] Motor Vehicle Enforcement Division of notification from a certified vehicle inspector that a motor vehicle has had a prerepair inspection, the [~~division~~] Motor Vehicle Enforcement Division shall make a record of the inspection.

(b) Any subsequent prerepair inspections shall be disregarded by the [~~division~~] Motor Vehicle Enforcement Division in evaluating the major damage to the motor vehicle and the repairs required.

(6) A person who repairs or replaces major damage identified by a certified vehicle inspector on a motor vehicle in accordance with Subsection (1) shall:

(a) record on the vehicle damage disclosure statement:

(i) a description of the repairs made to the motor vehicle including how they were made; and

(ii) his signature following the repair description with an attestation that the description is accurate;

(b) obtain the signature of the certified vehicle inspector who performs an interim inspection, attesting that the repairs identified for interim inspection were satisfactorily completed;

(c) file [~~a copy of~~] the original vehicle damage disclosure statement containing the repair information with the [~~division~~] Motor Vehicle Enforcement Division; and

(d) give a copy of the [~~original~~] vehicle damage disclosure statement to the owner.

Section 14. Section Amended.

Section 41-1a-1003, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 239, Laws of Utah 1992, is amended to read:

41-1a-1003. Unbranded certificate of title — Application.

(1) If the certified vehicle inspector determines under Section 41-1a-1002 that a motor vehicle may qualify for an unbranded title, following repair or replacement of the damaged major component part of the vehicle identified by the certified vehicle inspector, the owner may submit an application to the [division] Motor Vehicle Enforcement Division for issuance of an unbranded title.

(2) The applicant for an unbranded title shall submit to the [~~division~~] Motor Vehicle Enforcement Division an application together with the vehicle damage disclosure statement and other supporting documents required by the [~~division~~] Motor Vehicle Enforcement Division.

(3) The [~~division~~] Motor Vehicle Enforcement Division shall make an independent determination based on the vehicle damage disclosure statement and other relevant documents whether the motor vehicle is qualified to receive an unbranded title.

Section 15. Section Amended.

Section 41-1a-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 54 and 95, Laws of Utah 1992, is amended to read:

41-1a-1206. Registration fees — Fees by gross laden weight.

(1) At the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) $7.50 for each motorcycle;

(b) $11 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) $10 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) $7.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) $14 for each farm truck of 10,000 pounds or less gross laden weight; plus

(ii) $8 for each 2,000 pounds over 10,000 pounds gross laden weight; and

(e) (i) $45 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) $16.50 for each 2,000 pounds over 14,000 pounds gross laden weight.

(2) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight exceeds 12,000 pounds.

(3) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

(4) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of $100.

(5) Except as provided in Section 41-6-163.6, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b)(i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division[~~: (A) a written statement indicating that the truck is used in combination with a semitrailer or trailer and the combined weight of the truck and the loaded semitrailer or trailer exceeds 12,000 pounds gross laden weight; and (B)~~] a certificate of emissions inspection or a waiver in compliance with Section 41-6-163.6.

(6) A violation of Subsection (5) is a class B misdemeanor that shall be punished by a fine of not less than $200.

Section 16. Section Amended.

Section 41-3-501, Utah Code Annotated 1953, as renumbered and amended by Chapter 234 and last amended by Chapter 54, Laws of Utah 1992, is amended to read:

41-3-501. Special plates — Dealers — Dismantlers — Manufacturers — Remanufacturers — Transporters — Restrictions on use.

(1) Except as provided under this chapter, a dealer owning or having in his possession by consignment for resale any motor vehicle required to be registered under Title 41, Chapter 1a, Motor Vehicle Act, may operate or move the motor vehicle upon the highways without registering it if a dealer plate issued by the division is displayed.

(2) A dismantler may operate or move any motor vehicle upon the highways solely for the purpose of transporting the motor vehicle from the place of purchase or legal acquisition to the place of business for dismantling or to the place of business of a licensed crusher for the purpose of transferring the motor vehicle for disposal upon displaying on it a dismantler plate issued by the division.

(3) A manufacturer or remanufacturer may operate or move any of his manufactured or remanufactured motor vehicles upon the highways solely for the purpose of delivery of the motor vehicle to a dealer or for demonstrating a motor vehicle to a dealer or prospective dealer, upon displaying on it a manufacturer's plate issued by the division.

(4)(a) Upon displaying on a repossessed motor vehicle a transporter plate issued by the division, a transporter may operate or move upon the highways a repossessed motor vehicle not registered as required under Title 41, Chapter 1a, Motor Vehicle Act, solely for the purpose of transporting the repossessed motor vehicle from the point of repossession:

(i) to a financial institution or to the place of storage, so that a financial institution may provide for operation of a repossessed motor vehicle by a prospective purchaser;

(ii) to and from a detail or repair shop for the purpose of detailing or repairing the motor vehicle: or

(iii) to a delivery point in, out, or through the state.

(b) This subsection does not include loaded motor vehicles subject to the gross laden weight provision of Title 41, Chapter 1a, Motor Vehicle Act.

(5) [~~Unless a special loaded demonstration permit is obtained from the department, dealer~~] Dealer plates may not be used on:

(a)(i) a motor vehicle leased or rented for compensation; or

(ii) in lieu of registration, on a motor vehicle sold by the dealer; or

(b) on a loaded motor vehicle over 12,000 pounds gross laden weight unless a special loaded demonstration permit is obtained from the department.

Section 17. Section Amended.

Section 41-3-701, Utah Code Annotated 1953, as renumbered and amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-3-701. Violations as misdemeanors.

(1) Except as otherwise provided in this chapter, any person who violates this chapter or any rule made by the administrator is guilty of a class C misdemeanor.

(2) A person who violates Section 41-3-201 is guilty of a class B misdemeanor.

(3) A person who violates Section 41-3-301 is guilty of a class B misdemeanor unless the selling dealer complies with the requirements of Section [~~41-3-402~~] 41-3-403.

Section 18. Section Amended.

Section 41-6-163.6, Utah Code Annotated 1953, as last amended by Chapters 95, 111, and 276, Laws of Utah 1992, is amended to read:

41-6-163.6. Emissions inspection — County program.

(1) The legislative body of each county required under federal law to utilize an emissions inspection and maintenance program for motor vehicles shall:

(a) after December 31, 1983, require that a certificate of emissions inspection or a waiver or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented as a condition of registration or renewal of registration; and

(b) after June 30, 1992, require that all motor vehicles owned by or being used by all departments, instrumentalities, agencies, and employees of the federal government, the state and any of its agencies, and all political subdivisions of the state in-

cluding school districts and registered or principally operated in that county comply with the provisions of this section.

(2) The legislative body of a county identified in Subsection (1) shall make rules, no stricter than federal requirements, to facilitate compliance with federal requirements regarding emissions standards, test procedures, inspections stations, repair requirements and dollar limits for correction of deficiencies, and certificates of emissions inspections. The rules may allow for a phase-in of the program by geographical area.

(3) All agricultural implements of husbandry and any motor vehicle that [~~qualifies for registration as~~] meets the definition of a farm truck under Section [~~41-1a-1206~~] 41-1a-102 and has a gross vehicle weight rating of 12,001 pounds or more are exempt from this section.

(4)(a) The legislative body of a county identified in Subsection (1) shall exempt any pickup truck as defined in Section 41-1a-102 having a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section if the registered owner of the pickup truck signs and submits to the legislative body an affidavit stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as green belt property under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits an affidavit under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(c) The legislative body of a county granting exemptions under this subsection shall report to the Health and Environment Interim Committee before November 1, 1993, regarding the number of exemptions granted between July 1, 1992, and July 1, 1993, and any recommendations regarding the operation of this subsection.

(5) (a) Each college or university located in a county subject to this section shall:

(i) require its students and employees who park any motor vehicle on its campus or property that is not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body; and

(ii) implement this subsection regarding both students and employees prior to the first day of class of the fall quarter or semester of 1992.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this subsection.

(6) (a) An inspection station shall issue a certificate of inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The inspection shall be annual and, if Section 41-6-158 regarding automobile inspections is in effect, within the same time limit applicable to an inspection under Section 41-6-158.

(7) (a) Counties identified in Subsection (1) shall collect information about and monitor the program.

(b) The counties shall supply this information to an appropriate legislative committee, as designated by the legislative management committee, at times determined by that designated committee to identify program needs, including funding needs.

Section 19. Section Enacted.

Section 41-21-6, Utah Code Annotated 1953, is enacted to read:

41-21-6. Revocation of registration — Powers of tax commission.

The tax commission may revoke the registration of a vintage vehicle for failure to comply with this chapter.

Section 20. Section Amended.

Section 41-22-3, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1989, is amended to read:

41-22-3. Registration of vehicles — Application — Issuance of stickers and card — Proof of property tax payment — Records.

(1) (a) Unless exempted under Section 41-22-9, no person may operate or transport and no owner may give another person permission to operate or transport any off-highway vehicle on any public land, trail, street, or highway in this state unless the off-highway vehicle has been registered under this chapter for the current year.

(b) Unless exempted under Section 41-22-9, no dealer may sell an off-highway vehicle which can be used or transported on any public land, trail, street, or highway in this state, unless it has been registered or is in the process of being registered under this chapter for the current year.

(2) The owner of any off-highway vehicle requiring registration under this chapter shall file an application for registration with the Motor Vehicle Division on forms approved by it.

(3) Each application for registration of an off-highway vehicle shall be accompanied by:

(a) evidence of ownership, a title, or a manufacturer's certificate of origin, and a bill of sale showing ownership, make, model, horsepower or displacement, and serial number;

(b) the past certificate of registration; or

(c) the fee for a duplicate.

(4) With every initial registration, the Motor Vehicle Division shall assign a number which shall remain with the vehicle and be valid until ownership of the vehicle is transferred. The number shall be displayed on the vehicle in a manner prescribed by the board. With every initial and subsequent annual registration, the Motor Vehicle Division shall issue numbered stickers to be affixed to the vehicles as prescribed by the board and a registration card, which shall be available for inspection on the vehicle at all times.

(5) The Motor Vehicle Division, before issuing a registration card and registration stickers, shall require from each applicant a certificate from the county assessor of the county in which the off-highway vehicle has situs for taxation. The certificate shall state one of the following:

(a) the property tax on the off-highway vehicle for the current year has been paid;

(b) in the county assessor's opinion, the tax is a lien on real property sufficient to secure the payment of the tax; or

(c) the off-highway vehicle is exempt by law from payment of property tax for the current year.

(6) (a) All records of the division made or kept pursuant to this section shall be classified by the Motor Vehicle Division in the same manner as motor vehicle records are classified under Section 41-1a-116.

(b) Division records are available for inspection in the same manner as motor vehicle records pursuant to Section 41-1a-116.

Section 21. Section Amended.

Section 73-18-7, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

73-18-7. Registration requirements — Exemptions — Agents — Records — Period of registration and renewal — Expiration — Notice of transfer of interest or change of address — Duplicate registration card — Invalid registration — Powers of board.

(1) (a) Each motorboat and sailboat on the waters of this state shall be registered, unless it is exempt from registration as provided for in Section 73-18-9.

(b) A person may not place, or give permission for the placement of, a motorboat or sailboat on any waters of this state or operate or give permission for the operation of a motorboat or sailboat on the waters of this state, unless the motorboat or sailboat is registered in accordance with this chapter or is exempt from registration as provided for in Section 73-18-9.

(2) (a) The owner of each motorboat or sailboat required to be registered by this state shall file an application for registration with the division on forms approved by the division.

(b) (i) The application shall be signed by the owner of the motorboat or sailboat and accompanied by a fee set by the board.

(ii) This fee may not exceed $10 per year.

(c) The division, before issuing a registration card and registration decals, shall require from each applicant a certificate from the county assessor of the county in which the motorboat or sailboat has situs for taxation containing one of the following statements:

(i) the property tax on the motorboat or sailboat for the current year has been paid;

(ii) in the county assessor's opinion, the property tax is a lien on real property sufficient to secure the payment of the property tax; or

(iii) the motorboat or sailboat is exempt by law from payment of property tax for the current year.

(3) (a) Upon receipt of the application in the approved form, the division shall record the receipt and issue to the applicant registration decals and a registration card which state the number assigned to the motorboat or sailboat and the name and address of the owner.

(b) The registration card shall be available for inspection on the motorboat or sailboat for which it was issued, whenever that motorboat or sailboat is in operation.

(4) The assigned number shall:

(a) be painted or permanently attached to each side of the forward half of the motorboat or sailboat;

(b) consist of plain vertical block characters not less than three inches in height;

(c) contrast with the color of the background and be distinctly visible and legible;

(d) have spaces or hyphens equal to the width of a letter between the letter and numeral groupings; and

(e) read from left to right.

(5) Any vessel with a valid marine document issued by the United States Coast Guard is exempt from the number display requirements of Subsection (4).

(6) The nonresident owner of any motorboat or sailboat already covered by a valid number, which has been assigned to it pursuant to federal law or a federally-approved numbering system of his resident state, shall be exempt from registration while operating the motorboat or sailboat on the waters of this state unless he is operating in excess of the reciprocity period provided for in Subsection 73-18-9 (1).

(7) (a) If the ownership of a motorboat or sailboat changes, a new application form with the fee shall be filed with the division and a new registration card and registration decals shall be issued in the same manner as provided for in Subsections (2) and (3).

(b) The current number assigned to the vessel shall be reassigned to the new owner to display on the motorboat or sailboat.

(8) If the United States Coast Guard has in force an overall system of identification numbering for motorboats or sailboats within the United States, the numbering system employed under this chapter by the board shall be in conformity with that system.

(9) The division may authorize any person to act as its agent for the registration of motorboats and sailboats. Any number assigned and any registration card and registration decals issued by an agent of the division in conformity with this chapter and rules of the board shall be valid.

(10) (a) All records of the division made or kept pursuant to this section [~~are public records~~] shall be classified by the Motor Vehicle Division in the same manner as motor vehicle records are classified under Section 41-1a-116. [~~The records shall be available for public inspection through the division or its authorized agent~~]

(b) Division records are available for inspection in the same manner as motor vehicle records [~~are made available for public inspection~~] pursuant to Section 41-1a-116.

(11) Each registration, registration card, and decal issued under this chapter shall continue in effect for a period set by the board. A registration may be renewed by the owner in the same manner provided for in the initial application. The current number assigned to the vessel shall be reassigned when the registration is renewed.

(12) The board shall fix a day and month of the year on which registrations, registration cards, and registration decals expire.

(13) (a) The owner shall notify the division of the transfer of all or any part of his interest, other than creation of a security interest, in a motorboat or sailboat registered in this state under Subsections (2) and (3) or of the destruction or abandonment of the motorboat or sailboat.

(b) This notification must take place within 15 days of the transfer, destruction, or abandonment.

(c) The transfer, destruction, or abandonment of a motorboat or sailboat terminates its registration except if a transfer of a part interest which does not affect the owner's right to operate a motorboat or sailboat, the transfer shall not terminate the registration.

(14) (a) The registered owner shall notify the division within 15 days if his address changes from the address appearing on the registration card and shall, as a part of this notification, furnish the division with his new address.

(b) The board may provide in its rules for the surrender of the registration card bearing the former address and its replacement with a new registration card bearing the new address, or for the alteration of an outstanding registration card to show the new address of the holder.

(15) (a) If the registration card is lost or stolen, a fee of $4 may be collected by the division for the issuance of a duplicate.

(b) If the registration decals are lost or stolen, a fee of $3 may be collected by the division for the issuance of duplicate decals.

(16) A number other than the number assigned to a motorboat or sailboat or a number for a motorboat or sailboat granted reciprocity under this chapter may not be painted, attached, or otherwise displayed on either side of the bow of a motorboat or sailboat.

(17) A motorboat or sailboat registration and number shall be invalid if obtained by knowingly falsifying an application for registration.

(18) The board may:

(a) designate the suffix to assigned numbers;

(b) adopt rules for the display of registration decals;

(c) adopt rules for the issuance and display of dealer numbers and registrations; and

(d) adopt rules for the issuance and display of temporary registrations.

CHAPTER 222
H. B. No. 240
Passed March 3, 1993
Approved March 18, 1993
Effective July 1, 1993

VEHICLE TITLE, REGISTRATION, AND LICENSE PLATE FEES

By Stephen M. Bodily

AN ACT RELATING TO MOTOR VEHICLES; RESTRUCTURING AND AMENDING FEE SCHEDULES FOR VEHICLE TITLE, REGISTRATION, AND PLATES; ELIMINATING A TRANSFER FEE; MAKING TECHNICAL CORRECTIONS; INCLUDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

9-1-503, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-208, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-408, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 30, 152, 174, AND 218, LAWS OF UTAH 1992
41-1A-410, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-413, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-416, AS ENACTED BY CHAPTER 200, LAWS OF UTAH 1992
41-1A-701, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1201, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1206, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 54 AND 95, LAWS OF UTAH 1992
41-1A-1209, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

REPEALS AND REENACTS:

41-1A-1208, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1210, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1992
41-1A-1211, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1212, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1213, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

REPEALS:

41-1A-1214, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1215, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1216, AS ENACTED BY CHAPTER 1 AND LAST AMENDED BY CHAPTERS 174, 218, AND 250, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-1-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 1, Laws of Utah 1992, is amended to read:

9-1-503. Centennial license plates — Fees — Design.

(1) (a) Any person who is the owner or lessee of a motor vehicle as defined in Section 41-1a-102 may apply for statehood centennial license plates.

(b) In addition to the regular motor vehicle registration fees, the applicant shall pay a special fee of $25 at the time the centennial license plates are issued.

(c) In addition to the annual renewal fees for license plates, each applicant shall pay a special fee of $10 upon each annual renewal of the centennial license plates.

(2) (a) The State Tax Commission shall deposit revenues from the special fees collected from the sale or renewal of centennial license plates, less production and administrative costs as provided in this subsection, into the Utah Statehood Centennial Commission account.

(b) The special fees paid for purchase or renewal of centennial license plates shall be treated as a voluntary contribution that is not tax deductible for the funding of statehood centennial activities, and is not a motor vehicle registration fee.

(c) Before transferring revenues to the Utah Statehood Centennial Commission account, the State Tax Commission shall deduct the actual production and administrative costs associated with making and issuing the centennial license plates.

(3) (a) The State Tax Commission shall maintain a record by county of all centennial license plates issued or renewed.

(b) The state centennial commission shall pay annually to the county centennial committees 20% of the special fees collected in each county after deduction of the production and administrative costs paid to the State Tax Commission.

(4) (a) The Utah Statehood Centennial Commission shall approve the color and design of the statehood centennial license plates consistent with the provisions of Sections 41-1a-401, 41-1a-402, and 41-1a-403 and with the concurrence of the State Tax Commission, the Utah Highway Patrol, and the Motor Vehicle Division.

(b) The Utah Statehood Centennial Commission shall hold all rights to the use of the statehood cen-

tennial slogan and statehood centennial license plate design and may license, for a fee to be determined by the commission, or otherwise authorize the use of the design for commercial or other purposes, provided the design is not used in a manner inconsistent with the provisions of Subsection 41-1a-1305(10).

(5) Any person who applies for statehood centennial license plates may also apply for personalized numbers or letters on the centennial license plates as authorized by Section 41-1a-410 and after payment of the fees required by Section [~~41-1a-1214~~] 41-1a-1211.

(6)(a) Statehood centennial license plates may not be issued before January 1, 1992.

(b) Statehood centennial license plates may not be issued or renewed after December 31, 1996, nor may the plates be displayed after December 31, 1997.

Section 2. Section Amended.

Section 41-1a-208, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-208. Payment of automobile driver education tax prerequisite to registration of motor vehicle.

(1) The collection and payment of the automobile driver education tax is a prerequisite to the registration of any motor vehicle.

(2) Except as provided under Subsection (3), the automobile driver education tax accrues and is collectible upon each motor vehicle, subject to the same exemptions, and payable in the same manner and time as motor vehicle registration fees under Section 41-1a-1206.

(3) The automobile driver education tax:

(a) shall be paid in full at the time the motor vehicle is first registered in a calendar year [and];

(b) may not be reduced at the time of registration for portions of a year as provided by Section 41-1a-302[;]; and

(c) is not collectible or payable upon the transfers of registration, issuance, reissuance of certificates of registration, titles, or plates contemplated by Sections 41-1a-301, 41-1a-1207, 41-1a-1210, and [~~41-1a-1213~~] 41-1a-1211.

Section 3. Section Amended.

Section 41-1a-408, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 30, 152, 174, and 218, Laws of Utah 1992, is amended to read:

41-1a-408. Special group plates — Design — Application — Issuance.

(1) As used in this section:

(a) "Collegiate license plates" means license plates issued under this section to a contributor after payment of the appropriate fees.

(b) "Contributor" means a person who has:

(i) donated or in whose name at least $25 has been donated to a scholastic scholarship fund of a single institution in the 12 months prior to registration; and [~~who has~~]

(ii) received a completed contribution verification form.

(c) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(d) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (b).

(b) Each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) [~~(i)~~] The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

[~~(ii)~~] (b) Collegiate license plates may not be redesigned under this section more frequently than every five years.

[~~(b) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.~~]

(4) Subject to [~~Subsection~~] Subsections (8) and (10), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a handicapped person or the registered owner of a vehicle that an organization uses primarily for

the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) licensing a special interest vehicle;

(j) licensing a vintage vehicle;

(k) a licensed amateur radio operator; or

(l) licensing a farm vehicle.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection [~~(12)~~](10), the division shall issue a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying disabled person; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a handicapped special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a handicapped special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a handicapped special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form to the division at the time of application.

[~~(8)~~] (b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

[~~(a)~~] (i) the name of the contributor;

[~~(b)~~] (ii) the institution to which a donation was made;

[~~(c)~~] (iii) the date of the donation; and

[~~(d)~~] (iv) an attestation that the donation was for a scholastic scholarship.

[~~(9)~~] (c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

[~~(10)~~] (8) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 50 applications with the fees required under Section [~~41-1a-1216~~] 41-1a-1211.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

[~~(11)~~] (9) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

[~~(12)~~] (10) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

[~~(ii)~~] (iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and one year for a removable windshield placard; and

(C) the seal or other identifying mark of the division[~~; and~~].

[~~(iii) establish the maximum number of numerals or characters for special group license plates.~~]

(b) The qualifying criteria under Subsection (a) for a handicapped special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a disabled person be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

[~~(13) All existing temporary removable windshield placards and removable windshield placards shall be returned to the division by January 1, 1993, to implement the provisions of Subsection (12)(a)(ii).~~]

Section 4. Section Amended.

Section 41-1a-410, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-410. Eligibility for personalized plates.

(1) A person who is the registered owner of a vehicle not subject to registration under Section 41-1a-301, registered with the division, or who applies for an original registration of a vehicle not subject to registration under Section 41-1a-301, may upon payment of the fee prescribed in Section [~~41-1a-1214~~] 41-1a-1211 apply to the division for personalized license plates.

(2) Application shall be made in accordance with Section 41-1a-411.

(3) The personalized plates shall be affixed to the vehicle for which registration is sought in lieu of the regular license plates.

(4) Personalized license plates shall be issued only to the registered owner of the vehicle on which they are to be displayed.

Section 5. Section Amended.

Section 41-1a-413, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-413. Personalized plates — Sale of vehicle — Transfer of plates — Release of priority.

If a person who has been issued personalized license plates sells, trades, or otherwise releases ownership of the vehicle for which the personalized license plates have been issued, that person shall immediately:

(1) apply to [transfer] display the license plates [to] on a different vehicle owned by the person; or

(2) surrender the license plates to the division and release his priority to the letters and numbers displayed on the personalized license plates.

Section 6. Section Amended.

Section 41-1a-416, Utah Code Annotated 1953, as enacted by Chapter 200, Laws of Utah 1992, is amended to read:

41-1a-416. Original issue license plates — Alternative stickers — Rulemaking.

(1) The owner of a motor vehicle that is a model year 1968 or older may apply to the division for permission to display an original issue license plate of a format and type issued by the state in the same year as the model year of the vehicle.

(2) The owner of a motor vehicle who desires to display original issue license plates instead of license plates issued under Section 41-1a-401 shall:

(a) complete an application on a form provided by the division;

(b) supply and submit the original license plates that the owner desires to display to the division for approval; and

(c) pay the fees prescribed in Sections 41-1a-1206 and [~~41-1a-1214~~] 41-1a-1211.

(3) The division, prior to approval of an application under this section, shall determine that the original issue license plates:

(a) are of a format and type issued by the state for use on a motor vehicle in this state;

(b) have numbers and characters that are unique and do not conflict with existing license plate series in this state;

(c) are legible, durable, and otherwise in a condition that serves the purposes of this chapter, except that original issue license plates are exempt from the provision of Section 41-1a-401 regarding reflectorization and Section 41-1a-403 regarding legibility from 100 feet; and

(d) are from the same year of issue as the model year of the motor vehicle on which they are to be displayed.

(4) An owner of a motor vehicle displaying original issue license plates approved under this section is not exempt from any other requirement of this chapter except as specified under this section.

(5)(a) An owner of a motor vehicle currently registered in this state whose original issue license plates are not approved by the division because of the requirement in Subsection (3)(b), may apply to the division for a sticker to allow the temporary display of the original issue license plates if:

(i) the plates otherwise comply with this section;

(ii) the plates are only displayed when the motor vehicle is used for participating in motor vehicle club activities, exhibitions, tours, parades, and similar activities and are not used for general daily transportation;

(iii) the license plates and registration issued under this chapter for normal use of the motor vehicle on the highways of this state are kept in the motor vehicle and shown to a peace officer on request; and

(iv) the sticker issued by the division under this subsection is properly affixed to the face of the original issue license plate.

(b) The sticker issued under this section shall be the size and form customarily furnished by the division.

(c) The division may charge a fee under Section 63-38-3 to cover the cost of issuing the sticker.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules for the implementation of this section.

Section 7. Section Amended.

Section 41-1a-701, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-701. Transfer by owner — Removal of plates.

(1) If the owner of a registered vehicle transfers his title or interest to the vehicle the registration of the vehicle expires. The owner shall remove the license plates from the transferred vehicle.

(2) Within 20 days from the date of transfer the owner shall forward the plates to the division to be destroyed or may have the plates and the registration number assigned to another vehicle [~~upon the payment of the transfer fee under Section 41-1a-1208~~], subject to the rules of the division.

Section 8. Section Amended.

Section 41-1a-1201, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) [~~Unless otherwise provided~~] Except as provided in Subsections (3) and (4), all fees collected under this part shall be [~~placed to the credit of~~] deposited in the Transportation Fund.

(3) (a) Funds generated under Subsections 41-1a-1211(1)(a), (7)(a), and (8) and Section 41-1a-1212 may be used by the commission as a dedicated credit to cover the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

(b) Funds collected under Subsections 41-1a-1211(3), (5)(b), and (5)(c), less the actual cost incurred by the division in purchasing decals for special group license plates, shall be deposited in the Transportation Fund.

(4) All funds available to the commission for purchase and distribution of license plates and decals are nonlapsing.

[~~(3)~~] (5) Except as provided in Subsection (3) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

Section 9. Section Amended.

Section 41-1a-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapters 54 and 95, Laws of Utah 1992, is amended to read:

41-1a-1206. Registration fees — Fees by gross laden weight.

(1) [~~At~~] Except as provided in Subsection (2), at the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) $7.50 for each motorcycle;

(b) $11 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) $10 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) $7.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) $14 for each farm truck of 10,000 pounds or less gross laden weight; plus

(ii) $8 for each 2,000 pounds over 10,000 pounds gross laden weight; and

(e) (i) $45 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) $16.50 for each 2,000 pounds over 14,000 pounds gross laden weight.

(2) The initial registration fee for a vintage vehicle is $10.

[~~(2)~~] (3) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight of the combination exceeds 12,000 pounds.

[~~(3)~~] (4) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

[~~(4)~~] (5) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of $100.

[~~(5)~~] (6) Except as provided in Section 41-6-163.6, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b) (i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division:

(A) a written statement indicating that the truck is used in combination with a semitrailer or trailer

and the combined weight of the truck and the loaded semitrailer or trailer exceeds 12,000 pounds gross laden weight; and

(B) a certificate of emissions inspection or a waiver in compliance with Section 41-6-163.6.

[~~(6)~~] (7) A violation of Subsection [~~(5)~~] (6) is a class B misdemeanor that shall be punished by a fine of not less than $200.

Section 10. Section Repealed and Reenacted.

Section 41-1a-1208, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is repealed and reenacted to read:

41-1a-1208. Fees for duplicate certificates of registration.

A duplicate certificate of registration may be issued upon application and payment of $4 to the division.

Section 11. Section Amended.

Section 41-1a-1209, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-1209. Exemptions from registration fees — Vintage vehicle information renewal.

(1) A fee may not be charged for the registration of ambulances, law enforcement vehicles, fire engines, and passenger cars and trucks owned and used by the United States government or by the state of Utah or any of its political subdivisions.

(2) A fee may not be charged municipal corporations for the issuance of any certificate of title or registration or a duplicate certificate of title or registration.

(3) An annual renewal of registration is not required for a vintage vehicle but registration information for vintage vehicle special group license plates must be updated every five years.

Section 12. Section Repealed and Reenacted.

Section 41-1a-1210, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 218, Laws of Utah 1992, is repealed and reenacted to read:

41-1a-1210. Fees for original and duplicate certificates of title.

A fee of $6 shall be paid to the division for the issuance of each original and duplicate certificate of title for a vehicle, vessel, or outboard motor.

Section 13. Section Repealed and Reenacted.

Section 41-1a-1211, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is repealed and reenacted to read:

41-1a-1211. License plate fees — Application fees for issuance and renewal of personalized and special group license plates — Replacement fee for license plates — Postage fees.

(1) A license plate fee of $5 per set shall be paid to the division for the issuance of any new license plate under Part 4, License Plates and Registration Indicia. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(2) An applicant for original issuance of personalized license plates issued under Section 41-1a-410 shall pay a $50 per set license plate application fee in addition to the fee required in Subsection (1).

(3) (a) Except as provided in Subsections (b) and (c), applicants for original issuance of special group license plates issued under Section 41-1a-408 shall pay a $50 per set license plate application fee in addition to the fee required in Subsection (1).

(b) A person who qualifies for a licensed amateur radio operator special group license plate shall only pay a $5 fee for the original set of license plates.

(c) A person who qualifies for legislative, United States Congressional, handicapped, collegiate, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, or farm vehicle special group license plates is exempt from payment of special group license plate application fees imposed under this subsection.

(4) An applicant for original issuance of personalized special group license plates shall pay the license plate application fees required in Subsection (2) in addition to the license plate fees and license plate application fees established under Subsections (1) and (3).

(5) The following application fees for renewal of personalized and special group license plates shall be paid to the division at the time of renewal of registration:

(a) an applicant for renewal of personalized license plates issued under Section 41-1a-410 shall pay a $10 per set application fee;

(b) except as provided in Subsection (c), an applicant for renewal of special group license plates issued under Section 41-1a-408 shall pay a $10 per set application fee; and

(c) an applicant for renewal of legislative, United States Congressional, handicapped, collegiate, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, farm vehicle, vintage vehicle, or licensed amateur radio operator special group license plates is exempt from payment of application fees imposed under this subsection.

(6) An applicant for renewal of personalized special group license plates shall pay the application fee required in Subsection (5)(a) in addition to the applicable application fees for renewal of license plates established under Subsections (5)(b) and (5)(c).

(7) A fee of $5 shall be paid to the division for the replacement of any license plate issued under Part 4, License Plates and Registration Indicia. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(8) The division may charge a fee established under Section 63-38-3 to recover its costs for the replacement of decals issued under Section 41-1a-408.

(9) In addition to any other fees required by this section, the division shall assess a fee established under Section 63-38-3 to cover postage expenses if new or replacement license plates are mailed to the applicant.

(10) The fees required under this section are separate from and in addition to registration fees required under Section 41-1a-1206.

Section 14. Section Repealed and Reenacted.

Section 41-1a-1212, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is repealed and reenacted to read:

41-1a-1212. Fee for replacement of license plate decals.

A fee established in accordance with Section 63-38-3 shall be paid to the division for the replacement of a license plate decal required by Section 41-1a-402.

Section 15. Section Repealed and Reenacted.

Section 41-1a-1213, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is repealed and reenacted to read:

41-1a-1213. No fee for identification number inspection.

A fee may not be charged an applicant for vehicle registration under this chapter for an identification number inspection.

Section 16. Repealer.

Section 41-1a-1214, Fees for personalized plates, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992;

Section 41-1a-1215, Transfer fee for personalized plates, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992; and

Section 41-1a-1216, Fees for special group license plates, Utah Code Annotated 1953, as enacted by Chapter 1 and last amended by Chapters 174, 218, and 250, Laws of Utah 1992, are repealed.

Section 17. Effective Date.

This act takes effect on July 1, 1993.

Section 18. Coordinating Clause.

(1) If this bill and H.B. 133, Special License Plates for Federal Reservists, both pass in the 1993 General Session, it is the intent of the Legislature that Subsections 41-1a-1211(3)(b) and (5)(c) of this bill be amended to insert after "National Guard," "Federal Armed Forces Reservist,".

(2) If this bill and S.B. 92, Special License Plates - Wildlife Resources, both pass in the 1993 General Session, it is the intent of the Legislature that Subsections 41-1a-1211(3)(b) and (5)(c) of this bill be amended to insert after "collegiate," "wildlife,".

(3) If this bill and H.B. 16, Centennial License Plate Amendments, both pass in the 1993 General Session, it is the intent of the Legislature that this bill be amended as follows:

(a) page 6, line 11: delete "each" and insert "except for statehood centennial special group license plates, each"

(b) page 8, line 8: delete "(10)" and insert "(11)"

(c) page 15, lines 22 and 23: delete "(7)(a), and (8)" and insert "(8)(a), and (9)"

(d) page 16, line 4: after line 4 insert "(c) fees for statehood centennial special group license plates shall be collected and deposited:

(i) through December 31, 1996, as provided in Title 9, Chapter 1, Part 5, Statehood Centennial Commission; and

(ii) beginning January 1, 1997, in the Transportation Fund, less production and administrative costs incurred by the commission."

(e) page 20, line 7: after "(b)" delete "and" insert "," after "(c)" insert ", and (6)"

(f) page 20, line 22: after "(1)" delete "and" insert "," after "(3)" insert ", and (6)"

(g) page 21, line 3: delete "Subsection (c)" and insert "Subsections (c) and (6)"

(h) page 21, Line 11: after line 11 insert "(6) (a) For vehicles with registration years expiring on or before December 31, 1996, applicants for original statehood centennial special group license plates or renewal of registration with statehood centennial special group license plates shall pay the fees required in Section 9-1-503.

(b) For vehicles with registration years beginning on or after January 1, 1997, applicants for:

(i) original statehood centennial special group license plates shall pay a special fee of $25 at the time the centennial license plates are issued; and

(ii) renewal of registration with statehood centennial special group license plates are exempt from paying an additional special annual renewal fee for the centennial license plates."

(i) page 21, line 12: delete "(6)" and insert "(7)"

(j) page 21, line 15: delete "and" and insert "," after "(5)(c)" insert ", and (6)"

Renumber remaining subsections accordingly.

CHAPTER 223
H. B. No. 242
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

CHILDREN'S LEGAL DEFENSE FUND AMENDMENTS

By Kelly C. Atkinson

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; CLARIFYING THE FUND SHALL BE USED FOR STATED PURPOSES ONLY; PROVIDING FOR LAPSING OF FUNDS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-63A-8, AS ENACTED BY CHAPTER 253, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-63a-8, Utah Code Annotated 1953, as enacted by Chapter 253, Laws of Utah 1992, is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents - Pilot Program relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, [~~Mandatory Educational Course on Children's Needs for Divorcing Parents - Pilot Program,~~] and the Mediation Pilot Program - Child Custody or Visitation as provided in Sections 30-3-15.3, 30-3-18, and 30-3-19 through 30-3-31[~~, Mediation Pilot Program - Child Custody or Visitation~~];

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-44.5, 78-3a-63, 78-3a-65, 78-11-6, and 78-7-9, and termination of parental rights as provided in Sections 78-3a-39, 78-3a-42, 78-3a-47, and [~~78-3a-101~~] 78-3f-101 through [~~78-3a-115~~] 78-3f-114. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-63; and

(c) requiring community service for violation of visitation orders or failure to pay child support as provided in Section 78-32-12.1.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (c):

(a) an additional fee of $10 shall be withheld on every marriage license issued in the state of Utah as provided in Section 21-2-2; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Section (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of $200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

CHAPTER 224
H. B. No. 258
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

LOW INCOME HOUSING AMENDMENTS

By Frank R. Pignanelli

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CLARIFYING PUBLIC POLICY REGARDING REVENUE FROM PUBLIC HOUSING.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-4-610, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-4-610, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-610. Profit from projects prohibited — Criteria for determining rentals and payments.

(1) It is declared to be the policy of this state to accomplish the public, governmental, and charitable purposes of this part that:

(a) each authority manage and operate its housing projects in an efficient manner to enable it to provide decent, safe, and sanitary dwelling accommodations for persons of medium and low income and fix the rentals or payments for these accommodations for persons of low income at low rates; and

(b) no authority [~~construct or operate any housing project for profit or~~] be operated as a source of revenue to the city or county.

(2) To this end each authority shall fix the rentals or payments for dwellings in its projects at no higher rates than it finds necessary in order to produce revenues that, together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived, including federal financial assistance necessary to maintain the low-rent character of the projects, is sufficient to:

(a) pay, as they become due, the principal and interest on the bonds of the authority;

(b) create and maintain reserves required to assure the payment of principal and interest as it becomes due on its bonds;

(c) meet the cost of, and provide for, maintaining and operating the projects, including necessary reserves and the cost of any insurance, and the administrative expenses of the authority; and

(d) make payments in lieu of taxes and, after payment in full of all obligations for which federal annual contributions are pledged, make repayments of federal and local contributions as it determines are consistent with the maintenance of the low-rent character of projects.

(3) Rentals or payments for dwellings shall be established and the projects administered, in so far as possible, to assure that any federal financial assistance required is strictly limited to amounts and periods necessary to maintain the low-rent character of the projects.

(4) Nothing in this section may be construed to limit the amount an authority may charge for non-dwelling facilities.

(5) All such income, together with other income and revenue, shall be used in the operation of the projects to aid in accomplishing the public, governmental, and charitable purposes of this part.

CHAPTER 225
H. B. No. 259
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

SERVICE OF PROCESS

By R. Mont Evans

AN ACT RELATING TO THE JUDICIAL CODE; ELIMINATING THE EXEMPTION FOR SMALLER COUNTIES TO ALLOW FOR SERVICE OF PROCESS BY PERSONS NOT PEACE OFFICERS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
78-12A-2, AS ENACTED BY CHAPTER 20, LAWS OF UTAH 1990
78-27-58, AS ENACTED BY CHAPTER 173, LAWS OF UTAH 1983

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

Section 1. Section Amended.

Section 78-12a-2, Utah Code Annotated 1953, as enacted by Chapter 20, Laws of Utah 1990, is amended to read:

78-12a-2. Process servers.

(1) The following persons may serve all process issued by the courts of this state except as otherwise limited by [~~law~~] Section 78-27-58:

(a) a peace [~~officers~~] officer employed by any political subdivision of the state acting within the scope and jurisdiction of his employment;

(b) [~~sheriffs~~] a sheriff or appointed deputy [~~sheriffs~~] sheriff employed by any county of the state;

(c) [~~constables~~] a constable serving in compliance with applicable law; and

(d) [~~investigators~~] an investigator employed by the state and authorized by law to serve civil process.

(2) Other persons may serve process as prescribed by [~~the Utah Rules of Civil Procedure~~] Section 78-27-58.

(3) A person serving process shall legibly document the date and time of service and his name and address on the return of service.

Section 2. Section Amended.

Section 78-27-58, Utah Code Annotated 1953, as enacted by Chapter 173, Laws of Utah 1983, is amended to read:

78-27-58. Service of judicial process by persons other than law enforcement officers.

Persons who are not peace officers, constables, sheriffs, or lawfully appointed deputies of such officers or authorized state investigators [~~in counties of 400,000 persons or more are~~] may not [~~entitled to~~] serve any forms of civil or criminal process other than complaints, summonses, and subpoenas.

CHAPTER 226
H. B. No. 262
Passed March 3, 1993
Approved March 18, 1993
Effective July 1, 1993

RETIREMENT OFFICE AMENDMENTS

By Rob W. Bishop

AN ACT RELATING TO PENSIONS; AMENDING THE RETIREMENT CODE TO CLARIFY THE RETIREMENT OFFICE HEARING PROCESS, CERTAIN DEFINITIONS, THE EFFECTIVE DATE OF RETIREMENT, AND POST RETIREMENT RESTRICTIONS FOR CERTAIN RETIREES; ESTABLISHING THE LEGAL STATUS OF RETIREMENT RECORDS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-1-103, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1991
49-1-610, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-2-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-2-401, AS LAST AMENDED BY CHAPTER 179, LAWS OF UTAH 1988
49-2-802, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1987
49-3-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-3-401, AS LAST AMENDED BY CHAPTER 179, LAWS OF UTAH 1988
49-3-802, AS ENACTED BY CHAPTER 243, LAWS OF UTAH 1987
49-4-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-4-401, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1987
49-4A-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-4A-401, AS ENACTED BY CHAPTER 260, LAWS OF UTAH 1989
49-5-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-5-401, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1987
49-6-103, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-6-401, AS ENACTED BY CHAPTERS 1 AND 168, LAWS OF UTAH 1987
67-20-7, AS ENACTED BY CHAPTER 203, LAWS OF UTAH 1989

ENACTS:
49-1-616, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 49-1-103, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1991, is amended to read:

49-1-103. Definitions.

As used in this title:

(1) "Accumulated contributions" means the sum of the contributions made by or on behalf of a member and standing to the credit of the member's individual account, including regular interest where allowed by law.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of [~~the 1983 Group Annuity~~] mortality tables [~~for males set back three years~~] adopted by the board, including regular interest [~~at 8% per annum compounded annually~~].

(3) "Actuarial interest rate" means the interest rate adopted by the board upon the recommendation of the actuary and upon which the funding of retirement system costs and benefits are computed.

(4) "Administrator" means the executive director of the board.

(5) "Allowance" means the pension plus the annuity.

(6) "Annuity" means annual payments for life derived from contributions made by the employee.

(7) "Beneficiary" means any person entitled to receive a retirement allowance or other benefit provided by this title.

(8) "Board" or "retirement board" means the Utah State Retirement Board established under this title.

(9) "Contributions" means the contributions by the employer and the member, if any, into a retirement fund.

(10) "Current service" means covered service rendered after the effective date of each system.

(11) "Department" means any department, office, board, commission, instrumentality, or other agency of the state.

(12) "Dependent beneficiary" means a spouse, child, or children under 21 years of age, a physically or mentally handicapped child or children, regardless of age, or a parent, or person, regardless of age or relationship, who is or are financially dependent upon the member. The dependency of a person other than a spouse or child shall be proved by written verified documents acceptable to the board or by a copy of the member's state income tax return for the last reportable year listing the person as a dependent. All documents are subject to review and approval of the [~~retirement~~] administrator.

(13) "Employer" or "employing unit" means any department, educational institution, political subdivision, organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this title.

(14) "Inactive member" means a member who has received no compensation for a period longer than four months.

[~~(14)~~] (15) (a) "Member" means any person included in the membership of any retirement system administered by the board. [~~A member who has received no compensation as defined in this section for~~

~~a period longer than four months is considered an inactive member.~~]

(b) A person is considered to be a member if he has contributions on deposit with the retirement system or with the terminated system. "Member" also includes leased employees within the meaning of Section 414(n)(2) of the federal Internal Revenue Code. [~~Notwithstanding the foregoing, if such~~] If leased employees constitute less than 20% of the employer's work force [which] that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii) of the federal Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

[~~(15)~~] (16) "Office" or "retirement office" means the Utah State Retirement Office.

[~~(16)~~] (17) "Participating employer" or "participating employing unit" means any employer or employing unit participating in the system whose employees are members of the system.

[~~(17)~~] (18) "Payroll" means a register, warrant, or any other document upon which all persons receiving salary payments are listed.

[~~(18)~~] (19) "Pension" means annual payments for life derived from contributions made by employers.

[~~(19)~~] (20) "Political subdivision" means any political subdivision of the state, including [~~but not limited to~~] cities, towns, counties, and school districts, but only if the subdivision is a juristic entity [~~which~~] that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity, employees of the state or one of its departments.

(a) The term includes special districts or authorities created by the Legislature or by local governments [~~such as, but not limited to,~~] including mosquito abatement districts, sewer or water districts, water associations and companies, libraries, and any entity arising out of a consolidation agreement between political subdivisions.

(b) The term includes the retirement office.

(c) The term does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act.

[~~(20)~~] (21) "Prior service" means service rendered prior to the effective date of each system.

[~~(21)~~] (22) "Refund" means a return of contributions to a terminating member.

[~~(22)~~] (23) "Regular interest" means interest compounded annually at a rate adopted by the board in accordance with this title.

[~~(23)~~] (24) "Retirant" means a retired member who is receiving retirement benefits.

[~~(24)~~] (25) "Retirement" means withdrawal from active service with a retirement allowance granted under this title.

[~~(25)~~] (26) "Service" or "covered service" means service used in the computation of benefits.

Section 2. Section Amended.

Section 49-1-610, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-1-610. Right of appeal to hearing officer — Council review of hearings — Further board review — Rules of procedure applied — Judicial review.

(1) (a) All members of a system, plan, or program under this title shall acquaint themselves with their rights and obligations as members.

(b) A member shall request a ruling by the administrator on any benefit claim or legal right under this title.

(c) Any person who is dissatisfied by a ruling of the administrator [~~in regards~~] with respect to [a] any benefit claim or legal right under any system, plan, or program under this title shall request a review of that claim by a hearing officer[~~,~~].

(d) The hearing officer shall:

(i) be hired by the executive director after consultation and review with the membership council[~~, by following~~]; and

(ii) follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) (i) The hearing officer shall hear and determine all facts pertaining to applications for benefits under any retirement system, plan, or program under this title and all matters pertaining to the administration of the system.

(ii) The membership council may examine the record of the hearing, provide a recommendation to the board, and recommend any necessary changes in retirement policy or procedure to the Legislature.

(b) (i) If the executive officer of the board cannot determine from the records or other information available the length of service, compensation, or age of any member, the executive officer may estimate, for the purpose of any determination required to be made, any of these factors.

(ii) The board shall review all decisions of the hearing officer.

(3) Any applicant may file an application for reconsideration according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, upon any of the following grounds:

(a) that the board acted in excess of its powers;

(b) that the order or award was procured by fraud;

(c) that the evidence does not justify the determination of the board; or

(d) that the applicant has discovered new material evidence [~~which~~] that could not, with reasonable diligence, have been discovered or procured at the hearing.

(4) A member aggrieved by the board's decision may obtain judicial review by complying with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

Section 3. Section Enacted.

Section 49-1-616, Utah Code Annotated 1953, is enacted to read:

49-1-616. Status of documents and records at the retirement office.

(1) The retirement office may treat any document received by facsimile as an original if it pertains to member accounts and is forwarded by a member or employer.

(2) All records at the retirement office, filmed from facsimile or other sources, or produced from optical imaging or other technology, have the same legal effect as the original record.

Section 4. Section Amended.

Section 49-2-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-2-103. Definitions.

As used in this chapter:

[~~(b) An "appointive~~] (1) "Appointive officer" means [~~a person~~] an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit who earns $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

[~~(1)~~] (2) (a) "Compensation," "salary," or "wages" means the total amount of [~~fixed~~] payments [~~regularly~~] made by an employer to an employee for services rendered to the employer, including [~~performance-based~~]:

(i) bonuses[~~, which by its nature is~~];

(ii) cost-of-living adjustments;

(iii) payments currently includable in gross income and [~~which is~~] that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law[~~. It includes~~]; and

(iv) amounts [~~which~~] that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

[~~(b)~~] (c) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) any payments upon termination, including accumulated [~~lump-sum~~] vacation, sick leave payments, or any other special payments [~~except performance-based bonuses and cost-of-living adjustments which are set by a policy of the employing unit to cover all employees or a distinct class of employees~~]; or

(vi) uniform, travel, or similar allowances.

[~~(2)~~] (3) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including [~~but not limited to~~]:

(a) the State Board of Education and its instrumentalities[~~,~~];

(b) any institution of higher learning and its branches[~~,~~];

(c) any school district and its instrumentalities[~~,~~];

(d) any vocational and technical [~~schools,~~] school; and

(e) any entity arising out of a consolidation agreement between entities under this definition.

[~~(3)~~] (4) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

[~~(a) It~~] (b) "Employee" or "regular employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

[~~(4)~~] (5) "Employer" or "employing unit" means any department, educational institution, political subdivision, or organization or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

[~~(5)~~] (6) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (a), (b), (c), and (d). [~~However,~~]

(a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than [~~the blanket salary increase given by the employer plus~~] 10%[~~, except in~~] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [~~that~~ this], the limitation [~~has been~~] in Subsection (a) may be exceeded [because] if: [~~(a)~~]

(i) the member has transferred from another employing unit; [~~(b)~~]

(ii) the member has been promoted to a new position; or [~~(c)~~]

(iii) the years used are not consecutive.

(c) For purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last salary rate from the date of the termination of employment to the date retirement becomes effective.

(d) If participating service is less than five years, final average salary means the average annual compensation paid to the member during the full period of participating service.

[~~(6)~~] (7) "Normal retirement age" means the age of 65 years.

[~~(7)~~] (8) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization [~~which~~] that receives public funds. The term does not include political subdivisions, departments, or educational institutions.

(9) "Public funds" [~~are~~] means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

[~~(8)~~] (10) (a) "Regular full-time employee," in qualifying for membership in the system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit. [~~It~~]

(b) "Regular full-time employee" includes a teacher who teaches half-time or more, or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided.

[~~(9)~~] (11) "Years of service" or "service years" means:

(a) the number of periods, each to consist of 12 full months; [~~or~~]

(b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter[~~.—For~~]; or

(c) for a teacher, school administrator, or other contract employee of an educational institution, not less than nine months of full-time service constitutes a service year.

Section 5. Section Amended.

Section 49-2-401, Utah Code Annotated 1953, as last amended by Chapter 179, Laws of Utah 1988, is amended to read:

49-2-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [~~and which~~].

(b) The effective date shall be [~~effective on~~] the 1st or 16th day of the month [~~following~~], as selected by the member, but must be after the last day of actual work.

(c) The member shall actually terminate employment and provide evidence of termination.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least four years of service and has attained an age of 65 years or more;

(b) the member has been credited with at least ten years of service and has attained an age of 62 years or more;

(c) the member has been credited with at least 20 years of service and has attained an age of 60 years or more; or

(d) the member has been credited with at least 30 years of service.

Section 6. Section Amended.

Section 49-2-802, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1987, is amended to read:

49-2-802. Early retirement incentive — Eligibility for this early retirement plan — Calculation of benefit — Payment of costs of early retirement incentive — Savings to be appropriated by Legislature — Restrictions on reemployment.

(1) Any member of this system may retire and receive the benefit allowed under Subsection (2) if the member meets the following requirements as of the effective date of retirement:

(a) the member is eligible for retirement under Section 49-2-401, or otherwise has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the employing unit; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3) (a) or (3) (b).

(2) (a) A member who retires pursuant to Subsection (1) shall receive 2% of that member's final average salary for all years of service credit. [~~No~~]

(b) An actuarial reduction may not be applied to the benefit granted under this section.

(3) In order to receive the benefit allowed by this section, a member shall submit an application to the retirement office as follows:

(a) For state and school employees under level A, the application shall be filed by May 31, 1987. The effective date of retirement shall then be set by the employee on the first or sixteenth day of July, August, or September, 1987. If a level A employee elects to retire, the administrator or employer may request the employee to delay the effective date of retirement until a later date, but no later than June 30, 1988. If the employee agrees to delay the effective retirement date, the effective date shall be delayed, but no service credit may be accrued after the original effective date of retirement elected by the employee, and no salary earned after that effective date may be used in the calculation of the final average salary for determining the retirement benefit.

(b) For political subdivisions under level B, the application shall be filed by September 30, 1987. The effective date of retirement shall then be set by the employee on the first or sixteenth day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the benefit under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the benefit under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections [~~(4)~~] (a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection [~~(4)~~] (d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in [~~the School Finance Act~~] Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under level B, by direct contributions by the employing unit.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections [~~(4)~~](c)(i) and [~~(4)~~](c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection [~~(4)~~](c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection [~~(4)~~](c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive [~~and neither the~~].

(iv) The State Office of Education [~~nor~~] and the employing unit may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section [~~may not cancel the retirement and return to active employment with a unit covered by this system or the Public Employees' Noncontributory Retirement System and continue to accrue service credit~~] is subject to Section 49-1-505.

(6) The retirement board may adopt rules to implement and administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Section 7. Section Amended.

Section 49-3-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-3-103. Definitions.

As used in this chapter:

[~~(b) An "appointive~~] (1) "Appointive officer" means [~~a person~~] an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit and who earns $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

[~~(1)~~] (2) (a) "Compensation," "salary," or "wages" means the total amount of [~~fixed~~] payments [~~regularly~~] made by an employer to an employee for services rendered to the employer, including [~~performance-based~~]:

(i) bonuses [and];

(ii) cost-of-living adjustments[~~, which by its nature is~~];

(iii) payments currently includable in gross income and [~~which is~~] that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law[~~. It includes~~]; and

(iv) amounts [~~which~~] that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

[~~(b)~~] (c) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) any payments upon termination, including accumulated lump-sum vacation, sick leave payments, or any other special payments [~~except performance-based bonuses which are set by policy of the employing unit to cover all employees or a distinct class of employees~~]; or

(vi) uniform, travel, or similar allowances.

[~~(2)~~] (3) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including [~~but not limited to~~]:

(a) the State Board of Education and its instrumentalities[~~,~~];

(b) any institution of higher learning and its branches[~~,~~];

(c) any school district and its instrumentalities[~~,~~];

(d) any vocational and technical [~~schools,~~] school; and

(e) any entity arising out of a consolidation agreement between entities under this definition.

[~~(3)~~] (4) "Effective date" of the noncontributory system means 12:01 a.m., July 1, 1986.

[~~(4)~~] (5) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

[~~(a) It~~] (b) "Employee" or "regular employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

[~~(5)~~] (6) "Employer" or "employing unit" means any department, educational institution, political subdivision, or eligible organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

[~~(6)~~] (7) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (a), (b), and (c). [~~However,~~]

(a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than [~~the blanket salary increase given by the employer~~ plus] 10%[~~, except in~~] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [~~that this~~], the limitation [~~has been~~] in Subsection (a) may be exceeded [~~because~~] if: [~~(a)~~]

(i) the member has transferred from another employing unit; [~~(b)~~]

(ii) the member has been promoted to a new position; or [~~(c)~~]

(iii) the years used are not consecutive.

(c) For purposes of computing the member's final average salary only, the member is considered to have been in service at his last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

[~~(7)~~] (8) "Normal retirement age" means the age of 65 years.

[~~(8)~~] (9) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization [~~which~~] that receives public funds. The term does not include political subdivisions, departments, or educational institutions.

(10) "Public funds" [~~are~~] means those funds derived, either directly or indirectly, from public taxes or public revenue, dues, or contributions paid or donated by the membership of the organization used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

[~~(9)~~] (11) (a) "Regular full-time employee," in qualifying for membership in the system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit. [~~It~~]

(b) "Regular full-time employee" includes a teacher who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided.

[~~(10)~~] (12) "Years of service" or "service years" means:

(a) the number of periods, each to consist of 12 full months; [~~or~~]

(b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter[~~. For~~]; or

(c) for a teacher, school administrator, or other contract employee of an educational institution, not less than nine months of full-time service constitutes a service year.

Section 8. Section Amended.

Section 49-3-401, Utah Code Annotated 1953, as last amended by Chapter 179, Laws of Utah 1988, is amended to read:

49-3-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [~~and which~~].

(b) The effective date shall be [~~effective on~~] the 1st or 16th day of the month [~~following~~], as selected by the member, but must be after the last day of actual work.

(c) The member shall actually terminate employment and provide evidence of termination.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least four years of service and has attained an age of 65 years or more;

(b) the member has been credited with at least ten years of service and has attained an age of 62 years or more;

(c) the member has been credited with at least 20 years of service and has attained an age of 60 years or more;

(d) the member has been credited with at least 30 years of service; or

(e) the member is credited with at least 25 years of service, in which case the member shall be subject to the reduction set out under Subsection 49-3-402(2)(b).

Section 9. Section Amended.

Section 49-3-802, Utah Code Annotated 1953, as enacted by Chapter 243, Laws of Utah 1987, is amended to read:

49-3-802. Early retirement incentive — Eligibility for this early retirement plan — Calculation of benefit — Payment of costs of early retirement incentive — Savings to be appropriated by Legislature — Restrictions on reemployment.

(1) Any member of this system may retire and receive the benefit allowed under Subsection (2) if the member meets the following requirements as of the effective date of retirement:

(a) the member is eligible for retirement under Section 49-3-401, or otherwise has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the employing unit; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).

(2) A member who retires pursuant to Subsection (1) shall receive 2% of that member's final average salary for all years of service credit. No actuarial reduction may be applied to the benefit granted under this section.

(3) In order to receive the benefit allowed by this section, a member shall submit an application to the retirement office as follows:

(a) For state and school employees under level A, the application shall be filed by May 31, 1987. The effective date of retirement shall then be set by the employee on the [~~first~~] 1st or [~~sixteenth~~] 16th day of July, August, or September, 1987. If a level A employee elects to retire, the administrator or employer may request the employee to delay the effective date of retirement until a later date, but no later than June 30, 1988. If the employee agrees to delay the effective retirement date, the effective date shall be delayed, but no service credit may be accrued after the original effective date of retirement elected by the employee, and no salary earned after that effective date may be used in the calculation of the final average salary for determining the retirement benefit.

(b) For political subdivisions under level B, the application shall be filed by September 30, 1987. The effective date of retirement shall then be set by the employee on the [~~first~~] 1st or [~~sixteenth~~] 16th day of July, August, September, October, November, or December, 1987.

(4)(a) The cost of providing the benefit under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the benefit under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections [~~(4)~~] (a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection [~~(4)~~] (d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in [~~the School Finance Act~~] Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under level B, by direct contributions by the employing unit.

(d)(i) Each year, any excess savings derived from this early retirement incentive which are above the

costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections [(4)](c)(i) and [(4)](c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection [(4)](c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection [(4)](c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive [and neither the].

(iv) The State Office of Education [nor] and the employing unit may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section [may not cancel the retirement and return to active employment with a unit covered by this system and continue to accrue service credit under this system] is subject to Section 49-1-505.

(6) The retirement board may adopt rules to implement and administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Section 10. Section Amended.

Section 49-4-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-4-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee covered under the retirement system for services rendered to the employer as base income[, as]. Base income shall be determined prior to any salary deductions or reductions for any salary deferral or pretax benefit programs authorized by federal law[, for the position covered under the retirement system, including].

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments[, but excluding].

(c) "Compensation" does not include:

(i) overtime[,];

(ii) sick pay incentives[,];

(iii) retirement pay incentives[, or];

(iv) the monetary value of remuneration paid in kind, such as a residence, use of equipment or uniform or travel allowances[,];

(v) a lump-sum payment or special payments covering accumulated leave; and

(vi) all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Final average salary" means the amount computed by averaging the highest [annual] three years of annual compensation preceding retirement, subject to Subsections (a) and (b). [However,]

(a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than [the blanket salary increase given by the employer plus] 10%[, except in] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [that this], the limitation [has been] in Subsection (a) may be exceeded [because] if:

[(a)] (i) the member has transferred from another employing unit;

[(b)] (ii) the member has been promoted to a new position; or

[(c)] (iii) the years used are not consecutive.

(3) "Full-time service" means 2,080 hours a year.

(4) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a police officer or other public safety member.

(5) (a) "Participating service" means public safety service rendered during which a person was a member of this system as well as any of the terminated systems during which the person was paid compensation upon which member contributions were taken. [It]

(b) Participating service also means public safety service rendered for an employer covered by the retirement system and standing to the credit of a member as of June 30, 1969, who transferred to coverage under the public safety retirement system on July 1, 1969.

(6) (a) "Public safety service" means full-time paid service rendered by:

[(a)] (i) peace officers in accordance with Section 77-1a-1;

[(b)] (ii) correctional officers in accordance with Section 77-1a-2; and

[(c)] (iii) special function officers in accordance with Section 77-1a-4, if approved by the [Council on] Peace Officer Standards and Training Council unless the Legislature designates otherwise in the appropriations act. [This subsection]

(b) Subsection (a) does not apply to any person who became a member of the system prior to January 1, 1984.

(7) "Years of service" or "service years" means the number of periods, each to consist of 12 full months, whether consecutive or not, during which an employee performed services for an employer or employers, including time the employee was absent in the service of the United States government on military duty.

Section 11. Section Amended.

Section 49-4-401, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1987, is amended to read:

49-4-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [~~and which~~].

(b) The effective date shall be [~~effective on~~] the 1st or 16th day of the month [~~following~~], as selected by the member, but must be after the last day of actual work.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least 20 years of service;

(b) the member has been credited with at least ten years of service and has attained an age of 60 years or more; or

(c) the member has been credited with at least four years of service and has attained an age of 65 years or more.

Section 12. Section Amended.

Section 49-4a-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-4a-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee for services rendered to the employer as base income for the position covered under the retirement system[~~, including~~]. Base income shall be determined prior to any salary deductions or reductions for any salary deferral or pretax benefit programs authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments[~~, but excluding~~].

(c) "Compensation" does not include:

(i) overtime[~~;~~];

(ii) sick pay incentives[~~;~~];

(iii) retirement pay incentives[~~, or~~];

(iv) the monetary value of remuneration paid in kind, [~~such~~] as in a residence, use of equipment or uniform or travel allowances[~~;~~];

(v) a lump-sum payment or special payment covering accumulated leave; and

(vi) all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Final average salary" means the amount computed by averaging the highest [~~annual~~] three years of annual compensation preceding retirement subject to Subsections (a) and (b). [~~However,~~]

(a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than [~~the blanket salary increase given by the employer plus~~] 10%[~~, except in~~] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [~~that this~~], the limitation [~~has been~~] in Subsection (a) may be exceeded [~~because~~] if:

[~~(a)~~] (i) the member has transferred from another employing unit;

[~~(b)~~] (ii) the member has been promoted to a new position; or

[~~(c)~~] (iii) the years used are not consecutive.

(3) "Full-time service" means 2,080 hours a year.

(4) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a policeman or other public safety member.

(5) "Public safety service" means full-time paid service rendered by:

(a) peace officers in accordance with Section 77-1a-1;

(b) correctional officers in accordance with Section 77-1a-2; and

(c) special function officers in accordance with Section 77-1a-4 if approved by the [~~Council on~~] Peace Officers Standards and Training Council unless the Legislature designates otherwise in the appropriations act.

(6) "Years of service" or "service years" means the number of periods, each to consist of 12 full months, whether consecutive or not, during which an employee performed services for an employer or employers, including time the employee was absent in the service of the United States government on military duty.

Section 13. Section Amended.

Section 49-4a-401, Utah Code Annotated 1953, as enacted by Chapter 260, Laws of Utah 1989, is amended to read:

49-4a-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [and which].

(b) The effective date shall be [effective on] the 1st or 16th day of the month [following], as selected by the member, but must be after the last day of actual work.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least 20 years of service;

(b) the member has been credited with at least ten years of service and has attained an age of 60 years or more; or

(c) the member has been credited with at least four years of service and has attained an age of 65 years or more.

Section 14. Section Amended.

Section 49-5-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-5-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee for services rendered to the employer as base income[, as]. Base income shall be determined prior to any salary deductions or reductions for any salary deferral or pretax benefit programs authorized by federal law, for the position covered under the retirement system[, including].

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments[, but excluding].

(c) "Compensation" does not include:

(i) overtime[,];

(ii) sick pay incentives[,];

(iii) retirement pay incentives[,];

(iv) remuneration paid in kind such as a residence, use of equipment, uniforms, or travel allowances[, or];

(v) a lump-sum payment or special payments covering accumulated leave[,]; and

(vi) all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2)(a) "Disability" means a physical or mental condition which, in the judgment of the board, is total and presumably permanent, prevents a member from fulfilling the responsibilities of the member's assignment, and prevents the member from performing satisfactorily in some other assignment of the same general class.

(b) The determination of disability is based upon medical and other evidence satisfactory to the board.

(3) "Employer" or "employing unit" means any regularly constituted fire department of a political subdivision for which any employee or member performs services subject to this chapter.

(4) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement, but not including overtime or lump-sum or special salary adjustments received instead of uniform or other allowances or expenses or other payments made covering accumulated leave. [However,]

(a) Except as provided in Subsection (b), the percentage increase in any one of the years used may not exceed the previous year's salary by more than [the blanket salary increase given by the employer plus] 10%[, except in] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [that this] the limitation [has been] in Subsection (a) may be exceeded [because] if:

[(a)] (i) the member has transferred from another employing unit;

[(b)] (ii) the member has been promoted to a new position; or

[(c)] (iii) the years used are not consecutive.

(5) "Firefighter service" means full-time paid service rendered as an individual or as a member of a group of firefighters regularly assigned to a regularly constituted fire department.

(6) "Full-time service" means 2,080 hours per year.

(7) "Inactive member" means a member who has received no compensation for a period of longer than four months.

[(7)] (8) "Line-of-duty death or disability" means a death or any physical or mental disability resulting from external force, violence, or disease occasioned by an act of duty as a firefighter and includes for a paid firefighter, after five years of credited ser-

vice, any death or disability resulting from heart disease, lung disease, or respiratory tract, but if a firefighter ceases to be a contributing member because of personal illness or service-connected disability, neither of which is related to heart or lung disease nor the respiratory tract for a period of six months or more and then again becomes a contributing member, the provision relating to death or disability resulting from heart, lung, or respiratory disease does not apply until the member again becomes a contributing member for a period of not less than two years or unless clear and precise evidence is presented that the heart, lung, or respiratory disease was, in fact, occasioned in the line-of-duty.

[~~(8)~~] (9) (a) "Member" means any person included in the membership of the retirement system. [~~Any member who has not received any compensation for a period of more than four months is an inactive member.~~]

(b) A person is a member if the person has contributions on deposit with the retirement system.

(c) A person hired on or after July 1, 1971, in a fire department, who is assigned directly to a clerical position, and because of lack of training in fire fighting techniques, is not subject to reassignment into positions of hazardous duty, is not eligible for membership in this system [~~but~~].

(i) The person in a clerical position shall become a contributing member of the appropriate retirement system.

(ii) The required employer contributions shall be paid by the fire department.

(iii) This membership exclusion may not be interpreted to prohibit the assignment of a handicapped or partially disabled firefighter to that position. [~~In that event~~]

(iv) If Subsection (iii) applies, the firefighter retains status as a contributing member of this system and continues to accrue service credits while so employed.

[~~(9)~~] (10) "Regularly constituted fire department" means a fire department which employs a full-time fire chief and promulgates rules.

[~~(10)~~] (11) (a) "Service" or "covered service" means firefighter service rendered an employer for compensation which is included in computations relating to membership status or benefit rights under this chapter. [~~In no case may a~~]

(b) A retirement allowance or other benefit may not be granted under this system [~~which~~] that is based upon the same service for retirement benefits under some other retirement system administered by the board.

[~~(11)~~] (12) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter, but who is on the rolls of a regularly constituted fire department.

(b) An individual that volunteers assistance but is not a regularly enrolled firefighter is not a volunteer firefighter.

(c) Service as a volunteer firefighter is not creditable towards qualifying for a service retirement allowance.

[~~(12)~~] (13) "Years of service" or "service years" means the number of periods consisting of 12 full months, whether consecutive or not, during which an employee performed services for an employer or received full-time pay while on sick leave, including any time the employee was absent in the service of the United States.

Section 15. Section Amended.

Section 49-5-401, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1987, is amended to read:

49-5-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [~~and which~~].

(b) The effective date shall be [~~effective on~~] the 1st or 16th day of the month [~~following~~], as selected by the member, but must follow the last day of actual work.

(2) The member is qualified to retire upon termination of service on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member is credited with at least 20 years of service;

(b) the member is credited with at least [~~10~~] ten years of service and is 60 years of age or more; or

(c) the member is credited with at least four years of service and is 65 years of age or more.

Section 16. Section Amended.

Section 49-6-103, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

~~49-6~~-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee for services rendered to the employer[~~, including~~].

(b) "Compensation" includes:

(i) performance-based bonuses [~~and~~];

(ii) cost-of-living adjustments[~~, which by its nature is~~];

(iii) payments subject to Social Security deductions[~~, including~~];

(iv) any payments in excess of the maximum amount subject to deduction under Social Security law[~~. It includes~~]; and

(v) amounts which the employee authorizes to be deducted or reduced for salary deferral or other authorized benefit programs.

(c) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

[(b)] (d) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) payments upon termination or any other special payments including early retirement inducements; or

(vi) uniform, travel, or similar allowances.

(2) "Final average salary" means the amount computed by averaging the highest two years of annual compensation preceding retirement subject to Subsections (a) and (b). [~~However,~~]

(a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than [~~the blanket salary increase given by the employer plus~~] 10%[~~, except in~~] plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board [~~that this~~], the limitation [~~has been~~] in Subsection (a) may be exceeded [~~because~~] if:

[~~(a)~~] (i) the member has transferred from another employing unit;

[~~(b)~~] (ii) the member has been promoted to a new position; or

[~~(c)~~] (iii) the years used are not consecutive.

(3) "Normal retirement age" means the age of 65 years.

(4) "Years of service" or "service years" means the number of periods, each to consist of 12 full months or as determined by the board, whether consecutive or not, during which a member was employed to perform services for the employer.

Section 17. Section Amended.

Section 49-6-401, Utah Code Annotated 1953, as enacted by Chapters 1 and 168, Laws of Utah 1987, is amended to read:

49-6-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any judge who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days after the date of application [~~and which~~].

(b) The effective date shall be [~~effective on~~] the 1st or 16th day of the month [~~following~~], as selected by the member, but must be after the last day of actual work.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least six years of service and has attained an age of 70 years or more;

(b) the member has been credited with at least ten years of service and has attained an age of 62 years or more;

(c) the member has been credited with at least 20 years of service and has attained an age of 55 years or more; or

(d) the member has been credited with at least 25 years of service.

Section 18. Section Amended.

Section 67-20-7, Utah Code Annotated 1953, as enacted by Chapter 203, Laws of Utah 1989, is amended to read:

67-20-7. Workers' compensation benefits for volunteer firefighters.

(1) In addition to the purposes set out in Subsections 67-20-3 (2) and (3), a volunteer firefighter, as defined in [~~Subsection~~] Section 49-5-103 [~~(12)~~], is considered an agency employee for the purpose of receiving worker's compensation benefits under Title 35, Chapters 1 and 2.

(2) These benefits are the exclusive remedy for all injuries and occupational diseases resulting from his services as a volunteer firefighter. Compensation shall be computed as indicated in Section 49-5-802.

Section 19. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 227
H. B. No. 266
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

COUNTY GOVERNING BODIES AUTHORITY

By Stephen M. Bodily
Evan L. Olsen
Fred R. Hunsaker
Dan Q. Price
M. Keele Johnson
Eli H. Anderson

AN ACT RELATING TO COUNTIES; REPLACING "COUNTY COMMISSION" AND "COUNTY GOVERNING BODY" WITH "COUNTY EXECUTIVE" OR "COUNTY LEGISLATIVE BODY"; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
2-1-16.5, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1977
4-11-5, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
4-17-2, AS LAST AMENDED BY CHAPTER 18, LAWS OF UTAH 1985
4-17-4, AS LAST AMENDED BY CHAPTER 18, LAWS OF UTAH 1985
4-17-5, AS LAST AMENDED BY CHAPTER 18, LAWS OF UTAH 1985
4-17-8.5, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1985
4-25-7, AS ENACTED BY CHAPTER 2, LAWS OF UTAH 1979
9-1-502, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-1-601, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-501, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-502, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-503, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-504, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-506, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-7-510, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
10-2-101.5, AS ENACTED BY CHAPTER 55, LAWS OF UTAH 1981
10-2-102, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1983
10-2-102.2, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1983
10-2-102.4, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1983
10-2-102.6, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988
10-2-102.8, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1983
10-2-102.10, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1983
10-2-104, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977
10-2-105, AS LAST AMENDED BY CHAPTER 51, LAWS OF UTAH 1988
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59-2-1206, AS RENUMBERED AND AMENDED BY CHAPTER 4, LAWS OF UTAH 1987
59-2-1207, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1988
59-2-1212, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1988
59-2-1214, AS RENUMBERED AND AMENDED BY CHAPTER 4, LAWS OF UTAH 1987
59-2-1215, AS RENUMBERED AND AMENDED BY CHAPTER 4, LAWS OF UTAH 1987
59-2-1219, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1988
59-2-1220, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1988
59-2-1303, AS LAST AMENDED BY CHAPTER 237, LAWS OF UTAH 1992
59-2-1310, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1320, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1321, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1332, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1332.5, AS LAST AMENDED BY CHAPTER 40, LAWS OF UTAH 1991
59-2-1333, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1341, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1347, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1349, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1350, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1351, AS LAST AMENDED BY CHAPTER 222, LAWS OF UTAH 1992
59-2-1355, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-1368, AS RENUMBERED AND AMENDED BY CHAPTER 4, LAWS OF UTAH 1987
59-2-1371, AS RENUMBERED AND AMENDED BY CHAPTER 4, LAWS OF UTAH 1987
62A-4-603, AS ENACTED BY CHAPTER 248, LAWS OF UTAH 1991
62A-8-101, AS LAST AMENDED BY CHAPTER 181, LAWS OF UTAH 1990
62A-8-202, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
62A-12-101, AS LAST AMENDED BY CHAPTER 181, LAWS OF UTAH 1990
62A-12-217, AS ENACTED BY CHAPTER 1,

LAWS OF UTAH 1988
62A-12-242, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
63-11-17, AS LAST AMENDED BY CHAPTER 165, LAWS OF UTAH 1979
63-11-17.5, AS LAST AMENDED BY CHAPTER 167, LAWS OF UTAH 1986
63-12-4, UTAH CODE ANNOTATED 1953
63-51-8, AS LAST AMENDED BY CHAPTER 169, LAWS OF UTAH 1988
68-3-12, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
71-2-2, AS LAST AMENDED BY CHAPTER 135, LAWS OF UTAH 1959
71-2-3, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1961
73-2-23, AS LAST AMENDED BY CHAPTERS 3 AND 169, LAWS OF UTAH 1988
76-10-806, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1977
77-16-2, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
78-5-102, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-5-107, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1991
78-7-13, UTAH CODE ANNOTATED 1953
78-12-30, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 2-1-16.5, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1977, is amended to read:

2-1-16.5. Aircraft landing permits — Eligible aircraft — Special licenses — Rules and regulations — Proof of insurance — Bonds.

(1) The county [~~commission~~] executive of any county may issue permits authorizing aircraft to land on or take off from designated county roads. Permits may be issued to aircraft operated as air ambulances or pesticide applicators and to aircraft operated by or under contract with public utilities and [use] used in connection with inspection, maintenance, installation, operation, construction, or repair of property owned or operated by the public utility.

(2) Permits may also be issued by the county [~~commission~~] executive to other aircraft under rules and regulations prescribed by the commission.

(3) The division of aeronautics shall prescribe rules and regulations for the issuance of special licenses to aircraft permitted by a county [~~commission~~] executive to land on county roads.

The division shall prescribe rules and regulations for the issuance of special licenses to pilots permitting the pilots to operate aircraft licensed under this subsection from county roads.

The rules and regulations prescribed under this subsection shall include provisions for the safety of the flying and motoring public.

(4) The aeronautical committee shall prescribe rules and regulations for the landing and taking off of aircraft to which permits have been issued, which may include annual reports of activities of such aircraft.

(5) Prior to the issuance of a permit or license to any aircraft, the applicant shall file with the county [~~commission~~] executive and the aeronautical operations division a certificate of insurance executed by an insurance company or association authorized to transact business in this state upon a form prescribed by the division that there is in full force and effect a policy of insurance covering the aircraft for liability against personal injury or death for any one person in an amount of not less than $50,000, for any one accident in an amount of not less than $100,000, and for property damage in an amount of not less than $50,000.

(6) In addition to the insurance herein required, either the county [~~commission~~] executive or the aeronautical division may require the posting of a bond to indemnify the [~~commission~~] county or division against liability resulting from the issuance of the permit or license.

Section 2. Section Amended.

Section 4-11-5, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-11-5. County bee inspector — Appointment — Termination — Compensation.

The [~~board of~~] county [~~commissioners~~] executive upon the petition of five or more persons who raise bees within their respective counties shall, with the approval of the commissioner, appoint a qualified person to act as a bee inspector within their county. A county bee inspector shall be employed at the pleasure of the [~~board of~~] county [~~commissioners~~] executive and the commissioner, and is subject to termination of employment, with or without cause, at the instance of either. Compensation for the county bee inspector shall be fixed by the [~~board of~~] county [~~commissioners~~] legislative body.

Section 3. Section Amended.

Section 4-17-2, Utah Code Annotated 1953, as last amended by Chapter 18, Laws of Utah 1985, is amended to read:

4-17-2. Definitions.

As used in this chapter:

(1) "Commission" means the [~~board of~~] county [~~commissioners~~] legislative body of the [~~several~~] counties of this state;

(2) "Commissioner" means the commissioner of agriculture or the commissioner's representative;

(3) "County noxious weed" means any plant which is not on the state noxious weed list, is especially troublesome in a particular county, and is declared by the county [~~commission~~] legislative body to be a noxious weed within its county;

(4) "Noxious weed" means any plant the commissioner determines to be especially injurious to public health, crops, livestock, land, or other property.

Section 4. Section Amended.

Section 4-17-4, Utah Code Annotated 1953, as last amended by Chapter 18, Laws of Utah 1985, is amended to read:

4-17-4. County Weed Control Board — Appointment — Composition — Terms — Removal — Compensation.

(1) Each [board of] county [commissioners] executive of the [several] counties [appoints] may, with the advice and consent of the county legislative body, appoint a county weed control board comprised of not less than three nor more than five appointed members [and].

(2) (a) If the county legislative body is the county commission, the chair of the county legislative body shall appoint one member of the county [commission appointed by the chairman of the board of county commissioners] legislative body who [acts] shall act as a coordinator between the [commission] county and the weed board.

(b) If the county legislative body is a county council, the county executive shall serve on the county weed control board and act as coordinator between the county and the weed board.

(3) Two members of the board shall be farmers or ranchers whose primary source of income is derived from production agriculture.

(4) Members are appointed to four year terms of office and serve with or without compensation as determined by each [commission] county legislative body.

(5) Members may be removed [by a commission] for cause and any vacancy which occurs on a county weed control board shall be filled by appointment [of the commission] for the unexpired term of the vacated member.

Section 5. Section Amended.

Section 4-17-5, Utah Code Annotated 1953, as last amended by Chapter 18, Laws of Utah 1985, is amended to read:

4-17-5. Noxious weeds — County weed control board responsible for control of — County weed control board to cooperate with other county boards — County legislative body authority to designate — Public hearing before removal of noxious weed from state list.

(1) A county weed control board is responsible, under the general direction of [its commission] the county executive, for the formulation and implementation of a county-wide coordinated noxious weed control program designed to prevent and control noxious weeds within its county.

(2) A county weed control board is required, under the general direction of its commission, to cooperate with other county weed control boards to prevent and control the spread of noxious weeds.

(3) A county [commission] legislative body may declare a particular weed or competitive plant, not appearing on the state noxious weed list, a county noxious weed within its county, or [it] the county executive, with the approval of the county legislative body, may petition the commissioner for removal of a particular noxious weed from the state noxious weed list. [A noxious weed shall not be removed by] The county legislative body may not approve a petition [without] of the county executive to the commissioner to remove a noxious weed unless it has first conducted a public hearing [conducted by the commissioner] after due notice.

Section 6. Section Amended.

Section 4-17-8.5, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1985, is amended to read:

4-17-8.5. Hearing before county weed control board — Appeal of decision to the county legislative body — Judicial review.

(1) Any person served with notice to control noxious weeds may request a hearing to appeal the terms of the notice before the county weed control board within 10 days of receipt of such notice and may appeal the decision of the county weed control board to the [board of] county [commissioners] legislative body.

(2) Any person served with notice to control noxious weeds who has had a hearing before both the county weed control board and the [board of] county [commissioners] legislative body may further appeal the decision of the [board of] county [commissioners] legislative body by filing written notice of appeal with a court of competent jurisdiction.

Section 7. Section Amended.

Section 4-25-7, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1979, is amended to read:

4-25-7. The county legislative body authorized to adopt fence ordinance in derogation of common law — Lawful fence to be specified by ordinance.

The [board of] county [commissioners] legislative body of any county is authorized through ordinance to declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property. If such an ordinance is adopted, the [board of] county [commissioners] legislative body shall through ordinance declare and specify what constitutes a lawful fence.

Section 8. Section Amended.

Section 9-1-502, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-1-502. County centennial committee — Composition — Powers.

(1) (a) Each county [governing] executive with the approval of the county legislative body may form a county centennial committee composed of no less than 11 members.

(b) The county [governing] executive body shall:

(i) solicit applications for membership on the county centennial committee from county residents and residents of other political subdivisions located within the county;

(ii) appoint the members of the county centennial committee after consulting with mayors, city and town councils, commissions, community councils, and other community and county leaders; and

(iii) ensure that the members of the county centennial committee are nonpartisan, represent the various geographic and population regions of the county, and broadly represent the people of the county.

(c) Members of the county centennial committee shall serve until December 31, 1997, until they resign, or until they are removed for cause.

(d) After consultation with mayors, city and town councils, commissions, community councils, and other community and county leaders, the county [governing] executive body may remove any member of the county centennial committee for cause and may appoint a replacement.

(2) County centennial committees may:

(a) raise funds;

(b) administer centennial license plate funds, if authorized to do so by the Utah Statehood Centennial Commission;

(c) apply for special project funds from the Utah Statehood Centennial Commission; and

(d) spend funds for centennial related activities and events according to rules established by the Utah Statehood Centennial Commission.

Section 9. Section Amended.

Section 9-1-601, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-1-601. Utah Columbus Quincentenary Commission — Composition — Powers.

(1) There is created a commission known as the Utah Columbus Quincentenary Commission to mark the 500th anniversary of the voyages of discovery of Christopher Columbus.

(2) (a) The commission shall be composed of a chairman appointed by the governor and 25 bipartisan members appointed by the governor with the consent of the Senate.

(b) The members of the commission shall broadly represent the people of Utah.

(3) (a) Ten percent of the members of the commission are a quorum for the transaction of business.

(b) The governor shall appoint a replacement to the commission if a vacancy occurs on the commission for any reason.

(4) The director of the Division of State History and the chairman of the Salt Lake County [Commission] legislative body shall serve as consultants to the commission.

(5) The chairman of the commission may appoint an advisory board to the commission in such number as the commission may determine.

(6) The commission shall:

(a) work with and cooperate with the United States Christopher Columbus Quincentenary Commission established by P. L. 98-375;

(b) develop and draft a preliminary plan that:

(i) defines the scope of the quincentenary celebration in Utah;

(ii) submits quincentenary projects to the United States commission for designation as a federal "Official Quincentenary Project";

(iii) defines the scope and identifies particular events and activities that the commission intends or proposes will be part of the state quincentenary celebration; and

(iv) establishes a tentative timetable for planning, preparing, and accomplishing the quincentenary celebration that describes with particularity specific dates by which the commission intends to have certain planning and preparation phases completed; and

(c) prepare legislation that more explicitly defines the structure, representation, powers, and responsibilities of the commission and submit it to the Legislature by December 1, 1990, for consideration in the 1991 General Session.

(7) The commission shall submit the plan required by Subsection (b) to the governor and to the Office of Legislative Research and General Counsel for submission to the Legislature by December 1, 1990.

Section 10. Section Amended.

Section 9-7-501, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-501. Tax for establishment and maintenance of public library — Library fund.

(1) A county [governing] legislative body may establish and maintain a public library.

(2) For this purpose, counties may levy annually a tax not to exceed .001 of taxable value of taxable property in the county, outside of cities which maintain their own city libraries as authorized by Part 4. The tax is in addition to all taxes levied by counties and is not limited by the levy limitation imposed on counties by law. However, if bonds are issued for purchasing a site, or constructing or furnishing a building, then taxes sufficient for the payment of the bonds and any interest may be levied.

(3) The taxes shall be levied and collected in the same manner as other general taxes of the county and shall constitute a fund to be known as the county library fund.

Section 11. Section Amended.

Section 9-7-502, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-502. Library board of directors — Expenses.

(1) When the county [governing] legislative body decides to establish and maintain a county public library under the provisions of this part, [it] the county executive shall, with the advice and consent of the county legislative body, appoint a library board of five directors chosen from the citizens of the county and based upon their fitness for the office.

(2) Only one member of the county [governing] legislative body may be, at any one time, a member of the board.

(3) Each director shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

Section 12. Section Amended.

Section 9-7-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-503. Library board terms — Officers — Removal — Vacancies.

(1) Each director shall be appointed for a four-year term, or until their successors are appointed. Initially, appointments shall be made for one-, two-, three-, and four-year terms, and one member of the county [governing] legislative body for the term of his elected office. Annually thereafter, the county [governing] executive body shall, before the first day of July of each year, appoint, with the advice and consent of the county legislative body, for a four-year term, one director to take the place of the retiring director.

(2) Directors shall serve not more than two consecutive full terms.

(3) The governor shall annually select a chairman and other officers.

(4) The county [governing] executive body may remove any director for misconduct or neglect of duty.

(5) Vacancies in the board of directors shall be filled for the unexpired terms in the same manner as original appointments.

Section 13. Section Amended.

Section 9-7-504, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-504. Board powers and duties — Library fund deposits and disbursements.

(1) The library board of directors may, with the approval of the county [governing] legislative body:

(a) have control of the expenditure of the library fund, of construction, lease, or sale of library buildings and land, and of the operation and care of the library; and

(b) purchase, lease, or sell land, and purchase, lease, erect, or sell buildings, for the benefit of the library.

(2) The board shall:

(a) maintain and care for the library;

(b) establish policies for its operation; and

(c) in general, carry out the spirit and intent of the provisions of this part.

(3) All tax moneys received for the library shall be deposited in the county treasury to the credit of the library fund, and may not be used for any purpose except that of the county library. These funds shall be drawn upon by the authorized officers of the county upon presentation of the properly authenticated vouchers of the library board. All moneys collected by the library shall be deposited to the credit of the library fund.

Section 14. Section Amended.

Section 9-7-506, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-506. Reports to governing body and State Library Board.

The library board of directors shall:

(1) make an annual report to the county [governing] executive and county legislative body on the condition and operation of the library, including a financial statement; and

(2) provide for the keeping of records required by the State Library Board in its request for an annual report from the public libraries, and submit that annual report to the State Library Board.

Section 15. Section Amended.

Section 9-7-510, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-7-510. Estimate of moneys.

(1) The library board of directors shall furnish to the county [governing] executive and county legislative body, in writing, and prior to the time required by law to levy county taxes, an estimate of the amount of moneys necessary to establish, equip, and maintain the library, and to provide library services during the next ensuing fiscal year and shall certify the amount.

(2) The county [governing] legislative body may, at the time and in the manner of levying other taxes, impose the levy, but the levy may not exceed in any one year .0006 per dollar of taxable value of taxable property in the county.

Section 16. Section Amended.

Section 10-2-101.5, Utah Code Annotated 1953, as enacted by Chapter 55, Laws of Utah 1981, is amended to read:

10-2-101.5. Form of petition.

A petition for municipal incorporation shall substantially comply with, and be circulated in, the following form:

PETITION FOR MUNICIPAL INCORPORATION

To the Honorable County [Commissioners] Legislative Body of ____ County, Utah:

We, the undersigned citizens and legal voters of the State of Utah, respectfully petition the county [commissioners] legislative body to submit a proposal to incorporate as a municipality certain unincorporated contiguous territory located within ____ County, to-wit, (here describe the territory to be incorporated), to the legal voters, resident within the territory described, for their approval or rejection at a special election held for that purpose; and each signator for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Utah, and my residence and post office address are correctly written after my name.

Section 17. Section Amended.

Section 10-2-102, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1983, is amended to read:

10-2-102. Certification of petition to county legislative body.

Upon receipt of a petition filed under this part, the county clerk shall determine whether it meets the requirements specified in sections 10-2-101 and 10-2-101.5. If the requirements of those sections are fully satisfied, the county clerk shall certify the petition and deliver it together with any attachments to the [board of] county [commissioners] legislative body at its next regular meeting.

Section 18. Section Amended.

Section 10-2-102.2, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1983, is amended to read:

10-2-102.2. Independent advisability and feasibility study — Notice of hearing on proposal.

Upon receipt of a petition certified by the county clerk, the [board of] county [commissioners] legislative body may commission an independent study of the advisability of incorporation and of the feasibility of the proposed municipality by a person or association of persons with expertise in the processes and economics of local government. The results of the study shall be reduced to writing and delivered to the [board of] county [commissioners] legislative body not later than 90 days after the study is commissioned. Upon receipt of any study results, the [board of] county [commissioners] legislative body shall designate a time and place for public hearing on the municipal incorporation proposal. The hearing may not be held sooner than 14 days nor later than 30 days after the study results are delivered to the commission. Notice of the time and place of hearing, including a copy of the petition without attachments, shall be published in a newspaper having general circulation within the area proposed for incorporation seven days before the hearing.

Section 19. Section Amended.

Section 10-2-102.4, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1983, is amended to read:

10-2-102.4. Conduct and record of hearing on proposal.

A record of the hearing shall be kept by the [board of] county [commissioners] legislative body and the results of the independent advisability and feasibility study, if any, shall be published as part of the record. All interested persons shall be permitted to appear and be heard. Oral and written arguments for and against the incorporation shall be received and considered. The [board of] county [commissioners] legislative body in its discretion may invite opinions and appearances from representatives of state and local government. The hearing may be adjourned from time to time but shall conclude within 14 days after it commences.

Section 20. Section Amended.

Section 10-2-102.6, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

10-2-102.6. Considerations in determining advisability and feasibility of proposal.

(1) The county [governing] legislative body in determining the advisability of incorporation and the feasibility of the proposed municipality shall consider:

(a) population and population density within the area proposed for incorporation;

(b) land area, topography, natural boundaries, and drainage basin of the area proposed for incorporation;

(c) comparative area and taxable value of subdivided land and unsubdivided land within the area proposed;

(d) extent of business, commercial, and industrial development;

(e) past expansion in terms of population and construction;

(f) likelihood of significant growth in the area proposed, and in adjacent areas, during the next ten years;

(g) present cost and adequacy of governmental services in the area proposed, present and projected revenues for the county and the municipality proposed, and the probable effect of the incorporation on local governmental revenues and on services in the area proposed and in adjacent areas; and

(h) the effect of the proposed municipal incorporation on the local governmental structure of the entire urban community.

(2) If the area proposed for municipal incorporation is within five miles of an existing municipality, the county [governing] legislative body, in addition to the factors listed in Subsection (1), shall consider:

(a) the size and population of the existing municipality;

(b) its population, business, and industrial growth during the past ten years;

(c) the extension of its boundaries during the past ten years;

(d) the probability of growth of the existing municipality towards the area proposed for municipal in-

corporation during the next ten years with due regard given to natural barriers and other factors which might influence that growth; and

(e) the willingness of the existing municipality to annex the area proposed for municipal incorporation and its ability to provide municipal services to the area in the event of annexation.

Section 21. Section Amended.

Section 10-2-102.8, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1983, is amended to read:

10-2-102.8. Decision of county legislative body on merits of proposal — Election — Publication of notice — Order of county legislative body refusing election.

After the public hearing is finally concluded, the [~~board of~~] county [~~commissioners~~] legislative body shall determine whether the proposal for municipal incorporation has sufficient merit, based on the results of the feasibility study and the public hearing, to justify an election. The [~~board of~~] county [~~commissioners'~~] legislative body's final decision on the merits of the proposal shall be made within 14 days after the hearing is concluded.

(1) If it is determined that the proposal for municipal incorporation has sufficient merit, the [~~board of~~] county [~~commissioners~~] legislative body shall designate the boundaries of the proposed municipality either as originally proposed or as modified by the [~~board of~~] county [~~commissioners~~] legislative body in view of the feasibility study and public hearings unless a majority of original petitioners express in writing their disapproval of the proposed modifications. An election on the proposal for municipal incorporation shall be held not less than two nor more than four months after the [~~board's~~] decision. Before the election is held, however, the [~~board of~~] county [~~commissioners~~] legislative body shall publish notice of the election in a newspaper having general circulation within the area proposed for municipal incorporation at least once a week for three successive weeks. The last publication of notice shall be at least one day before the election. The notice shall contain:

(a) A statement of the contents of the petition;

(b) A description of the area proposed for municipal incorporation; and

(c) A statement of the time of the election and the location of polling places.

(2) If it is determined that the proposal for municipal incorporation is not feasible, that the incorporation proposed would be substantially detrimental to the structure of local government in the county or be otherwise contrary to the public interest, or that withdrawal of support from a majority of the petitioners for incorporation is presented in writing, the [~~board of~~] county [~~commissioners~~] legislative body shall issue a written order refusing to hold an election. The order shall be supported in writing with the reasons for the [~~board of~~] county [~~commissioners'~~] legislative body's action. If such an order is issued, the incorporation proceedings are terminated, and no further petition for incorporation of the same or substantially the same area may be considered by the [~~board of~~] county [~~commissioners~~] legislative body or circulated within one year after the date of the order. Notwithstanding the provisions of Sections 10-2-102.2, 10-2-102.4, 10-2-102.6, and 10-2-102.8, the [~~board of~~] county [~~commissioners~~] legislative body must proceed with the election unless a majority of the petitioners withdraw their signatures in writing.

Section 22. Section Amended.

Section 10-2-102.10, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1983, is amended to read:

10-2-102.10. Appeal of decision of county legislative body.

Any person aggrieved by the [~~board of~~] county [~~commissioners'~~] legislative body's decision may appeal the decision to the district court. The review of the district court, however, is limited to review of the record of the public hearing and the decision of the [~~board of~~] county [~~commissioners~~] legislative body may be reversed only upon a showing that the board's decision is arbitrary or capricious or involves an abuse of discretion.

Section 23. Section Amended.

Section 10-2-104, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-104. Return of ballots.

The ballots shall be returned to the county [~~commissioners~~] legislative body who shall canvass the ballots in the same manner as for a general election. The commissioners shall give official notice of the result to the county clerk.

Section 24. Section Amended.

Section 10-2-105, Utah Code Annotated 1953, as last amended by Chapter 51, Laws of Utah 1988, is amended to read:

10-2-105. Candidates for office.

Candidates for elective municipal office in an election required by Subsection 10-2-103 (3) shall file a declaration of candidacy with the county [~~commissioners~~] legislative body at least 30 days before the election to select municipal officers.

Section 25. Section Amended.

Section 10-2-106.5, Utah Code Annotated 1953, as enacted by Chapter 55, Laws of Utah 1981, is amended to read:

10-2-106.5. Petition prohibited for one year following election.

No petition for municipal incorporation proposing to incorporate a specified geographic area shall be circulated nor considered by the [~~board of~~] county [~~commissioners~~] legislative body for a period of one year following the date of an election at which the same specified geographic area was proposed by petition for municipal incorporation. A petition for

municipal incorporation circulated within the proscribed one-year period is invalid.

Section 26. Section Amended.

Section 10-2-109, Utah Code Annotated 1953, as last amended by Chapter 34, Laws of Utah 1979, is amended to read:

10-2-109. Incorporation of towns — Population.

A majority of the registered voters of any unincorporated area having a population of at least 100 but not more than 800 may incorporate that area as a town by filing a petition for that purpose with the [~~board of~~] county [~~commissioners~~] legislative body, stating the legal description and the boundaries of the territory to be incorporated. On approval of such petition by the [~~board of~~] county [~~commissioners~~] legislative body of the county in which the proposed town is located, the filing of a copy of the petition with the county recorder and the filing of articles of incorporation as provided in Section 10-2-108, the incorporation shall be complete.

Section 27. Section Amended.

Section 10-2-110, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

10-2-110. Appointment of town officials.

On approval of the petition provided for in Section 10-2-109, the [~~board of~~] county [~~commissioners~~] legislative body in the county in which the town is located, shall appoint the first mayor and council who shall hold office until the next regular municipal election and until their successors are elected and qualified.

Section 28. Section Amended.

Section 10-2-402, Utah Code Annotated 1953, as enacted by Chapter 25, Laws of Utah 1979, is amended to read:

10-2-402. Local boundary commissions — Establishment — Members.

A local boundary commission shall be created in each county, prior to or at the time necessary to carry out the commission's functions under the provisions of this chapter. The [~~board of~~] county [~~commissioners~~] legislative body shall be responsible for the initial establishment of the local boundary commission with membership as follows:

(1) Except in counties with fewer than two municipalities, the commission shall consist of seven members, selected as follows:

(a) Two representing the county, appointed by the [~~governing body~~] county executive, with the advice and consent of the county legislative body, from elected county officers;

(b) Two representing the municipalities, each of whom shall be an elected municipal officer not of the same municipality, appointed by the municipal selection committee; and

(c) Three representing the general public, none of whom shall be a county or municipal officer, appointed by the other four members.

(2) If there is only one municipality in the county, the commission shall consist of five members, selected as follows:

(a) Two representing the county, appointed by the [~~governing body~~] county executive, with the advice and consent of the county legislative body, from elected county officers;

(b) One representing the municipality, who shall be a city officer, appointed by the governing body of the municipality; and

(c) Two representing the general public, appointed by the other three members of the commission.

(3) If there is no municipality in the county, the commission shall consist of five members, selected as follows:

(a) Three representing the county, appointed by the [~~board of~~] county [~~commissioners~~] executive, with the advice and consent of the county legislative body, from elected county officers; and

(b) Two representing the general public, appointed by the other three members of the commission.

Section 29. Section Amended.

Section 10-2-408, Utah Code Annotated 1953, as enacted by Chapter 25, Laws of Utah 1979, is amended to read:

10-2-408. Protests — Application for hearing — Notice of intent to protest — Response.

A local boundary commission shall become involved in a boundary change only upon an application duly filed by an affected entity. An affected entity desiring to initiate a hearing before the local boundary commission to protest a proposed boundary change shall file an application with the local boundary commission within five days of the conclusion of the public hearing held by the municipality initiating the change. If a local boundary commission has not been established by the [~~board of~~] county [~~commissioners~~] legislative body, a notice of intent to protest within the above time period shall be adequate.

(1) The application of the affected entity protesting the change shall contain:

(a) A statement indicating the nature of the protest and relating the protest to the standards established by this chapter;

(b) Such other information and data as the commission may by rule require or as the affected entity may consider pertinent; and

(c) The names of not more than three persons to whom mailed notices shall be sent by the commission.

(2) The local entity proposing to change its boundaries, upon notification of the filing of an application protesting the change, shall file:

(a) The policy declaration, if any, required by this chapter;

(b) A copy of the petition, if any, by property owners;

(c) Such other information and data as the commission may by rule require or as the local entity may consider pertinent; and

(d) The names of not more than three persons to whom mailed notices shall be sent by the commission.

Section 30. Section Amended.

Section 10-2-506, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-506. Taxes to meet municipal obligations.

The court shall order the levy of taxes from time to time on the property included with the disconnected territory which may be required for the purpose of paying the territory's proportionate share of the municipal obligations. Any tax levy so ordered by the court shall be levied by the [~~board of~~] county [commissioners] legislative body on the disconnected territory and collected by the county treasurer in the same manner as though the disconnected territory were a municipality and the revenue received from such tax levy shall be paid to the court or as the court shall direct.

Section 31. Section Amended.

Section 10-2-601, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-601. Consolidation of two or more municipalities.

The process for consolidating municipalities shall begin by filing with the [~~board or boards of~~] county [commissioners] legislative bodies of the respective counties in which the municipalities are located:

(1) Resolutions passed by the governing bodies of the municipalities which state their intention and desire to form a consolidated municipality; or

(2) Petitions signed by at least ten percent of the registered voters in each of the municipalities to be included with the boundaries of the consolidated municipality.

Section 32. Section Amended.

Section 10-2-604, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-604. Duty of county legislative body when petition is by electors.

When the petition for consolidation is properly presented by the electors, the [~~governing bodies~~] county legislative bodies and officers of each of the respective municipalities shall, within 15 days after the filing of the petition with the [~~board of~~] county [commissioners] legislative bodies, cause to be filed with the [~~board of~~] county [commissioners] legislative bodies a plan of consolidation containing the same information as is required in Section 10-2-603.

Section 33. Section Amended.

Section 10-2-606, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-606. Public hearings.

The governing body of each municipality in its plan for consolidation shall set a time and place for a public hearing or public hearings which shall be held at least ten days after the plan of consolidation and the dates of the public hearing have been submitted to the [~~board or boards of~~] county [commissioners] legislative bodies. The public hearing may be held jointly or separately by the governing bodies of each municipality to be consolidated. Any interested person may be heard on any aspect of the proposed consolidation. One or more certified copies of the plan of consolidation shall be available in the recorder's office of each municipality at least five days prior to the hearing.

Section 34. Section Amended.

Section 10-2-607, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-607. Notice of election.

If the [~~board or boards of~~] county [commissioners finds] legislative bodies find that the resolution or petition for consolidation and their attachments substantially conform with the requirements of this part, they shall give notice of the election for consolidation to the electors of each municipality which would become part of the consolidated municipality by publication in a newspaper having a general circulation within the boundaries of each municipality to be consolidated at least once a week for four consecutive weeks prior to the election on the question of consolidation.

Section 35. Section Amended.

Section 10-2-706, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-706. Taxes to meet municipal obligations.

The court shall have power to wind down the affairs of the municipality, to dispose of its property as provided by law, and to make provisions for the payment of all indebtedness thereof and for the performance of its contracts and obligations, and shall order such taxes levied from time to time as may be requisite therefore, which the [~~board of~~] county [commissioners] legislative body shall levy against the property within the municipality. The taxes shall be collected by the county treasurer in the manner for collecting other property taxes and shall be paid out under the orders of the court, and the surplus, if any, shall be paid into the school fund for the district in which the taxes were levied. All municipal property remaining after the winding down of the affairs of the municipality, shall be transferred to the board of education of such school dis-

trict, which board hereby is empowered to enforce all claims for the same and to have the use of all property so vesting.

Section 36. Section Amended.

Section 10-2-711, Utah Code Annotated 1953, as last amended by Chapter 41, Laws of Utah 1983, is amended to read:

10-2-711. Dissolution by the county legislative body.

Any municipality having fewer than 50 residents, according to any official federal, state, or county census, may be dissolved on application to the district court by the [~~board of~~] county [~~commissioners~~] legislative body of the county where the municipality is located. Notice of the application shall be served on the municipality in the manner prescribed by law or by publication in the manner provided by law if the municipal authorities cannot be served. The district court may order the municipality dissolved on a finding that the existence of the municipality serves no valid municipal purpose, its existence is a sham, or on a clear and convincing showing that the best interests of the community would be served by the dissolution. If the municipality is dissolved, the district court shall wind down the affairs and dissolve the municipality as quickly as possible in the same manner as is provided in Sections 10-2-705 through 10-2-709.

Section 37. Section Amended.

Section 10-8-58, Utah Code Annotated 1953, as last amended by Chapter 229, Laws of Utah 1988, is amended to read:

10-8-58. Jails and workhouses — Establishment and maintenance.

The governing body of a city or town may:

(1) establish, erect, and maintain city jails, houses of correction, and workhouses for the confinement of persons convicted of violating any city ordinances;

(2) make rules for the government of them;

(3) appoint necessary jailers and keepers; and

(4) use the county jail for the confinement or punishment of offenders, subject to any conditions that are imposed by law, and with the consent of the county [~~governing~~] legislative body.

Section 38. Section Amended.

Section 10-8-93, Utah Code Annotated 1953, is amended to read:

10-8-93. Control of funds and disbursements — Auditing of accounts by county auditor — Transfer of county tax funds to board to cover deficiencies.

The joint board created pursuant to this act shall have the custody and control of all funds collected in the joint operation of such hospital and the disbursement thereof; provided that the county auditor of any county participating under the provisions of this act shall audit the accounts of said board quarterly or at more frequent intervals, if public interest, in the judgment of such auditor requires a more frequent audit. The [~~board of~~] county [~~commissioners~~] executive of any county participating in the operation and maintenance of hospitals pursuant to this act may pay over to the joint board of such hospitals any funds yielded by a levy made pursuant to Section 17-5-62 that may be required to cover any deficiencies incurred in the operation and maintenance of such hospital.

Section 39. Section Amended.

Section 10-11-4, Utah Code Annotated 1953, is amended to read:

10-11-4. Costs of removal to be included in tax notice.

Upon receipt of the itemized statement of the cost of destroying or removing such weeds, refuse, garbage, objects, or structures, the county treasurer shall forthwith mail one copy to the owner of the land from which the same were removed, together with a notice that objection in writing may be made within [~~thirty~~] 30 days to the whole or any part of the statement so filed to the [~~board of~~] county [~~commissioners~~] legislative body. The county treasurer shall at the same time deliver a copy of the statement to the clerk of the [~~board of~~] county [~~commissioners~~] legislative body. If objections to any statement are filed with the county [~~commissioners~~] legislative body, they shall set a date for hearing, giving notice thereof, and upon the hearing fix and determine the actual cost of removing the weeds, garbage, refuse, or unsightly or deleterious objects or structures, and report their findings to the county treasurer. If no objections to the items of the account so filed are made within [~~thirty~~] 30 days of the date of mailing such itemized statement, the county treasurer shall enter the amount of such statement on the assessment rolls of the county in the column prepared for that purpose, and likewise within ten days from the date of the action of the [~~board of~~] county [~~commissioners~~] legislative body upon objections filed shall enter in the prepared column upon the tax rolls the amount found by the [~~board of~~] county [~~commissioners~~] legislative body as the cost of removing and destroying the said weeds, refuse, garbage or unsightly and deleterious objects or structures. If current tax notices have been mailed, said taxes may be carried over on the rolls to the following year. After the entry by the county treasurer of the costs of removing weeds, garbage, refuse or unsightly and deleterious objects or structures the amount so entered shall have the force and effect of a valid judgment of the district court, and shall be a lien upon the lands from which the weeds, refuse, garbage or unsightly and deleterious objects or structures were removed and destroyed, and shall be collected by the county treasurer at the time of the payment of general taxes. Upon payment thereof receipt shall be acknowledged upon the general tax receipt issued by the treasurer.

Section 40. Section Amended.

Section 11-1-2, Utah Code Annotated 1953, is amended to read:

11-1-2. Auditors may rely on certain facts.

Whenever a [~~board of~~] county [~~commissioners~~] legislative body, board of city commissioners, city council, or board of education of any such county, city, or school district shall find or declare that any appropriation or expenditure for which a warrant or warrants are to be issued was or is for interest upon the bonded debt, for salaries, or for the current expenses of such county, city, or school district, such finding or declaration shall conclusively protect the county auditor, city auditor, or clerk of the board of education of any such county, city, or school district, as to such facts, in certifying any warrant or warrants therefor to be within the lawful debt limit of such county, city, or school district.

Section 41. Section Amended.

Section 11-27-2, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

11-27-2. Definitions.

As used in this chapter:

(1) "Advance refunding bonds" means refunding bonds issued for the purpose of refunding outstanding bonds in advance of their maturity.

(2) "Assessments" means a special tax levied against property within a special improvement district to pay all or a portion of the costs of making improvements in the district.

(3) "Bond" means any revenue bond, general obligation bond, tax increment bond, special improvement bond, or refunding bond.

(4) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body payable in whole or in part from revenues derived from ad valorem taxes and that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.

(5) "Governing body" means the council, commission, [~~board of~~] county [~~commissioners~~] legislative body, board of directors, board of trustees, board of education, board of regents, or other legislative body of a public body designated in this chapter that is vested with the legislative powers of the public body, and, with respect to the state, the State Bonding Commission created by Section 63-56a-1.

(6) "Government obligations" means:

(a) direct obligations of the United States of America, or other securities, the principal of and interest on which are unconditionally guaranteed by the United States of America; or

(b) obligations of any state, territory, or possession of the United States, or of any of the political subdivisions of any state, territory, or possession of the United States, or of the District of Columbia described in Section 103 (a), Internal Revenue Code of 1986.

(7) "Issuer" means the public body issuing any bond or bonds.

(8) "Public body" means the state or any agency, authority, instrumentality, or institution of the state, or any municipal or quasi-municipal corporation, political subdivision, agency, school district, special district, or other governmental entity now or hereafter existing under the laws of the state.

(9) "Refunding bonds" means bonds issued under the authority of this chapter for the purpose of refunding outstanding bonds.

(10) "Resolution" means a resolution of the governing body of a public body taking formal action under this chapter.

(11) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money issued by a public body or any predecessor of any public body and that is payable from designated revenues not derived from ad valorem taxes or from a special fund composed of revenues not derived from ad valorem taxes, but excluding all of the following:

(a) any obligation constituting an indebtedness within the meaning of any applicable constitutional or statutory debt limitation;

(b) any obligation issued in anticipation of the collection of taxes, where the entire issue matures not later than one year from the date of the issue; and

(c) any special improvement bond.

(12) "Special improvement bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body or any predecessor of any public body that is payable from assessments levied on benefited property and from any special improvement guaranty fund.

(13) "Special improvement guaranty fund" means any special improvement guaranty fund established under Title 10, Chapter 6, Title 17A, Chapter 3, Part 2, County Improvement Districts, or any predecessor or similar statute.

(14) "Tax increment bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body issued under authority of Title 17A, Chapter 2, Part 16, Great Salt Lake Development Authority Act, or any similar statutes, including Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act.

Section 42. Section Amended.

Section 11-32-2, Utah Code Annotated 1953, as enacted by Chapter 143, Laws of Utah 1987, is amended to read:

11-32-2. Definitions.

As used in this chapter:

(1) "Assignment agreement" means the agreement, security agreement, indenture, or other documentation by which the county transfers the delinquent tax receivables to the authority in consideration of the amounts paid by the authority under the assignment agreement, as provided in this chapter.

(2) "Bonds" means any bonds, notes, or other evidence of indebtedness of the financing authority issued under this chapter.

(3) "Delinquent tax receivables" means those ad valorem tangible property taxes levied within any county, for any year, which remain unpaid and owing the participant members within the county, as of January 15 of the following year, plus any interest and penalties accruing or assessed to them.

(4) "Financing authority" or "authority" means a nonprofit corporation organized under this chapter by a county on behalf of the participant members within the county as the financing authority for the participant members solely for the purpose of financing the assignment of the delinquent tax receivables of the participant members for which it was created.

(5) "Governing body" means the council, commission, [~~board of~~] county [~~commissioners~~] legislative body, board of education, board of trustees, or any other governing entity of a public body in which the legislative powers of the public body are vested.

(6) "Participant members" means those public bodies, including the county, the governing bodies of which approve the creation of an authority as provided in Section 11-32-3 and on whose behalf the authority acts.

(7) "Public body" means any city, town, county, school district, special service district, water and sewer improvement district, redevelopment agency, parking and business improvement district, fire protection district, special service area, metropolitan water district, water conservancy district, or any other entity entitled to receive ad valorem property taxes, existing under the laws of the state of Utah.

Section 43. Section Amended.

Section 17-1-33, Utah Code Annotated 1953, is amended to read:

17-1-33. Disputed boundaries — Determination.

Whenever any dispute or uncertainty shall arise as to any county boundary the same may be determined by the county surveyors of the counties interested, and in case they fail to agree or otherwise fail to establish the boundary, the [~~board of~~] county [~~commissioners~~] executive of either or both counties interested shall engage the services of the state engineer, who with the aforesaid county surveyors, or either of them, if but one appears for that purpose, all having received due and proper notice, shall proceed forthwith to permanently determine such boundary line by making the necessary surveys and erecting suitable monuments to designate the boundaries, which shall be deemed permanent until superseded by legislative enactment. Nothing in this section shall be construed to give the surveyors or state engineer any further authority than to erect suitable monuments to designate boundaries as they are now established by law.

Section 44. Section Amended.

Section 17-2-1, Utah Code Annotated 1953, is amended to read:

17-2-1. County to county — Petition — Election — Ballots.

Whenever a majority of the legal voters of any county desire to have the territory included within the boundaries of such county annexed to an adjoining county they may petition [~~therefor~~] the [~~board of~~] county [~~commissioners~~] legislative body of the county in which they reside, which is hereafter referred to as the county to be annexed, as well as the [~~board of~~] county [~~commissioners~~] legislative body of the county to which they desire to be annexed, which shall hereafter be referred to as the annexing county. Such petition must be presented before the first Monday in June of any year, and, if presented in a year during which a general election is held, the county [~~commissioners~~] legislative body must cause said proposition to be submitted to the legal voters of each of said counties at the ensuing general election. If the petition is presented during a year in which there is no general election, the [~~boards of~~] county [~~commissioners~~] legislative body must call a special election to be held on the first Tuesday after the first Monday in November following the presentation of such petition, and must cause the proposition to be submitted to the legal voters of the respective counties on that day. Except as [~~herein~~] otherwise provided, such election shall be held, the [~~result thereof~~] results canvassed, and returns made under the provisions of the general election laws of the state. The ballot to be used shall be:

For annexing ____ county to ____ county.

Against annexing ____ county to ____ county.

Section 45. Section Amended.

Section 17-2-6, Utah Code Annotated 1953, is amended to read:

17-2-6. Annexation of portion of county to adjoining county — Petition — Election — Ballots.

Whenever a majority of the legal voters of any portion of any county, in number equal to a majority of the votes cast at the preceding general election within said portion of the county, desire to have the territory within which they reside included within the boundaries of an adjoining county they may petition [~~therefor~~] the [~~board of~~] county [~~commissioners~~] legislative body of the county in which they reside, which is hereafter referred to as the county from which territory is to be taken, as well as the [~~board of~~] county [~~commissioners~~] legislative body of the county to which they desire to be annexed, which is referred to as the annexing county. Such petition must be presented before the first Monday in June of a year during which a general election is held, and the county [~~commissioners~~] legislative body must cause such proposition to be submitted to the legal voters residing in the county from which territory is to be taken as well as to the legal voters of the annexing county at the ensuing general election. Except as [~~herein~~] otherwise provided, such election shall be held, the [result thereof] results canvassed, and returns made under the provisions of the general election laws of the state. The ballot to be used shall be:

For annexing a portion of ____ county to ____ county.

Against annexing a portion of ____ county to ____ county.

Section 46. Section Amended.

Section 17-2-11, Utah Code Annotated 1953, is amended to read:

17-2-11. Effect on precincts and school districts — Assumption of indebtedness.

The precincts and school districts in the annexed territory shall continue, and shall become precincts and school districts in the annexing county and shall remain as then organized until changed in the manner provided by law, and the officers of such precincts and school districts shall hold their respective offices until the expiration of the terms thereof; provided, that whenever pursuant to the provisions of this chapter any precinct or school district shall be divided the same shall become disorganized, and the property and territory embraced therein shall be subject to the action of the county [~~commissioners~~] legislative body of the respective counties; provided further, that any bonded or other indebtedness of any such school district shall attach to, and become the obligation of, the district that shall be created out of the territory that shall retain the buildings and other property of the original district.

Section 47. Section Amended.

Section 17-3-1, Utah Code Annotated 1953, is amended to read:

17-3-1. By petition — Election — Ballots.

Whenever any number of the qualified electors of any portion of any county desire to have the territory within which they reside created into a new county they may petition therefor the [~~board of~~] county [~~commissioners~~] legislative body of the county in which they reside. Such petition must be signed by at least [~~one-fourth~~] 1/4 of the qualified electors as shown by the registration list of the last preceding general election, residing in that portion of the county to be created into a new county, and by not less than [~~one-fourth~~] 1/4 of the qualified electors residing in the remaining portion of said county. Such petition must be presented on or before the first Monday in May of any year, and shall propose the name and define the boundaries of such new county. The county [~~commissioners~~] legislative body must cause the proposition to be submitted to the legal voters residing in the county at a special election to be held in the month of July next following, first causing [~~thirty~~] 30 days' notice of such election to be given in the manner provided by law for giving notice of general elections. Such election shall be held, the result thereof canvassed, and returns made under the provisions of the general election laws. The form of ballot to be used at such election shall be:

For the creation of (supplying the name proposed) county.

Against the creation of (supplying the name proposed) county.

Section 48. Section Amended.

Section 17-3-4, Utah Code Annotated 1953, is amended to read:

17-3-4. County seat, selection by election — First officers — Election.

Whenever a new county shall have been created under the provisions of this chapter, the [~~board of~~] county [~~commissioners~~] legislative body of the county from which territory has been taken to create such new county shall provide for an election to select a county seat therefor and to elect officers for the new county; provided, that whenever the petitions provided for in this chapter shall be presented to any [~~board of~~] county [~~commissioners~~] legislative body during a year when no general election is held they shall call a special election to select a county seat and county officers for such new county, such election to be held on the first Tuesday after the first Monday of November following and to be conducted under the laws providing for general elections. The city or town receiving the largest number of votes therefor shall be the county seat of the new county.

Section 49. Section Amended.

Section 17-3-5, Utah Code Annotated 1953, is amended to read:

17-3-5. Records to be transmitted — Expenses for transcribing and transfer.

Whenever a new county shall have been created under the provisions of this chapter, the [~~board of~~] county [~~commissioners~~] executive of the county from which the new county has been taken shall furnish to the respective officers of the new county, in form and on suitable paper for binding into permanent records, certified copies of all such records or parts of such records and books as pertain to or affect the title of real or personal property in such new county; such copies to be complete up to twelve o'clock noon of the first Monday in January following the election for the creation of such new county; provided, that original records, books, maps or plats, whether filed or recorded, or filed papers which exclusively relate to or affect the title to land in such new county or which affect personal property owned by residents of such new county, as shown by the records pertaining thereto, shall be transferred to the custody of the proper officer of the new county, who shall give his receipt therefor; and where any record of any county from which such new county is taken has been compiled or arranged in such manner that it may be divided by segregating such instruments therein or pages thereof as to relate to or affect exclusively the title to lands in such new county or personal property owned by residents thereof, such record shall be so divided, and the separate parts of such divided or segregated records shall be the property of the counties to which they relate.

The records of all corporations whose principal place of business is situated in the new county, unless recorded in such a manner that the original re-

cord pertaining to any such corporation may, as herein provided, be delivered over to the new county, shall be copied and certified, and such certified copy of copies, together with all original documents, files and papers relating to such corporations shall be transmitted to the new county.

All recorded official bonds of officers within the new county in force at the time it is created, unless recorded in such manner that the original record thereof may be transferred, shall be copied, certified and transmitted to the new county, and all bonds of local officers within the new county which are required by law to be filed only shall be transferred to the new county.

All official registers, books, papers and files of every description relating to or affecting elections, both general and local, which shall have been held in any district, precinct or other subdivision wholly within such new county, and certified copies of the last election proceedings had in any districts which are partly in the new county and partly in the old county shall be transmitted to the new county.

All records, maps, plats, files and papers relating to or affecting the creation, regulation and operation of irrigation, drainage and mosquito abatement districts which are wholly within the new county, and certified copies of such records, maps, plats, files and papers relating to and affecting the creation, regulation and operation of irrigation, drainage and mosquito abatement districts which are partly in the new and partly in the old county shall be transmitted to the new county.

All expenses lawfully incurred for transcribing and for the transfer of records provided for in this section shall be paid out of the general funds of the new county, and the expenses of any special election provided for in this chapter shall be paid one-half out of the general funds of the county from which territory is taken and one-half out of the general funds of the new county.

Section 50. Section Amended.

Section 17-3-6, Utah Code Annotated 1953, is amended to read:

17-3-6. Effect on precincts and school and other districts — Indebtedness.

All precincts, school districts, road districts, and election districts, as they existed prior to the creation of such new county, shall continue and become precincts, school districts, road districts, and election districts of such new county, and the respective officers thereof shall hold office until the expiration of the several terms for which they were elected or appointed; provided, that wherever pursuant to the provisions of this chapter any precinct, school district, road district, or election district shall be divided the same shall be by reason thereof disorganized, and the property and territory embraced therein shall be subject to the action of the [~~board of~~] county [commissioners] legislative body of the respective counties as to reorganization thereof or adding the same to other like subdivisions already organized; provided further, that any bonded or other indebtedness of any such school district so divided shall attach to and become the obligation of the district that shall be created out of the territory that shall retain the buildings and other property of the original district or to the district to which the same may be added; and all bonded or other indebtedness of the county from which territory is taken shall attach to and become the obligation of such county.

Section 51. Section Amended.

Section 17-4-2, Utah Code Annotated 1953, is amended to read:

17-4-2. Powers, how exercised.

The powers of a county can be exercised only by the [~~board of~~] county executive and county [~~commissioners~~] legislative body or by agents and officers acting under their authority [~~of the board~~] or under authority of law.

Section 52. Section Amended.

Section 17-4-4, Utah Code Annotated 1953, as last amended by Chapter 82, Laws of Utah 1981, is amended to read:

17-4-4. County indebtedness authorized — Issuance of tax anticipation notes — Purposes.

No county shall in any manner give or lend its credit to or in aid of any person or corporation, or appropriate money in aid of any private enterprise. The [~~board of~~] county [~~commissioners~~] legislative body may borrow money in anticipation of the collection of taxes and other revenues of the county in the manner and subject to the conditions of the Utah Municipal Bond Act. This indebtedness may be incurred for any purpose for which funds of the county may be expended.

Section 53. Section Amended.

Section 17-5-5, Utah Code Annotated 1953, is amended to read:

17-5-5. Chairman — Oaths — Quorum.

[~~County commissioners~~] Each county legislative body shall elect one of their number chairman. The chairman shall preside at all meetings of the board, and in case of his absence or inability to act the members present must, by an order entered in their minutes, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any person when necessary in the performance of his official duties. Not less than two members shall constitute a quorum for the transaction of business, and no act of the board shall be valid or binding unless two members concur therein.

Section 54. Section Amended.

Section 17-5-6, Utah Code Annotated 1953, is amended to read:

17-5-6. Meetings — At county seat.

The [~~board of~~] county [~~commissioners~~] legislative body must provide by ordinance for the holding of regular meetings of the board at the county seat.

Section 55. Section Amended.

Section 17-5-9, Utah Code Annotated 1953, is amended to read:

17-5-9. Rules and regulations governing board and transaction of business.

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

Section 56. Section Amended.

Section 17-5-12, Utah Code Annotated 1953, is amended to read:

17-5-12. Moneys unlawfully paid — Recovery — Restraining payment.

Whenever any [~~board of~~] county [~~commissioners~~] legislative body shall without authority of law order any money paid for any purpose and such money shall have been actually paid, or whenever any other county officer has drawn any warrant in his own favor or in favor of any other person without being authorized thereto by the [~~board of~~] county [~~commissioners~~] legislative body or by law and the same shall have been paid, the county attorney of such county shall institute suit in the name of the county against such person or such officer and his official bondsman to recover the money so paid, and when the money has not been paid on such order or warrants, the county attorney of such county upon receiving notice [~~thereof~~] shall commence suit in the name of the county to restrain the payment of the same; no order of the [~~board of~~] county [~~commissioners~~] legislative body shall be necessary in order to maintain either of such actions.

Section 57. Section Amended.

Section 17-5-14, Utah Code Annotated 1953, is amended to read:

17-5-14. County clerk is clerk of board — Chairman to sign minutes.

The county clerk is the clerk of the [~~board of~~] county [~~commissioners~~] legislative body. The records and minutes of the board must be signed by the chairman and the clerk.

Section 58. Section Amended.

Section 17-5-17, Utah Code Annotated 1953, is amended to read:

17-5-17. Precincts and districts — Board to create.

The [~~boards of~~] county [~~commissioners~~] legislative bodies in the several counties have jurisdiction and power to divide the county into precincts and into road, sanitary, and other districts required by law, and may change the same and create others as convenience requires.

Section 59. Section Amended.

Section 17-5-18, Utah Code Annotated 1953, as last amended by Chapter 198, Laws of Utah 1986, is amended to read:

17-5-18. Election districts.

(1) The [boards of] county [commissioners] legislative body may:

(a) establish, divide, abolish, and change election districts;

(b) appoint judges of election;

(c) canvass all election returns, except as otherwise provided by law;

(d) declare the election results; and

(e) order the county clerk to issue certificates of election.

(2) The [boards of] county [commissioners] legislative body shall alter or divide election districts whenever necessary so that each election district contains not more than 1,000 voters.

(3) No precinct or election district shall be established or abolished, nor may the boundaries of any precinct or district be altered or changed in the 90 days prior to any election.

(4) For the purpose of balloting on election day, [~~boards of~~] the county [~~commissioners~~] legislative body may establish a common polling place for two or more whole election districts according to the following requirements:

(a) the total population of the combined election district shall not exceed 3,000 voters;

(b) the combined election districts shall all lie within the same legislative district; and

(c) the election districts shall be combined for balloting purposes at least 90 days prior to the election.

(5) Each party organization in each of the election districts may designate checkers and watchers for the combined polling places as now prescribed by law.

Section 60. Section Amended.

Section 17-5-38, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1983, is amended to read:

17-5-38. County roads and airports — Acquisition and control — Retainage escrow.

(1) They may contract for, purchase or otherwise acquire when necessary rights of way for county roads over private property, and may institute proceedings for acquiring such rights of way as provided by law, and lay out, construct, maintain, control and manage county roads, sidewalks, ferries and bridges within the county, outside of incorporated cities, may designate the county roads to be maintained by the county within or extending through any incorporated city or town, which in no case shall be more than three in the same direction, and may abolish or abandon such county roads as are unnecessary for the use of the public in the manner provided by law. They may also lay out, construct, maintain, control and manage landing fields and hangars for the use of airplanes or other vehicles for aerial travel anywhere within the county.

(2) If any payment on a contract with a private contractor to construct county roads, sidewalks, ferries, and bridges under this section is retained or withheld, it shall be placed in an interest bearing ac-

count and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the [board of] county [commissioners] executive. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

Section 61. Section Amended.

Section 17-5-41, Utah Code Annotated 1953, is amended to read:

17-5-41. Franchises for ferries and bridges.

They may grant licenses and franchises for constructing and keeping in repair roads, bridges, and ferries and for the taking of tolls thereon. All persons operating any toll boat or ferry for the transportation of persons, vehicles, or livestock across any stream, river, or body of water in this state shall obtain a franchise for the operation of the same from the county [commissioners] executive of the county or counties in which such boat or ferry is operated. Whenever such boat or ferry is operated on a stream or body of water forming the boundary line between two adjoining counties, a franchise shall be obtained from the county [commissioners] executive of each of such counties.

Section 62. Section Amended.

Section 17-5-43, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1983, is amended to read:

17-5-43. Water and water rights — Acquisition and control — Retainage escrow.

(1) They may purchase, receive by donation, or lease any real or personal property or water rights necessary for the use of the county; may purchase or otherwise acquire the necessary real estate upon which to sink wells to obtain water for sprinkling roads and for other county purposes and may erect thereon pumping apparatus, tanks and reservoirs for the obtaining and storage of water for such purposes; may preserve, take care of, manage and control the same; may purchase, receive by donation or lease any water rights or stock or rights in reservoirs or storage companies or associations for the use of citizens of the county; may construct dams and canals for the storage and distribution of such waters; and may fix the price for and sell such water, water rights, stock, or rights in reservoir or storage companies or associations, with the dams and canals, as are not required for public use to citizens of the county.

(2) If any payment on a contract with a private contractor to construct dams and canals under this section is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the [board of] county [commissioners] executive. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a rata basis.

Section 63. Section Amended.

Section 17-5-45, Utah Code Annotated 1953, as last amended by Chapter 60, Laws of Utah 1983, is amended to read:

17-5-45. Courthouse, jail, hospital and other public buildings — Acquisition and control — Retainage escrow.

(1) They may erect, repair or rebuild, and furnish a courthouse, jail, hospital and such other public buildings as may be necessary, and join with cities and towns in the construction, ownership and operation of hospitals.

(2) If any payment on a contract with a private contractor to erect, repair, or rebuild public buildings under this section is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the [board of] county [commissioners] executive. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

Section 64. Section Amended.

Section 17-5-48, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1980, is amended to read:

17-5-48. Acquisition, management, and disposal of property.

(1) The [board of] county [commissioners] may purchase, receive, hold, sell, lease, convey, or otherwise acquire and dispose of any real or personal property or any interest in such property that it determines to be in the public interest.

(2) Any property interest acquired by the [board of] county [commissioners] shall be held in the name of the county unless specifically otherwise provided by law.

(3) The [board of] county [commissioners] legislative body shall provide by ordinance, resolution, rule, or regulation for the manner in which property shall be acquired, managed, and disposed of.

Section 65. Section Amended.

Section 17-5-61, Utah Code Annotated 1953, is amended to read:

17-5-61. Relief of sick persons.

It shall be the duty of the [board of] county [commissioners] executive, upon any complaint made to it that any person not an inhabitant of that county and not having a lawful settlement therein is lying sick or disabled therein, or is in distress without friends or money so that he or she is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case shall require. If any person not having a legal settlement in such county shall die within the county, and shall not leave money or other means to defray funeral expenses, it shall be the duty of the county [commissioners of such county] to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable

expenses thereof shall be paid upon the order of the [board of] county [commissioners] executive of such county in the same way that other claims against the county for the care, maintenance, and relief of the indigent sick or dependent poor persons are allowed and paid.

Section 66. Section Amended.

Section 17-5-62, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1977, is amended to read:

17-5-62. Tax for care, relief and burial of indigents — Hospitals, infirmaries — Manner of assessment, levy and collection.

The [board of] county [commissioners] legislative body may, if they deem it necessary and expedient so to do, annually at their session at which the annual tax levy for county purposes is fixed and levied, assess and levy a tax for the following purposes:

(1) The care, maintenance and relief of the indigent sick or dependent poor persons having a lawful settlement in the county;

(2) The temporary relief of indigent persons not having a lawful settlement in the county temporarily residing therein, and for the burial of such indigent persons who shall die within the county;

(3) The erection and maintenance of hospitals, infirmaries and farms in connection therewith;

(4) The employment of a superintendent for such county hospitals, infirmaries and any other necessary help therein; and

(5) The salary of the county physician for attending the indigent sick or dependent poor and other duties as provided by law.

The taxes herein authorized shall be collected in the same manner as other county taxes are assessed, levied and collected.

Section 67. Section Amended.

Section 17-5-64, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1977, is amended to read:

17-5-64. Commissioner of poor — Pauper clerks — Duties.

(1) (a) Except as provided in Subsection (b), the county executive is commissioner of the poor.

(b) The [board of] county [commissioners] executive, with the advice and consent of the county legislative body, may appoint[, if they deem it necessary and expedient so to do, one of their own number as] a commissioner of poor.

(2) Such commissioner of poor shall have, under control of the board, general care and supervision of the indigent sick or dependent poor persons of such county not otherwise provided for by law.

(3) It shall be the duty of such commissioner to keep his office at the county seat and to personally inform himself of the necessity of all expenditures of public money for the relief of indigent sick or dependent poor persons, to make all arrangements that may be required for the assistance of such persons who are not in the county hospital or infirmary and to certify all accounts of such expenditures.

(4) It shall be the duty of the commissioner of poor to visit regularly the county hospital and infirmary to keep himself informed of the condition thereof and of the inmates therein.

(5) The [board] county legislative body may also appoint a pauper clerk and one assistant to the pauper clerk at such compensation as may be fixed by the [board] county legislative body.

Section 68. Section Amended.

Section 17-5-65, Utah Code Annotated 1953, is amended to read:

17-5-65. Orders of board — Admission of patients — Private patients.

The board may make such orders regarding the indigent sick or dependent poor persons of the county as it may deem proper, and no person shall be received in any hospital or infirmary maintained by the county without an order of the county [commissioners] executive or of the commissioner of poor; provided, that the county [commissioners] executive or the commissioner of poor may authorize the admittance of private patients who are financially able to pay for the cost of care and maintenance at the hospital or infirmary; and provided further that said private patients shall be required to pay the cost of all care, treatment, and services received by them, and that the admittance of private patients will not mitigate against the use of said hospital or infirmary for indigent sick or dependent poor persons.

Section 69. Section Amended.

Section 17-5-73, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-5-73. County purchasing agent — Appointment — Compensation — Oath.

The county [governing] executive, with the advice and consent of the county legislative body, in each county having a taxable value in excess of $500,000,000 may appoint a county purchasing agent [to serve during the pleasure of the board at a compensation to be fixed by it]. The agent shall qualify by taking, subscribing, and filing the constitutional oath and giving bond to the county in a sum fixed by the board.

Section 70. Section Amended.

Section 17-5-74, Utah Code Annotated 1953, as last amended by Chapter 168, Laws of Utah 1967, is amended to read:

17-5-74. Powers and duties of purchasing agent.

The county purchasing agent under the direction and supervision of the [board of] county [commissioners] executive shall:

(1) Negotiate for the purchase of or contract for all supplies and materials required by the county, and shall submit all contracts and purchases so nego-

tiated to the [~~board of~~] county [~~commissioners~~] legislative body for approval and ratification. All such purchases shall be made in accordance with the provisions of Section 63-2-50.

(2) Keep an accurate and complete record of all purchases and a detailed disposition of the same, and shall whenever required by the [~~board of~~] county [~~commissioners~~] legislative body make a complete and detailed report to it of business transacted.

Section 71. Section Amended.

Section 17-5-76, Utah Code Annotated 1953, is amended to read:

17-5-76. Water survey — Cooperation with Utah Water Users' Association or subsidiary organization.

The [~~boards of~~] county [~~commissioners~~] legislative body of the several counties, or any of them jointly or separately, may cause water surveys to be made, collect data relating to the supply, distribution, and use of water or the necessity for drainage or other reclamation work and any information looking to the conservation of water or the reclamation of lands within the county or counties, and may compile and use or distribute such data or information in encouraging or aiding the conservation of water or the reclamation of lands within the county or counties. Money from the general fund of the county not exceeding $5,000 in any one year may be expended to cover the expense thereof; provided, that if any [~~board of~~] county [~~commissioners~~] legislative body so determines, such water surveys may be made and such data compiled and distributed by the Utah Water Users' Association, a nonprofit corporation of the state of Utah, or any district or county subsidiary organization thereto; in which event the money appropriated for that purpose by such [~~board of~~] county [~~commissioners~~] legislative body shall be paid to the Utah Water Users' Association, a nonprofit corporation of the state of Utah, or any district or county subsidiary organization [~~thereto~~], for the benefit of the county making such payment.

Section 72. Section Amended.

Section 17-5-77, Utah Code Annotated 1953, as last amended by Chapter 178, Laws of Utah 1986, is amended to read:

17-5-77. Ordinances — Power to enact — Penalty for violation.

The [~~board of~~] county [~~commissioners~~] legislative body may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by this title, and as are necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace, and good order, comfort, and convenience of the county and its inhabitants, and for the protection of property in the county; and may enforce obedience to ordinances with fines or penalties as the board deems proper, provided that the punishment of any offense shall be by fine, not to exceed the maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or by both fine and imprisonment. The [~~board of~~] county [~~commissioners~~] legislative body may pass ordinances to control air pollution.

Section 73. Section Amended.

Section 17-5-79, Utah Code Annotated 1953, is amended to read:

17-5-79. Study and improvement of county government — The county legislative body — Charges and expenses.

The several counties of the state of Utah[~~, through their boards of commissioners,~~] are authorized and empowered, either singly or in association, to study the processes and methods of county government with a view to improvement [~~thereof~~] and to cause to be assembled and presented to the legislature of the state of Utah or the Congress of the United States, or to or before the appropriate committees of either or both, such information and factual data with respect to the effect upon said counties, the taxpayers, and the people [~~thereof~~], of existing, pending or proposed legislation, as in the judgment of [~~such boards of~~] county [~~commissioners~~] executives and legislative bodies, will be in the interest of and beneficial to said counties, taxpayers, and people; and the charges and expenses incurred [~~hereunder~~] shall be proper claim against the funds of such counties, to be audited and paid as other county claims.

Section 74. Section Amended.

Section 17-5-80, Utah Code Annotated 1953, as last amended by Chapter 66, Laws of Utah 1979, is amended to read:

17-5-80. County resources — Power of board to provide for development.

The [~~boards of~~] county [~~commissioners~~] legislative body of the respective counties within the state are authorized and empowered to provide for the development of the county's mineral, water, manpower, industrial, historical, cultural, and other resources.

Section 75. Section Amended.

Section 17-5-81, Utah Code Annotated 1953, as enacted by Chapter 32, Laws of Utah 1965, is amended to read:

17-5-81. County resource development committee — Appointment of members — Terms — Compensation and expenses — Vacancies — Removal of members.

The [~~board of~~] county [~~commissioners~~] executive, with the advice and consent of the county legislative body of any county within the state is hereby authorized and empowered to appoint by resolution an unpaid commission of three or more members, to be known as the county resource development committee. One or more members of the [~~board of~~] county [~~commissioners~~] legislative body shall be designated by the [~~board of~~] county [~~commissioners~~] executive as members of such committee. Each of the other members of the committee shall be a resident of the county. The term of appointed members of the committee shall be two years and until their respec-

tive successors have been appointed. The members of the committee shall serve as such without compensation, except that the [board of] county [commissioners] legislative body may provide for reimbursement of the members of the committee for actual expenses incurred, upon presentation of proper receipts and vouchers. The [board of] county [commissioners] legislative body shall provide by ordinance for the filling of vacancies in the membership of the committee and for the removal of a member for nonperformance of duty or misconduct.

Section 76. Section Amended.

Section 17-5-82, Utah Code Annotated 1953, as enacted by Chapter 32, Laws of Utah 1965, is amended to read:

17-5-82. County resource development committee — Election of officers — Employment of executive director.

The county resource development committee may elect such officers from its members as it may deem advisable and may, with the consent and approval of the [board of] county [commissioners] legislative body, employ an executive director for the committee.

Section 77. Section Amended.

Section 17-5-83, Utah Code Annotated 1953, as last amended by Chapter 66, Laws of Utah 1979, is amended to read:

17-5-83. County resource development committee — Functions of committee.

It shall be the function of the county resource development committee to assist in promoting the development of the county's mineral, water, manpower, industrial, historical, cultural, and other resources, and to make such recommendations to the [board of] county [commissioners] legislative body for resource development programs as it may deem advisable.

Section 78. Section Amended.

Section 17-5-84, Utah Code Annotated 1953, as last amended by Chapter 66, Laws of Utah 1979, is amended to read:

17-5-84. County resources — Power of board to contract with other authorities.

The [board of] county [commissioners] executives may cooperate with and enter into contracts with municipalities, local communities, other counties, and the state, for the purpose of promoting the development of the economic, historical, and cultural resources of their respective counties.

Section 79. Section Amended.

Section 17-5-85, Utah Code Annotated 1953, as enacted by Chapter 32, Laws of Utah 1965, is amended to read:

17-5-85. County resources — Expenditure of county funds authorized.

The [board of] county [commissioners] legislative body may expend county funds as are deemed advisable to carry out the purposes of this act.

Section 80. Section Amended.

Section 17-5-86, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1977, is amended to read:

17-5-86. Rewards for information — Law enforcement — Protection of county property.

(1) The [board of] county [commissioners] legislative body of each county may appropriate funds from the county treasury for the offering and payment of rewards for information which directly assists in the enforcement of law and protection of county property. The offering and payment of rewards shall be made under conditions and limitations as established by the [board of] county [commissioners] legislative body.

(2) With the prior approval of the [board of] county [commissioners] legislative body, any county officer or agency can offer rewards to the same extent and for the same purposes authorized by this section.

Section 81. Section Amended.

Section 17-5-87, Utah Code Annotated 1953, as enacted by Chapter 75, Laws of Utah 1980, is amended to read:

17-5-87. County may adopt Utah Procurement Code.

The [board of] county [commissioners] legislative body of each county may adopt any or all of the provisions of the Utah Procurement Code, Sections 63-56-1 et seq., or the rules and regulations promulgated pursuant thereto.

Section 82. Section Amended.

Section 17-5-88, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

17-5-88. Contracting for management, maintenance, operation, or construction of jails.

(1)(a) With the approval of the sheriff, the county [governing body] executive may contract with private contractors for management, maintenance, operation, and construction of county jails.

(b) The county [governing body] executive may include a provision in the contract that allows use of a building authority created under the provisions of Title 17A, Chapter 3, Part 9, to construct or acquire a jail facility.

(c) The county [governing body] executive may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If the county [governing body] executive contracts only for the management, maintenance, or operation of a jail, the county [governing body] executive shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the county [governing] legislative body;

(b) establish training standards that must be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the county for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the county;

(e) require the private contractor to show evidence of liability insurance protecting the county and its officers, employees, and agents from liability arising from the construction, operation, or maintenance of the jail, in an amount not less than those specified in Title 63, Chapter 30, Governmental Immunity Act;

(f) require the private contractor to:

(i) receive all prisoners committed to the jail by competent authority; and

(ii) provide them with necessary food, clothing, and bedding in the manner prescribed by the governing body; and

(g) prohibit the use of inmates by the private contractor for private business purposes of any kind.

(3) A contractual provision requiring the private contractor to maintain liability insurance in an amount not less than the liability limits established by Title 63, Chapter 30 may not be construed as waiving the limitation on damages recoverable from a governmental entity or its employees established by that chapter.

Section 83. Section Amended.

Section 17-5-89, Utah Code Annotated 1953, as enacted by Chapter 181, Laws of Utah 1990, is amended to read:

17-5-89. Mental health and substance abuse services.

The [~~board of~~] county [~~commissioners~~] legislative body of each county shall provide mental health services in accordance with Title 62A, Chapter 12, and substance abuse services in accordance with Title 62A, Chapter 8.

Section 84. Section Amended.

Section 17-8-1, Utah Code Annotated 1953, is amended to read:

17-8-1. County legislative body — Powers — Contracts with United States — Construction of flood control project.

A [~~board of~~] county [~~commissioners~~] may contract with the United States of America, or any agency thereof, for the construction of any flood control project within the county designed to abate or control flood waters or any excessive or unusual accumulation of water in any natural or artificial basin, stream, or body of water or for the protection of life and property against the danger, menace, injury or damage resulting from said waters.

Section 85. Section Amended.

Section 17-8-2, Utah Code Annotated 1953, is amended to read:

17-8-2. Maintenance of project — Acquisition of property.

A [~~board of~~] county [~~commissioners~~] may contract to maintain such flood control projects after the construction work is completed, which maintenance may be without expense to the United States of America, and may contract to and acquire easements and rights of way to relocate public roads or bridges when the replacement shall be rendered necessary by the construction of any flood control project and may give satisfactory assurance to the United States of America, or any agency thereof, that the location, relocation, building or rebuilding of such roads, rights of way, or bridges shall be done without expense to the United States of America or any agency thereof.

Section 86. Section Amended.

Section 17-8-5, Utah Code Annotated 1953, as last amended by Chapter 347, Laws of Utah 1983, is amended to read:

17-8-5. Clearing, improving, fencing, and construction of natural channels, sewers, and drains — Enforcement of laws and regulations.

In anticipation of and to provide for the carrying away and the safe disposal of natural storm and flood waters, the [~~board of~~] county [~~commissioners~~] may remove any obstacle from any natural channels within the county and the incorporated municipalities in the county. For the same purpose the [~~board~~] county may plan for and construct new channels, storm sewers, and drains to serve as though they were natural channels. The [~~board~~] county may cause such channels, storm sewers, and drains to be surveyed, and the county legislative body may, by ordinance, establish their location and dimensions. The [~~board~~] county legislative body may promulgate regulations to prevent the destruction or obstruction of these channels, storm sewers, and drains, and may provide for the enforcement of those regulations. The [~~board of commissioners~~] county legislative body may also provide for the maintenance, improvement, and fencing of all such channels, including covering or replacement with buried conduits. To implement the establishment, clearing, protection, and continued use of such channels, storm sewers, and drains, the [~~board of~~] county [~~commissioners~~] may acquire, by right of eminent domain necessary easements and rights of way. All laws and sanitary regulations against the pollution of water in natural streams, canals, and lakes shall be enforced by the [~~boards of~~] county [~~commissioners~~] executives in their respective counties, or, by the state, through the attorney general and in cooperation with the state board of health, state fish and game commission, and the several [~~boards of~~] county [~~commissioners~~] legislative bodies.

Section 87. Section Amended.

Section 17-8-5.5, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1973, is amended to read:

17-8-5.5. Protection of channels and flood plains — Acquisition of land.

The [~~board of~~] county [~~commissioners~~] legislative body may also provide by ordinance for the protection and use of flood channels and present flood plains on rivers, streams, and canals located within the county and the incorporated municipalities in the county and may establish by ordinance the boundaries of these flood channels and present flood plains. The [~~board of~~] county [~~commissioners~~] may acquire and hold[~~, in behalf of the county,~~] by gift[~~,~~] or purchase, such lands, rights of way, easements, or other interests in property within the established boundaries of these flood channels and present flood plains. Flood plain as used herein means the lands along the course of the river or stream which is periodically flooded and for which flood control protective works would normally be provided or desirable.

Section 88. Section Amended.

Section 17-8-7, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1961, is amended to read:

17-8-7. Declaration of drought emergency — Appropriation — Tax levy.

The [~~county board of commissioners~~] county legislative body of each county may at any regular meeting[~~,~~] or at a special meeting called for such purpose, declare that an emergency drought exists in said county; and thereupon may appropriate from the moneys not otherwise appropriated in the county general fund such funds as shall be necessary for the gathering of information upon, and aiding in any program for increased precipitation within said county or in conjunction with any other county or counties, or that if there are not sufficient funds available in the county general fund for such purpose, [~~said board of~~] the county [~~commissioners~~] legislative body may, during any such emergency so declared by [~~said commissioners~~] them, assess, levy, and direct the county to collect annually to aid in any program of increased precipitation. The provisions of Sections 17-19-1 to 17-19-28 relating to budgeting shall not apply to appropriations necessitated by such an emergency.

Section 89. Section Amended.

Section 17-11-2, Utah Code Annotated 1953, is amended to read:

17-11-2. Petition for — Only once in four years.

Whenever there shall be presented to the [~~board of~~] county [~~commissioners~~] legislative body of any county a petition signed by qualified electors of such county, in number equal to a majority of the votes cast at the preceding general election, praying for th · submission of the question of the removal of the county seat, it shall be the duty of the [~~board of~~] county [~~commissioners~~] legislative body to submit the question of such removal at the next general election to the qualified electors of such county; and such election shall be conducted and the returns canvassed in all respects as provided by law for the conducting of general elections and canvassing the returns thereof. A proposition of removal of the county seat shall not be submitted in the same county more than once in four years, or within four years from the time that any such proposition has been theretofore submitted.

Section 90. Section Amended.

Section 17-12-1, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-12-1. Authority and applicable procedure for issuance of bonds — Application of proceeds — Debt limit.

Except as otherwise provided under Section 17-4-4, the county [~~governing~~] legislative body may contract a bonded indebtedness in the manner and subject to the conditions provided under the Utah Municipal Bond Act. The revenue derived from the sale of bonds shall be applied only to the purpose or purposes specified in the order of the board. If there is any surplus, it shall be applied to the payment of the bonds. In no event may any county become so indebted to an amount, including existing indebtedness, exceeding 2% of the fair market value, as defined under Section 59-2-102, of the taxable property in the county as computed from the last equalized assessment roll for county purposes prior to the incurring of the indebtedness.

Section 91. Section Amended.

Section 17-12-2, Utah Code Annotated 1953, as enacted by Chapter 33, Laws of Utah 1957, is amended to read:

17-12-2. Bond elections — Consolidating voting districts and precincts — Voting places.

The [~~board of~~] county [~~commissioners~~] legislative body may in any bond election consolidate voting districts and precincts and may select for the purposes of such election any voting places which it considers desirable, without regard to regularly established voting precincts and the voting places therefor.

Section 92. Section Amended.

Section 17-12-4, Utah Code Annotated 1953, as enacted by Chapter 25, Laws of Utah 1963, is amended to read:

17-12-4. Requirements in connection with bond issue for auditoriums, etc., and "convention complex" facilities — Board of directors required — Use of revenues from facilities — Purpose of act — Rights of bondholders.

Any [~~board of~~] county [~~commissioners~~] legislative body adopting proceedings authorizing the issuance of county bonds for the purpose of acquiring, improving, extending, furnishing, and equipping auditoriums, sports arenas, stadiums, convention centers, and all properties and facilities ordinarily forming part of a so-called "convention complex," or

for any part or combination of the foregoing, shall in the proceedings authorizing such bonds:

(1) Provide for the creation of a board of directors which, so long as any of the bonds remain outstanding either in original or refunded form, shall have complete management and control of the facilities acquired with the proceeds of the bonds. Such board shall have the number of members, possessing such qualifications and selected for such terms, and shall operate pursuant to such rules and regulations as may be provided in such proceedings. The members of such board shall serve without compensation except for reimbursement of expenses actually incurred in the performance of their duties. After the appointment and organization of any board of directors, all vacancies thereafter occurring, whether by expiration of term or otherwise, shall be filled by majority vote of the remaining members of the board. Subject to the provisions of such proceedings, the members of the board of directors shall have the powers and duties ordinarily enjoyed by the directors of a private corporation operating similar facilities.

(2) Provide that all revenues of every nature derived from the operation of the facilities so acquired with bond proceeds and not expended in the reasonable and proper costs of maintaining and operating the facilities, including the making of necessary repairs and replacements, be pledged to and utilized for the payment of principal of and interest on the bonds and, if so provided, the creation of a reserve for such purpose.

This act is adopted for the purpose of eliminating or reducing so far as possible the ad valorem taxes necessary to be levied for the payment of such bonds and for the purpose of improving the security of such bonds, and accordingly the holders of the bonds from time to time shall have a vested and enforceable contract right in the provisions of this act and in the provisions of the bond proceedings adopted pursuant hereto.

Section 93. Section Amended.

Section 17-13-1, Utah Code Annotated 1953, is amended to read:

17-13-1. Counties to provide funds.

It shall be the duty of the county [~~commissioners~~] legislative body of each county to provide annually funds in an amount sufficient to meet the purposes of this chapter, but not exceeding in any one year the sum of $10,000; provided, that in counties containing a population of 100,000 or more the amount of such funds shall not exceed $50,000 annually, such funds to be expended for the aid of widowed mothers who are dependent upon their own efforts for the maintenance of their children. No part of the funds above provided for shall be expended for administration or purposes other than the aid of widowed mothers.

Section 94. Section Amended.

Section 17-13-2, Utah Code Annotated 1953, is amended to read:

17-13-2. Monthly allowance.

The allowance to any one of such mothers shall not exceed $40 a month, whether she has but one child or more than one child under the age of sixteen years; the amount and manner and time of payment shall be determined by the [~~board of~~] county [~~commissioners~~] executive according to policies approved by the county legislative body.

Section 95. Section Amended.

Section 17-13-3, Utah Code Annotated 1953, is amended to read:

17-13-3. Conditions and restrictions.

Such allowance shall be made by the county [~~commissioners only upon~~] executive according to the policies approved by the county legislative body subject to the following conditions:

(1) The child or children for whose benefit the allowance is made must be living with their mother.

(2) The allowance shall be made only when in the absence of such allowance a widowed mother would be required to work regularly away from her home and children.

(3) The widowed mother must, in the judgment of the county [~~commissioners~~] executive, be a proper person, morally, physically and mentally for the bringing up of her children.

(4) Such allowance shall, in the judgment of the county [~~commissioners~~] executive, be necessary to save the child or children from neglect.

(5) No mother shall receive the benefit of this chapter who shall not have been a resident of the county in which application for aid is made for at least two years next before the making of such application.

(6) No mother shall receive the benefit of this chapter who has received support from public funds within one year before taking up her residence in the county in which such application is made.

(7) If at the date of her application or at any time thereafter there is living with any applicant, as a member of her household, any of her children [~~sixteen~~] 16 years of age, or any person or persons not of her immediate family, and such child or persons are not contributing their proportionate individual share of her household expense, the county [~~commissioners~~] executive shall not during such time grant or render to such applicant any assistance hereunder.

(8) The county [~~commissioners~~] executive shall not give assistance under the provisions of this chapter unless monthly accounts are rendered to the county [~~commissioners~~] executive by the applicant, which accounts shall be so rendered before further assistance is given, and the county [~~commissioners~~] executive shall decide as to the sufficiency of these reports and may require more complete information from the applicant.

Section 96. Section Amended.

Section 17-13-4, Utah Code Annotated 1953, is amended to read:

17-13-4. Age limit of children — Discontinuance and modification of allowance.

Whenever any child shall reach the age of sixteen years, any allowance made the mother for the benefit of such child shall cease. The county [commissioners] executive may[, in their discretion,] at any time discontinue or modify the allowance to any widowed mother or for any child.

Section 97. Section Amended.

Section 17-13-5, Utah Code Annotated 1953, is amended to read:

17-13-5. In case funds prove insufficient.

Should the fund herein authorized be sufficient to permit an allowance to only a part of the persons coming within the provisions of this chapter, the county [commissioners] executive shall select those cases in most urgent need of such allowance.

Section 98. Section Amended.

Section 17-13-8, Utah Code Annotated 1953, is amended to read:

17-13-8. Taxpayers may object.

In each case where allowance is made to any mother under the provisions of this chapter an order to that effect shall be entered upon the records of the county [commissioners] making such allowance, and it shall be the right of any taxpaying citizen at any time to file [a motion] an appeal to the county legislative body to set aside or modify such allowance; and [on] upon such [motion] appeal, the county [commissioners] legislative body shall hear evidence and confirm, modify or set aside the allowance theretofore made.

Section 99. Section Amended.

Section 17-15-1, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1961, is amended to read:

17-15-1. Ordinances — Effective dates — Publication — Adoption of ordinances printed in book form.

The enacting clause of all ordinances of the board shall be as follows: "The [Board of] County [Commissioners] Legislative Body of the County of ____ ordains as follows:" Every ordinance shall be signed by the chairman of the board and attested by the clerk. On the passage of all ordinances the votes of the several members of the board shall be entered on the minutes, and all ordinances shall be entered at length in the ordinance book. No ordinance passed by the board shall take effect within less than fifteen days after its passage, and until the same shall have been published, with the name of the members voting for and against the same, for at least one publication in some newspaper published in and having general circulation in the [country] county if there is one, and if there is none published in the [country] county then posted at the courthouse door at least one week. Any ordinance printed by authority of the board in book form, or any general revision of county ordinances printed in book form, may be adopted by an ordinance making reference to such printed ordinance or revision if not less than three copies of such ordinance or revision are filed in the office of the county clerk at the time of adoption for use and examination by the public. Ordinances establishing rules and regulations for the construction of buildings, the installation of plumbing, the installation of electric wiring or other related or similar work, where such rules and regulations have been printed as a code in book form, may be adopted by reference to such codes if not less than three copies thereof are filed in the office of the county clerk at the time of the adoption of such ordinance for use and examination by the public. Ordinances which in the opinion of the board are necessary for the immediate preservation of the peace, health or safety of the county and the inhabitants thereof may, if so provided in the ordinance, take effect immediately upon publication in one issue of a newspaper published in and having general circulation in the county, if there is one, and if there is none published in the county, then immediately after posting at the courthouse door. Ordinances, if so provided therein, may take effect at a later date than provided herein. An order entered in the minutes of the board that an ordinance has been duly published or posted shall be prima-facie proof of such publication or posting.

Section 100. Section Amended.

Section 17-15-2, Utah Code Annotated 1953, is amended to read:

17-15-2. Investigation by commissioners — Witnesses — Hearings.

The [board of] county [commissioners] legislative body may investigate any matter pertaining to the county or its business or affairs or any officer thereof, and may require the attendance of witnesses and take evidence therein. At such investigations any member of the board may administer oaths to witnesses. Whenever the board shall have appointed any member of its body a committee upon any subject or matter and shall have conferred upon him power to hear or take evidence therein such committee shall have the same powers in the premises as the board itself.

Section 101. Section Amended.

Section 17-15-3, Utah Code Annotated 1953, as last amended by Chapter 232, Laws of Utah 1991, is amended to read:

17-15-3. Erection and repair of public buildings or bridges — Contracts — Bids — Payment and performance bonds — Retainage escrow.

(1) (a) Until plans and specifications have been made and adopted by the county [governing] executive body, the [governing body] county may not erect or repair, or contract for the erection or repair of, any courthouse, jail, hospital, or other public building or bridge where the expenditure exceeds $25,000.

(b) All buildings and bridges shall be erected or repaired by contract let to the lowest responsible bidder after publication of notice at least once a week for three consecutive weeks in a newspaper of general circulation published in the county, or, if there is no such newspaper, then after posting such notice for at least 20 days in at least five public places in the county.

(c) The county [~~governing body~~] executive may reject any or all bids.

(d) The person to whom any contract to erect or repair buildings and bridges is awarded shall execute bonds under Sections 14-1-18 and 63-56-38.

(2) (a) Any payment on a contract with a private contractor to erect or repair buildings and bridges under this section that is retained or withheld shall be placed in an interest-bearing account.

(b) The interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the county [~~governing body~~] executive.

(c) The contractor shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

Section 102. Section Amended.

Section 17-15-4, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1988, is amended to read:

17-15-4. Approval of cost-increase changes in plans and specifications — Delegation.

(1) Whenever the county [~~governing body~~] executive adopts plans and specifications for the erection, alteration, construction, or repair of any public building, bridge, or other public structure, the plans and specifications may not be altered or changed in any manner that would increase the cost of erecting, altering, constructing, or repairing the building, bridge, or structure, unless the governing body first orders by unanimous vote that the plans and specifications be altered or changed.

(2) The [~~governing~~] county legislative body may adopt policies and procedures to delegate authority to approve alterations or changes in plans and specifications to a county employee, including the county engineer, architect, or surveyor, or the division or department director.

Section 103. Section Amended.

Section 17-15-5, Utah Code Annotated 1953, as last amended by Chapter 71, Laws of Utah 1988, is amended to read:

17-15-5. Changes or alterations in contract — Liability of county.

(1) Whenever the county [~~governing body~~] executive enters into a contract for the erection, construction, alteration, or repair of any public building, bridge, or other public structure, the contract may be altered or changed only:

(a) by unanimous vote of the [~~governing~~] county legislative body; and

(b) with the consent of the contractor.

(2) Whenever any change or alteration in the contract is ordered:

(a) the particular change or alteration shall be specified in writing; and

(b) the [~~governing body~~] county executive and the contractor shall agree to any cost incurred due to the change or alteration.

(3) (a) The [~~board~~] county legislative body may adopt policies and procedures to delegate authority for change order approvals to a county employee, including the county executive, county engineer, architect, surveyor, or the division or department director.

(b) Unless the requirements of this section are met, the county [~~governing body~~] is not liable for any extra work done on the buildings or public structures.

Section 104. Section Amended.

Section 17-15-7, Utah Code Annotated 1953, is amended to read:

17-15-7. Award of contract — Bond required.

(1) The [~~board of~~] county [~~commissioners~~] executive shall [~~at its first meeting~~] in July of each year open such bids and award to the lowest competent bidder the contract for furnishing such books, blanks, and stationery[~~; provided, that the board~~].

(2) The county executive may accept or reject any or all bids, or may accept or reject a part of any bid. The person to whom the contract is awarded shall give bond for the faithful performance of his contract.

Section 105. Section Amended.

Section 17-15-8, Utah Code Annotated 1953, is amended to read:

17-15-8. Bids for notices and advertising.

At the time of inviting bids for books, blanks, and stationery, the auditor shall also invite bids for the publishing of county reports, notices, and advertisements during the ensuing year beginning July 1. The bids for the same must be filed with the auditor on or before the 1st day of July, and at the time of opening bids for furnishing books, blanks, and stationery the [~~board of~~] county [~~commissioners~~] executive shall open the bids for publishing reports, notices, and advertisements[~~;~~] and shall award the same to the lowest competent bidder, circulation considered; provided, that the [~~board of~~] county [~~commissioners~~] executive may reject any or all bids and readvertise.

Section 106. Section Amended.

Section 17-15-10, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1963, is amended to read:

17-15-10. Claims against county — Presentation.

The [~~board of~~] county [~~commissioners~~] executive shall not hear or consider any claim of any person against the county, nor [~~shall~~] may the [~~board~~] county executive credit or allow any claim or bill against the county, unless the same is itemized, giving names, dates, and particular service rendered, or until it has been passed upon by the county auditor. If the claim is for service of process, it shall state

the character of process served, upon whom, the number of days engaged, and the number of miles traveled; if for materials furnished, to whom, by whom ordered, quantity and price agreed upon. Every claim against the county must be presented to the county auditor within a year after the last item of the account or claim accrued. In all cases, claims shall be duly substantiated as to their correctness and as to the fact that they are justly due. If the [~~board~~] county executive shall refuse to hear or consider a claim because it is not properly made out, [it] he shall cause notice of the fact to be given to the claimant or to his agent[;] and shall allow sufficient time for the same to be properly itemized and substantiated.

Section 107. Section Amended.

Section 17-15-13, Utah Code Annotated 1953, is amended to read:

17-15-13. Judgments against county — Payment.

When any judgment is obtained against a county, the same must be paid as are other county charges. The [~~board of~~] county [~~commissioners~~] legislative body shall levy and [~~collect~~] authorize the collection of a sufficient amount of revenue to pay off and discharge such judgment in addition to the ordinary expenses of the county, but the property of the county and of the persons owning property situated or liable to taxation therein shall in no case be liable to judgment lien or to seizure or sale upon execution or other process of any court.

Section 108. Section Amended.

Section 17-15-14, Utah Code Annotated 1953, is amended to read:

17-15-14. Attorney to approve claims of commissioners.

All claims against the county presented by any member of the [~~board of~~] county [~~commissioners~~] legislative body for expenses must be itemized and verified as other claims, and must state that the service has been actually rendered, and, before allowance, such claims must be presented to the county attorney, who must endorse thereon, in writing, his opinion as to the legality thereof. If the county attorney declares the claim illegal, he must state specifically wherein it is illegal, and the claim must then be rejected by the board.

Section 109. Section Amended.

Section 17-15-16, Utah Code Annotated 1953, is amended to read:

17-15-16. Warrants — Payment — Registration — Duty of auditor.

Warrants drawn by order of the [~~board of~~] county [~~commissioners~~] executive on the county treasurer for current expenses during each year must specify the liability for which they are drawn, when they accrued, and the funds from which they are to be paid, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered[;] and thereafter paid in the order of registration. Accounts for county charges of every description must bo presented to the auditor and [~~board of~~] county [~~commissioners,~~] executive to be audited as prescribed in this title.

Section 110. Section Amended.

Section 17-16-3, Utah Code Annotated 1953, is amended to read:

17-16-3. Consolidation of offices.

In counties where the [~~board of~~] county [~~commissioners~~] legislative body, by proper ordinance, shall so enact the duties of the above mentioned officers may be consolidated in such manner as the board may decide; and in counties where the duties of said officers have been or may hereafter be consolidated the [~~board of~~] county [~~commissioners~~] legislative body thereof, whenever in their discretion the public interest will be best subserved thereby, by proper ordinance, may elect to separate the duties so consolidated and reconsolidate them in any other manner or may separate duties without reconsolidation and provide that the duties of each office shall be performed by a separate person; provided, that no such ordinance shall be passed to take effect within less than three months after the passage thereof, and every such ordinance shall take effect on the first Monday of January next succeeding a general election.

Section 111. Section Amended.

Section 17-16-7, Utah Code Annotated 1953, as last amended by Chapter 152, Laws of Utah 1988, is amended to read:

17-16-7. County legislative body — Duties — Appointments — Liability of principal.

(1) Every county or precinct officer, including any elected county executive, except a county commissioner or county council member, may with the consent of the [~~governing body of the~~] county legislative body appoint deputies and assistants as necessary for the discharge of the duties of his office.

(2) The [~~governing body of the~~] county legislative body shall provide the clerk of the district court or circuit court in those counties where the county clerk performs court clerk functions, deputies and assistants for the business of the district courts and circuit courts as considered necessary and advisable by the judge or judges of the district and circuit court.

(3) The appointment of a deputy shall be made in writing and filed in the office of the county clerk. Until the appointment is made and filed, and the person has taken the oath of office as a deputy, he is not a deputy. An officer appointing a deputy is liable for all official acts of the deputy.

Section 112. Section Amended.

Section 17-16-9, Utah Code Annotated 1953, as last amended by Chapter 36, Laws of Utah 1957, is amended to read:

17-16-9. Officers at county seats — Office hours.

The clerks, recorders and treasurers of all counties, and except in counties having a population of less than 8,000, all other county officers must have

their offices at the county seats; and in counties having a population of 20,000 and over, the clerk, sheriff, recorder, auditor, treasurer, assessor and attorney must keep their offices open for the transaction of business from 9 [o'clock] a.m. until 5 [o'clock] p.m. except Saturdays when said offices shall be open for the transaction of business from 9 [o'clock] a.m. until 1 [o'clock] p.m.; provided that when authorized by resolution of the [board of] county [commissioners] legislative body county offices may remain closed on Saturday. Should the governing body authorize a Saturday closing, then the hours served by the employees of the county shall not be less than under their present schedule. Any act authorized, required or permitted to be performed at or by, or with respect to, any such county municipal office on a Saturday when the county municipal office is closed, may be so performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

Section 113. Section Amended.

Section 17-16-11, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-16-11. Official bonds.

The [board of] county [commissioners] legislative body shall prescribe by ordinance the amount in which the following county and precinct officers shall execute official bonds before entering upon the discharge of the duties of their respective offices, viz.: county clerk, county auditor, sheriff, county attorney, county recorder, county assessor, county surveyor, justice court judge, and constable, and the board may by ordinance require any deputy or assistant of any such officer to execute an official bond before entering upon the discharge of the duties of his office. The amount in which the county treasurer shall execute an official bond shall be prescribed by the State Money Management Council. If surety company bonds are taken, the premium for such of the bonds as the county [commissioners] legislative body shall specify by ordinance shall be paid out of the county funds. The judge or judges of the district court of the county shall prescribe the amount in which each member of the [board of] county [commissioners] legislative body of the county shall execute an official bond before entering upon the discharge of the duties of his office. If surety company bonds are taken and if the county [commissioners] legislative body shall so direct by ordinance the premium for each such bond shall be paid out of the county funds. The bonds and sureties of the county [commissioners] legislative body must, before the bonds can be recorded and filed, be approved by one of the judges. The bonds and sureties of all other county and precinct officers must be approved by the [board of] county [commissioners] legislative body before the bonds can be filed and recorded. All persons offered as sureties on official bonds shall be examined on oath touching their qualifications, and no person, other than a surety company, shall be admitted as surety on any bond unless he is a resident and freeholder within this state and is worth in real or personal property, or both, situate in this state the amount of his undertaking over and above all just debts and liabilities exclusive of property exempt from execution. All official bonds shall be recorded in the office of the county recorder and then filed and kept in the office of the county clerk. The official bond of the county clerk after being recorded shall be filed and kept in the office of the county treasurer.

Section 114. Section Amended.

Section 17-16-14, Utah Code Annotated 1953, as last amended by Chapter 41, Laws of Utah 1969, is amended to read:

17-16-14. Salaries of county officers.

The annual salaries of the officers of all counties in the state shall be fixed by the respective [boards of] county [commissioners] legislative bodies, provided no changes shall be made in existing salaries of county officers until the [board of] county [commissioners] legislative body in a county desiring to change existing salaries of county officers shall first hold a public hearing at which all interested persons shall be given an opportunity to be heard.

Section 115. Section Amended.

Section 17-16-17, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-16-17. Change of class — Effect on salaries — Salaries for new counties.

If the taxable value of any existing county has been reduced below or raised above the class and rank first assumed, the county [governing] legislative body of the county shall designate the class to which the county has been reduced or raised, and the county is in that class, and the salaries of county officers shall be adjusted on or before January 1 next succeeding by the county [governing] legislative body, but in no event may the salaries be reduced for the term for which the officers were elected and are qualified. The county [governing] legislative body in a newly created county shall at its first meeting after the organization of the county, for the purpose of fixing salaries and compensation of county officers, determine to which class the county belongs, and fix the salaries for the first term of the officers accordingly.

Section 116. Section Amended.

Section 17-16-18, Utah Code Annotated 1953, is amended to read:

17-16-18. Salaries paid out of general fund.

The salaries of county officers must be paid monthly out of the general fund or the salary fund, as the case may be, of the county upon the order of the [board of] county [commissioners] legislative body.

Section 117. Section Amended.

Section 17-16-19, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1953, is amended to read:

17-16-19. Salaries to be full compensation — Compensation for deputies.

The salaries herein provided for shall be full compensation for all services of every kind and description rendered by the officers named herein; and where deputies or assistants have been allowed to any such officers the salary of any deputy or assistant shall be fixed by the [~~board of~~] county [~~commissioners~~] legislative body, and shall be a county charge.

Section 118. Section Amended.

Section 17-16-20, Utah Code Annotated 1953, is amended to read:

17-16-20. Salaries in case of combined offices.

Whenever the [~~board of~~] county [~~commissioners~~] legislative body shall combine the duties of any county officers the salary of the person discharging the duties of such offices shall be fixed at a sum not exceeding the highest salary paid to either of the officers whose offices are so combined, in addition to an amount not exceeding one-half of the salary fixed for the other officer, when only two offices are combined, or when more than two offices are combined, in addition to such highest salary, one-third of the combined salaries of such other officers.

Section 119. Section Amended.

Section 17-16a-5, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1983, is amended to read:

17-16a-5. Compensation for assistance in transaction involving county — Public disclosure and filing required.

(1) No elected or appointed officer may receive or agree to receive compensation for assisting any person or business entity in any transaction involving the county in which he is an officer unless he files with the county [~~commission~~] legislative body a sworn statement giving the information required by this section, and discloses in open meeting to the members of the body of which he is a member, immediately prior to the discussion, the information required by Subsection (3).

(2) The statement required to be filed by this section shall be filed ten days prior to the date of any agreement between the elected or appointed officer and the person or business entity being assisted or ten days prior to the receipt of compensation by the business entity. The statement is public information and is available for examination by the public.

(3) The statement and disclosure shall contain the following information:

(a) The name and address of the officer;

(b) The name and address of the person or business entity being or to be assisted, or in which the appointed or elected official has a substantial interest; and

(c) A brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

Section 120. Section Amended.

Section 17-16a-6, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1983, is amended to read:

17-16a-6. Interest in business entity regulated by county — Disclosure.

Every appointed or elected officer who is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the county in which he is an elected or appointed officer shall disclose the position held and the precise nature and value of his interest upon first becoming appointed or elected, and again during January of each year thereafter during which he continues to be an appointed or elected officer. The disclosure shall be made in a sworn statement filed with the county [~~commission~~] legislative body. The commission shall report the substance of all such disclosure statements to the members of the governing body or may provide to the members of the governing body, copies of the disclosure statement within 30 days after the statement is received. This section does not apply to instances where the value of the interest does not exceed $2,000, and life insurance policies and annuities shall not be considered in determining the value of any such interest.

Section 121. Section Amended.

Section 17-17-2, Utah Code Annotated 1953, as enacted by Chapter 194, Laws of Utah 1992, is amended to read:

17-17-2. Assessor to be registered appraiser.

(1) In addition to the requirements of Section 17-16-1, any person elected to the Office of County Assessor after November 1, 1992, shall be a state registered appraiser as defined in Title 61, Chapter 2b, prior to the expiration of 18 months from the day on which his term of office begins.

(2) If an assessor fails to meet the requirement of this section, the county [~~governing body~~] executive shall contract with a state registered appraiser to assist the county assessor with the appraisal functions of the office.

Section 122. Section Amended.

Section 17-18-2, Utah Code Annotated 1953, is amended to read:

17-18-2. Legal adviser to commissioners.

The county attorney is the legal adviser of the [~~board of~~] county [~~commissioners~~]. He must attend [~~its~~] meetings of the county legislative body when required, and must oppose all claims and accounts against the county when he deems them unjust or illegal.

Section 123. Section Amended.

Section 17-19-1, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-19-1. County auditor's powers and duties.

(1) All persons holding claims against a county shall present the claims to the county auditor.

(2) The county auditor shall:

(a) investigate and examine all of those claims;

(b) recommend approval or disapproval of each of those claims and endorse the recommendation upon each claim;

(c) report the claims and his recommendation to the county [~~governing body at the next regular meeting~~] executive after the investigation is completed; and

(d) keep, in a book kept for that purpose, a complete record of all claims, his recommendation on the claims, the reasons for the recommendation, and the action of the board on the claims.

(3) Before any warrant for the payment of any bills, claims, accounts, or charges for materials of any kind or nature that are purchased by or on behalf of the county by any of the county officers or contracted for by the county [~~governing~~] executive body may be paid, the county auditor shall:

(a) investigate, examine, and inspect the bills, claims, accounts, or charges; and

(b) recommend approval or disapproval of each bill, claim, account, or charge.

(4) (a) At least annually, the county auditor shall examine the books and accounts of the county [~~governing body~~] executive, the county legislative body, the county assessor, county attorney, county treasurer, county clerk, county recorder, county sheriff, and county surveyor.

(b) At least annually, the county auditor shall examine the books and accounts of the justice court judges.

(c) The county auditor may examine the books and accounts of all other county offices or administrative units of the county.

(5) (a) To fulfill the requirements of this section, each county officer, office, or administrative unit shall give the county auditor complete and free access to all books, records, and papers.

(b) (i) If the county auditor finds that the books and accounts of any county officer, office, or administrative unit are not kept according to law or that incorrect or improper reports have been made by those officers, offices, or administrative units, he shall report his findings to the county [~~governing body~~] executive at their next regular meeting.

(ii) If the county auditor finds that the records of a justice court judge are not kept according to law or that incorrect or improper reports have been made by the justice court judge, the county auditor shall provide a copy of his report to the state court administrator, in addition to reporting his findings to the county [governing] executive and county legislative body.

Section 124. Section Amended.

Section 17-19-3, Utah Code Annotated 1953, is amended to read:

17-19-3. Warrants — Duty to draw.

The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined and allowed and ordered paid by the [~~board of~~] county [~~commissioners~~] executive; provided, that the auditor must not draw a warrant on the county treasurer in favor of any person until the auditor shall have received from the [~~clerk of the board of~~] county [~~commissioners~~] executive the certified list mentioned in [~~subdivision 4 of section~~] Subsection 17-5-15(4). The auditor must also draw his warrant on the county treasurer for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

Section 125. Section Amended.

Section 17-19-12, Utah Code Annotated 1953, is amended to read:

17-19-12. Annual joint statement with treasurer.

The auditor and the treasurer of each county must, on the second Monday in February of each year and at such other times as the [~~board of~~] county [~~commissioners~~] legislative body may require, make a joint statement to the [~~board of~~] county [~~commissioners~~] executive and the county legislative body, showing the whole amount of collections, stating particularly the source of each portion of revenue, from all sources paid into the county treasury; the funds among which the same was distributed and the amount of each; the total amount of warrants drawn and paid, and on what funds; the total amount of warrants drawn and unpaid, and accounts or claims audited or allowed and unpaid and the fund out of which they are to be paid; and generally make a full and specific showing of the financial condition of the county.

Section 126. Section Amended.

Section 17-19-13, Utah Code Annotated 1953, is amended to read:

17-19-13. Seal.

The county auditor shall have a seal, to be furnished by the [~~board of~~] county [~~commissioners~~] legislative body, the impression of which shall contain the following words: "State of Utah, County Auditor," together with the name of the county in which the same is to be used.

Section 127. Section Amended.

Section 17-19-15, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-19-15. Separate budget for costs of assessing, collecting, and distributing property taxes — Submission to state auditor for review — Allowable costs established by rule — Transmission to tax commission — Limitations on tax rate — Exceptions — Adjustments.

(1) To promote appraisal and equalization of property values and effective collection and distribution of property tax proceeds, the county [~~governing~~] leg-

islative body of each county shall annually separately budget for all costs incurred in the assessment, collection, and distribution of property taxes and related appraisal programs and submit those budgets to the state auditor for review.

(2) The state auditor shall establish, by rule, categories of allowable costs and shall certify submitted budgets for compliance with approved categories.

(3) Upon review and certification by the state auditor, the aggregated statewide costs shall be transmitted to the State Tax Commission for determination of a mandatory statewide tax rate sufficient to meet those expenditures. By June 8 of each year the tax commission shall certify the rate to each county auditor for inclusion upon the tax notice as a separately listed and identified local levy.

(4) The tax rate may not exceed a maximum of .0005 per dollar of taxable value of taxable property except for: (a) mandated or formally adopted reappraisal programs conforming to tax commission rules; or (b) actions required to meet legislative, judicial, or administrative orders. Taxes levied for this purpose may not be included in determining the maximum allowable levy for the county or any other taxing district.

(5) In the initial year that the levy adopted under this section is effective, each taxing district within counties which had not previously levied separate assessing, collecting, and distributing levies, shall reduce its property tax levy by an amount equal to that paid by the taxing district in the previous year for the cost of assessing, collecting, and distributing taxes.

(6) Revenues received by each county from the levy authorized by this section in excess of the amount set out in the certified budget shall be transmitted to the state treasurer for equalization and distribution to the counties in accordance with the certified budgets. Any revenue excess resulting from an increase in collection rates upon final settlement shall be deposited by the state treasurer in a trust account to be adjusted against subsequent years.

Section 128. Section Amended.

Section 17-20-4, Utah Code Annotated 1953, as last amended by Chapter 219, Laws of Utah 1992, is amended to read:

17-20-4. Duties as county clerk.

A county clerk shall:

(1) issue all marriage licenses and keep a register of marriages as provided by law;

(2) execute under his seal and in the name of and for the county, all deeds and conveyances of all real estate conveyed by the county pursuant to resolutions of the [board of] county [commissioners] legislative body;

(3) take and certify acknowledgments and administer oaths;

(4) keep a fee book as provided by law; and

(5) take charge of and safely keep the seal of the county clerk, and keep such other records and perform such other duties as may be prescribed by law.

Section 129. Section Amended.

Section 17-21-1, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1983, is amended to read:

17-21-1. Books and supplies for office.

The recorder must procure from the county auditor or purchasing agent those books and supplies the business of the office requires, but orders for the same must first be obtained from the [board of] county [commissioners] executive. The recorder has custody of, and must keep, all books, records, maps, and papers required by law to be kept or recorded in the office.

Section 130. Section Amended.

Section 17-21-2, Utah Code Annotated 1953, is amended to read:

17-21-2. Seal.

The county recorder shall have a seal, to be furnished by the [board of] county [commissioners] legislative body, the impression of which shall contain the following words: "State of Utah, County Recorder," together with the name of the county in which the same is to be used.

Section 131. Section Amended.

Section 17-21-8, Utah Code Annotated 1953, is amended to read:

17-21-8. Maps and plats — Approval before recordation.

It shall be unlawful for any recorder to record any map or plat of a subdivision of land situated in any city or town until the same shall have been approved by the legislative authority of the city or town in which such land may be situated, or in the absence of such legislative authority by the legislative authority of the county in which the town is situated, unless such map or plat of a subdivision is attached to or forms a part of a conveyance and relates to the property or some part thereof embraced in said conveyance. And it shall be unlawful for any recorder to record any map or plat of a subdivision of land situated outside of any city or town until the same shall have been approved by the [board of] county [commissioners] legislative body of the county in which such land is situated unless such map or plat is attached to or forms a part of a conveyance and relates to the property, or some part thereof, embraced in said conveyance. For each and every violation of this section by any recorder, his deputies or employees, the recorder shall forfeit and pay to the county the sum of $200.

Section 132. Section Amended.

Section 17-22-1.5, Utah Code Annotated 1953, as repealed and reenacted by Chapter 54, Laws of Utah 1990, is amended to read:

17-22-1.5. County sheriff qualifications.

(1) In addition to the general qualifications required of county officers by Title 17, Chapter 16,

each county sheriff must meet and continue to meet each of the following qualifications during his term of office:

(a) Prior to taking office, a county sheriff must be certified as a peace officer according to procedures and requirements of Title 67, Chapter 15, and shall satisfactorily complete annual certified training as required in Section 77-1a-1.

(b) After certification, each county sheriff must remain certified as a peace officer during his term of office.

(2) The county [~~governing~~] legislative body shall declare the office of sheriff to be vacant if at any time the incumbent sheriff fails to meet the legal qualifications for office under Subsection (1).

Section 133. Section Amended.

Section 17-22-4, Utah Code Annotated 1953, as last amended by Chapter 229, Laws of Utah 1988, is amended to read:

17-22-4. Jails — Sheriff as keeper — Use.

(1) The common jails in the several counties shall be kept by the sheriffs, and shall be used for:

(a) the detention of persons committed to jail to secure their attendance as witnesses in criminal cases;

(b) the detention of persons charged with crime and committed for trial;

(c) the confinement of persons committed for contempt, or upon civil process, or by other authority of law; and

(d) the confinement of persons sentenced to imprisonment upon conviction of crime.

(2) If the county [~~governing body~~] executive contracts with a private contractor to manage, maintain, operate, or construct county jail facilities, the sheriff shall perform whatever obligations are imposed upon him by that contract.

Section 134. Section Amended.

Section 17-22-7, Utah Code Annotated 1953, is amended to read:

17-22-7. Special guards for jail.

The sheriff when necessary may with the assent of the [~~board of~~] county [~~commissioners~~] executive employ a temporary guard for the protection of the county jail, or for the safekeeping of prisoners, and the expenses thereof shall be a county charge.

Section 135. Section Amended.

Section 17-22-8, Utah Code Annotated 1953, as last amended by Chapters 100 and 229, Laws of Utah 1988, is amended to read:

17-22-8. Care of prisoners — Funding of services — Private contractor.

(1) Except as provided in Subsection (3), the sheriff shall:

(a) receive all persons committed to jail by competent authority; and

(b) provide them with necessary food, clothing, and bedding in the manner prescribed by the county [governing] legislative body.

(2) The expense incurred in providing these services to prisoners shall be paid from the county treasury, except as provided in Section 17-22-10.

(3) If the county [~~governing body~~] executive contracts with a private contractor to provide the services required by this section, the sheriff shall provide only those services required of him by the contract between the county and the private contractor.

Section 136. Section Amended.

Section 17-23-1, Utah Code Annotated 1953, as last amended by Chapter 159, Laws of Utah 1990, is amended to read:

17-23-1. Duties of county surveyor — Election requirements — Contract option.

(1) (a) The office of the county surveyor in each county shall be filled by election and except as provided in Subsection (b), the county surveyor shall be a registered professional land surveyor in the state.

(b) In a county where the office of county surveyor is consolidated with another elected office, the officeholder need not be a registered professional land surveyor, but all surveying work must be performed by a registered professional land surveyor.

(c) In a county where there is no elected county surveyor, the county [~~governing body~~] executive may contract with a registered professional land surveyor to perform those duties.

(2) The county surveyor shall execute:

(a) all orders directed to the surveyor by any court; and

(b) all orders of survey required by the county [~~governing~~] executive or county legislative body.

(3) The surveyor of each county shall:

(a) advise the county [~~governing~~] executive and county legislative body regarding all surveying work;

(b) perform or arrange for the performance of all surveying work for the county;

(c) keep a fair and accurate record of all surveys made and all surveys received pursuant to Section 17-23-17;

(d) number progressively all surveys received and state by whom and for whom the surveys were made;

(e) deliver a copy of any survey to any person or court requiring the survey after the payment of the fee established by the county [~~governing~~] legislative body;

(f) ensure that all surveys of legal subdivisions of sections are made according to the current United States Manual of Surveying Instructions; and

(g) perform other duties required by law.

(4) (a) The county surveyor or his designee shall establish all corners of government surveys and reestablish all corners of government surveys where corners have been destroyed and where witness markers or other evidences of the government corners remain so that the corners established by government survey can be positively located.

(b) The corners shall be reestablished in the manner provided in Section 17-23-13 for establishing corners.

(c) The county surveyor shall keep a separate record of the established and reestablished corners of government surveys, giving the date and names of persons present and shall provide those records to his successor when he vacates his office.

(d) Established or reestablished corners shall be recognized as the legal and permanent corners.

(5) The county [~~governing body~~] executive may direct the county surveyor or his staff to perform engineering and architectural work if the county surveyor or his staff is qualified and licensed to perform that work.

Section 137. Section Amended.

Section 17-23-2, Utah Code Annotated 1953, as last amended by Chapter 93, Laws of Utah 1989, is amended to read:

17-23-2. Office supplies — Filing and indexing fees — Records remain public property.

(1) The county [~~governing body~~] executive shall furnish an office, furniture, and all stationery and record books necessary for the surveyor's office.

(2) The county [~~governing~~] legislative body, by ordinance or resolution, may establish the fee to be collected by the county surveyor for filing and indexing a map of a survey. Fees for filing of maps under Section 17-23-17 shall be governed by Section 17-23-19.

(3) All records, maps, plats, profiles, calculations, and field notes of all surveys made by the county surveyor in his official capacity during his term of office, or by persons designated by him to do survey work on behalf of the county, or maps of a survey filed under Section 17-23-17, shall be the property of the county, open to the inspection of any person free of charge, and shall be delivered by the surveyor to his successor in office. In counties where there is no elected county surveyor, the county [~~governing~~] legislative body may designate another office within the county to act as a depository for all documents filed in compliance with this section.

Section 138. Section Amended.

Section 17-23-3, Utah Code Annotated 1953, is amended to read:

17-23-3. Seal.

The county surveyor shall have a seal, to be furnished by the [~~board of~~] county [~~commissioners~~] legislative body, the impression of which shall contain the following words: "State of Utah, County Surveyor," together with the name of the county in which the same is to be used.

Section 139. Section Amended.

Section 17-23-5, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1961, is amended to read:

17-23-5. To make maps for county or county officers.

The county surveyor shall trace, blueprint, or otherwise make all maps necessary for the county or any county officer, when so requested, and the same shall be filed in his office, together with all data obtained by him from other sources; provided, that in counties where the salary of the county surveyor is not intended to cover the expenses of such work, the [~~board of~~] county [~~commissioners~~] executive may enter into a contract or other arrangement with the county surveyor, or another surveyor, or other person competent to make maps and plats for such mapping and platting as is required by law.

Section 140. Section Amended.

Section 17-23-19, Utah Code Annotated 1953, as enacted by Chapter 93, Laws of Utah 1989, is amended to read:

17-23-19. County permitted to establish Public Land Corner Preservation Fund — Use of fund — Fee schedule for filing maps.

(1) The county [~~governing~~] legislative body may establish by ordinance a fund to be known as the Public Land Corner Preservation Fund. Moneys generated for the fund shall be used only to pay expenses incurred and authorized by the county surveyor in the establishment, reestablishment, and maintenance of corners of government surveys pursuant to the powers and duties provided under Title 17, Chapter 23, and Title 57, Chapter 10.

(2) The county [~~governing~~] legislative body may by ordinance establish a fee schedule for filing maps in the county surveyor's office of surveys filed under Section 17-23-17, subdivisions, road dedication plats, and other property plats. All moneys collected under this subsection shall be deposited with the county treasurer to be credited to the Public Land Corner Preservation Fund.

Section 141. Section Amended.

Section 17-24-1, Utah Code Annotated 1953, is amended to read:

17-24-1. General duties.

The county treasurer shall:

(1) Receive all money belonging to the county and all other money by law directed to be paid to him, safely keep the same, and apply and pay it out and render an account thereof as required by law.

(2) Keep an account of the receipts and expenditures of all such money in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account any money was received by him; the amount, time when,

to whom, and on what account all disbursements were made by him.

(3) Disburse county money only on county warrants issued by the county auditor, except on settlements with the state.

(4) Disburse the money in the treasury on such warrants only when they are based on orders of the [board of] county [commissioners] executive, or upon the order of the district court, or as otherwise provided by law.

(5) File and keep the certificates of the auditor delivered to him when money is paid into the treasury.

(6) So keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole of the receipts and expenditures are shown in one general or cash account.

(7) Perform such other duties as are or may be required by law.

Section 142. Section Amended.

Section 17-24-4, Utah Code Annotated 1953, is amended to read:

17-24-4. Warrants — Payment only according to list.

When a warrant is presented for payment and there is money in the treasury for that purpose he shall pay the same, and write on the face thereof "paid," the date of payment and sign his name thereto; provided, that the treasurer shall not receive, or pay, or endorse any warrant until he shall have received from the [clerk of the board of] county [commissioners] executive the certified list mentioned in Section 17-5-15, and not then unless a claim or order upon which such warrant is based appears upon such list.

Section 143. Section Amended.

Section 17-24-9, Utah Code Annotated 1953, is amended to read:

17-24-9. Failure to present warrant for payments.

Should such warrants not be again presented for payment within [thirty] 30 days from the time the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be applied by the treasurer to the payment of unpaid warrants next in order of registry. The [board of] county [commissioners] executive may on application and presentation of warrants properly endorsed which have been advertised make an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

Section 144. Section Amended.

Section 17-24-12, Utah Code Annotated 1953, is amended to read:

17-24-12. Reports to county legislative body.

Each county treasurer must make a detailed report whenever required so to do by the county [commissioners] legislative body at any regular or special meeting of [the board] them of all money received by him, and of disbursements thereof, and of all other proceedings in his office so that the receipts into the treasury and the amount of disbursements shall clearly and distinctly appear.

Section 145. Section Amended.

Section 17-24-16, Utah Code Annotated 1953, is amended to read:

17-24-16. Demand for money found on dead body.

If such money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them after deducting the fees and expenses of the justice and of the county in relation to the matter, or the same may be so paid at any time thereafter upon the order of the [board of] county [commissioners] executive.

Section 146. Section Amended.

Section 17-24-17, Utah Code Annotated 1953, is amended to read:

17-24-17. Suspension of treasurer.

Whenever an action based upon official misconduct is commenced against any county treasurer the [board of] county [commissioners] legislative body may in its discretion suspend him from office until such action is determined, and may appoint some person to fill the vacancy, who shall qualify and give such bond as may be required by the board.

Section 147. Section Amended.

Section 17-24-19, Utah Code Annotated 1953, is amended to read:

17-24-19. Examination of records.

The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the [board of] county [commissioners] executive and county legislative body, the county attorney, the county auditor, and the grand jury.

Section 148. Section Amended.

Section 17-24-21, Utah Code Annotated 1953, is amended to read:

17-24-21. Seal of county treasurers.

The county treasurer of each county shall have an official seal to be provided by the county [commissioners] legislative body with which to authenticate his official acts and records. It shall have inscribed thereon the words "County Treasurer — Official Seal" and the name of the county in which the treasurer holds office.

Section 149. Section Amended.

Section 17-26-1, Utah Code Annotated 1953, is amended to read:

17-26-1. Jurisdiction transferred to commissioners.

All county hospitals established under chapter 106, Laws of 1917, shall hereafter be under the jurisdiction of the [board of] county [commissioners] legislative body, and the office of trustees therefor is abolished.

Section 150. Section Amended.

Section 17-27-103, Utah Code Annotated 1953, as last amended by Chapter 23, Laws of Utah 1992, is amended to read:

17-27-103. Definitions — Notice.

(1) As used in this chapter:

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

(b) "Chief executive officer" means the county [~~commission~~] executive, or if the county has adopted an alternative form of government, the official who exercises the executive powers.

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

(d) "County" means the unincorporated area of the county.

(e) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(f) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

(g) "Handicapped person" means a person who:

(i) has a severe, chronic disability attributable to a mental or physical impairment, or to a combination of mental and physical impairments, that is likely to continue indefinitely and that results in a substantial functional limitation in three or more of the following areas of major life activity:

(A) capacity for independent living;

(B) economic self-sufficiency;

(C) learning;

(D) mobility;

(E) receptive and expressive language;

(F) self-care; and

(G) self-direction; and

(ii) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that are individually planned and coordinated to allow the person to function in, and contribute to, a residential neighborhood.

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

(i) "Municipality" means a city or town.

(j) "Nonconforming structure" means a structure that:

(i) legally existed before its current zoning designation; and

(ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(k) "Nonconforming use" means a use of land that:

(i) legally existed before its current zoning designation;

(ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

(l) "Official map" means a map of proposed streets that has the legal effect of prohibiting development of the property until the county develops the proposed street.

(m) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(n) "Residential facility for handicapped persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 6 and any ordinance adopted under authority of that part.

(o) "Special district" means all entities established under the authority of Title 17A and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(p) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

(q) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include a bona fide division or partition of agricultural land for agricul-

tural purposes or of commercial, manufacturing, or industrial land for commercial, manufacturing, or industrial purposes.

(r) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2)(a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this subsection.

(c) (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section151. Section Amended.

Section 17-28-11, Utah Code Annotated 1953, is amended to read:

17-28-11. Temporary work — Term or period.

The head of any county fire department coming within the provisions of this act may with the advice and consent of [~~his particular board of~~] the county [~~commissioners~~] legislative body, appoint to any position or place of employment in his fire department, any person for temporary work without making such appointment from the certified civil service list, provided, however, such appointment shall not be longer than one month in the aggregate in the same calendar year.

Section 152. Section Amended.

Section 17-28-12, Utah Code Annotated 1953, as last amended by Chapter 115, Laws of Utah 1992, is amended to read:

17-28-12. Removal from office and disciplinary action — Appeals — Hearing and determination — Findings.

(1) Any person holding a position under this chapter may be removed from office or employment, reduced in rank or grade, or otherwise disciplined by the fire chief for misconduct, incompetency, failure to perform the duties of his employment or to properly observe the rules of the office or department in which he is employed, or for other cause, as set out in County Fire Civil Service Council rules.

(2) Any such disciplinary action is subject to appeal in all cases by the aggrieved party to the County Fire Civil Service Council in the manner established by rule. After an appeal is filed the council shall, as soon as practicable, hear and determine the matter.

(3) If it determines that it is in the best interest of the county, the county legislative body may appoint an administrative law judge, trained and experienced in personnel matters, to initially hear the matter. Upon hearing, the administrative law judge shall make findings of fact and a recommendation to the council. The council may adopt or reject the recommendation of the administrative law judge or request that the judge hold further factual hearings prior to the council's decision.

(4) The council may then affirm, modify, vacate, or set aside the order for disciplinary action.

(5) The aggrieved party shall, upon demand, be granted a public hearing, at which he may appear in person or by counsel or both.

(6) After the hearing, the findings and determination of the County [~~council~~] Fire Civil Service Council shall be certified to the head of the county fire department from whose order the appeal is taken. Notice in writing of the determination shall be served upon the person affected.

(7) The council determination shall be enforced and followed by the head of the fire department until an appeal is taken to the district court by any affected person.

Section 153. Section Amended.

Section 17-30-1, Utah Code Annotated 1953, as enacted by The People Nov. 8, 1960, is amended to read:

17-30-1. Definitions.

(1) "Governing body" means the [~~board of~~] county [~~commissioners~~] legislative body.

(2) "Appointing authority" means the sheriff of a county having jurisdiction over any peace officer as hereinafter defined.

(3) "Peace officer" means any paid deputy sheriff, other than a chief deputy designated by the sheriff, who is in the continuous employ of a county.

(4) "Commission" means the personal merit system commission consisting of three persons appointed by the governing body and having the duty, power and responsibility for the discharge of the functions of this act.

(5) "The state department of public safety" means the department of public safety as constituted under 41-13-1 through 41-13-9, Utah Code Annotated 1953.

Section 154. Section Amended.

Section 17-30-2, Utah Code Annotated 1953, as last amended by Chapter 67, Laws of Utah 1979, is amended to read:

17-30-2. Subordinate officers in sheriff's office to be appointed from list — Officers serving on effective date deemed qualified.

(1) From and after the effective date of this act the sheriff of each county with a population of 20,000

people or more which shall regularly employ one or more peace officers shall, by and with the advice and consent of the [~~board of~~] county [~~commissioners~~] legislative body, and subject to the rules and regulations of the merit service commission, appoint from the classified merit service list furnished by the merit service commission, all subordinate peace officers in his department and in like manner fill all vacancies in the same and shall further promote, transfer, demote, suspend or remove peace officers in accordance with the provisions of this act.

(2) Every peace officer who is serving as such upon the effective date of this act shall be deemed fully qualified for such position without examination or test and deemed to have been appointed and to hold his position and classification pursuant to the provisions of this act.

(3) Counties with a population of less than 20,000 people may implement a deputy sheriff's merit system if approved by the [~~board of~~] county [~~commissioners~~] legislative body or the people of the county through referendum or initiative.

Section 155. Section Amended.

Section 17-30-5, Utah Code Annotated 1953, as enacted by The People Nov. 8, 1960, is amended to read:

17-30-5. Organization of commission — Secretary — Offices — Job classification plan.

Each merit system commission shall be organized by its members who shall select one member as chairman and shall have assigned to it by the [~~governing body of the~~] county legislative body, a qualified employee of the county to act as secretary. Such employee shall be acceptable to the commission and shall act and serve as secretary without additional compensation unless the [~~governing body of the~~] county legislative body so specifies. The county [~~governing~~] legislative body shall provide suitable accommodations, supplies and equipment as needed to enable the commission to attend to its business. The commission shall formulate a comprehensive job classification plan covering all peace officers of the governmental unit. The plan shall place all positions requiring substantially the same duties and qualifications in the same classification and shall include minimum physical and educational qualifications of the applicants for each position, and provide standards for promotion. The commission shall adopt a classification plan which shall be the basis of the administration of this act until changed with the approval of the commission. In the event a new position is created and approved by the governing body, such position shall automatically be classified and become a part of the classification plan.

Section 156. Section Amended.

Section 17-30-24, Utah Code Annotated 1953, as enacted by Chapter 60, Laws of Utah 1979, is amended to read:

17-30-24. More than one chief deputy in larger county departments.

In counties employing more than 100 full time uniformed peace officers, the appointing authority, with the consent of the merit commission and the [~~board of~~] county [~~commissioners~~] legislative body, may appoint more than one chief deputy or undersheriff.

Section 157. Section Amended.

Section 17-31-3, Utah Code Annotated 1953, as renumbered and amended by Chapter 5, Laws of Utah 1987, is amended to read:

17-31-3. Reserve fund authorized — Use of collected funds.

The [~~Board of~~] county [~~Commissioners~~] legislative body may create a reserve fund and any funds collected but not expended during any fiscal year shall not revert to the general fund of the governing bodies but shall be retained in a special fund to be used in accordance with Sections 17-31-1 through 17-31-5.

Section 158. Section Amended.

Section 17-31-5, Utah Code Annotated 1953, as renumbered and amended by Chapter 5, Laws of Utah 1987, is amended to read:

17-31-5. General powers of board.

The [~~Board of~~] county [~~Commissioners~~] legislative body may do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of Sections 17-31-1 through 17-31-5.

Section 159. Section Amended.

Section 17-32-1, Utah Code Annotated 1953, as last amended by Chapter 186, Laws of Utah 1991, is amended to read:

17-32-1. Powers and duties of bail commissioners.

(1) The [~~chairman of the board of~~] county [~~commissioners~~] executive, with the advice and consent of [~~a majority of~~] the county [~~commissioners~~] legislative body, may appoint one or more responsible and discreet members of the sheriff's department of the county as a bail commissioner.

(2) A bail commissioner shall have authority to fix and receive bail for persons arrested in the county for misdemeanors under the laws of the state, or for a violation of any of the county ordinances in accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county ordinances not contained in the schedule.

(3) Any person who has been ordered by a bail commissioner to give bail may deposit the amount with the bail commissioner:

(a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or

(b) by a bond issued by a bail bond surety qualified under the rules of the Judicial Council.

(4) Any money or bond collected by a bail commissioner shall be delivered to the appropriate court within three days of receipt of the money or bond.

(5) The court may review the amount of bail ordered by a bail commissioner and may modify the amount of bail required for good cause.

Section 160. Section Amended.

Section 17-33-2, Utah Code Annotated 1953, as enacted by Chapter 81, Laws of Utah 1981, is amended to read:

17-33-2. Definitions.

As used in this chapter:

(1) "Governing body" means the county [commission] legislative body.

(2) "Director" means the director of personnel management.

(3) "Council" means the career service council, a three-member appeals and personnel advisory board.

(4) "Career service position" means any position in the county service except those exempted under section 17-33-8.

(5) "Merit system" means a system of personnel administration based on the principles set forth in section 17-33-3.

(6) "Eligible applicant" means any applicant that meets the job related minimum requirements established for a position in the career service.

(7) "Eligible list" means a list of eligible applicants ranked in order of relative knowledge, skill, ability and merit.

(8) "Certification" means referral of names of the most qualified eligible applicants certified by the director of personnel management to the agency for appointment.

(9) "Position classification" means a grouping of positions under the same title which are sufficiently similar to be compensated at the same salary range and to which the same tests of ability can be applied.

(10) "Exempt positions" means those positions which are not in the career service as specified in section 17-33-8.

(11) "Provisional appointment" means an appointment to fill a position pending the establishment of a register for such position.

Section 161. Section Amended.

Section 17-33-5, Utah Code Annotated 1953, as last amended by Chapter 275, Laws of Utah 1992, is amended to read:

17-33-5. Office of personnel management — Director, appointment and responsibilities — Personnel rules.

(1) (a) Each county legislative body shall:

(i) create an office of personnel management, administered by a director of personnel management; and

(ii) ensure that the director is a person with proven experience in personnel management.

(b) (i) Beginning July 1, 1993, the county legislative body shall appoint a director of personnel management to serve a four year term.

(ii) At the expiration of any four year term, the county legislative body may reappoint that director to another four year term or may appoint a new director.

(iii) If the position of director of personnel management becomes vacant for any reason before the four year term expires, the county legislative body shall appoint a person to complete the unexpired term by following the procedures and requirements of this section.

(c) The career service council shall:

(i) advertise and recruit for the director position in the same manner as for merit positions;

(ii) select three names from a register; and

(iii) submit those names as recommendations to the county legislative body.

(d) The county legislative body shall select a person to serve as director of the office of personnel management from the names submitted to it by the career service council.

(2) The director of personnel management shall:

(a) encourage and exercise leadership in the development of expertise in personnel administration within the several departments, offices, and agencies in the county service and make available the facilities of the office of personnel management to this end;

(b) advise the county legislative and executive bodies on the use of human resources;

(c) develop and implement programs for the improvement of employee effectiveness, such as training, safety, health, counseling, and welfare;

(d) investigate periodically the operation and effect of this law and of the policies made under it and report findings and recommendations to the governing body;

(e) establish and maintain records of all employees in the county service, setting forth as to each employee class, title, pay or status, and other relevant data;

(f) make an annual report to the governing body regarding the work of the department; and

(g) apply and carry out this law and the policies under it and perform any other lawful acts that are necessary to carry out the provisions of this law.

(3) (a) (i) The director shall issue personnel rules for the county.

(ii) The county [governing] legislative body may approve, amend, or reject those rules before they are implemented.

(b) The rules shall provide for:

(i) recruiting efforts to be planned and carried out in a manner that assures open competition, with special emphasis to be placed on recruiting efforts to

attract minorities, women, handicapped, or other groups that are substantially underrepresented in the county work force to help assure they will be among the candidates from whom appointments are made;

(ii) the establishment of job related minimum requirements wherever practical, which all successful candidates shall be required to meet in order to be eligible for consideration for appointment or promotion;

(iii) selection procedures that include consideration of the relative merit of each applicant, a job related method of determining the eligibility or ineligibility of each applicant, and a valid, reliable, and objective system of ranking eligibles according to their qualifications and merit;

(iv) certification procedures that insure equitable consideration of an appropriate number of the most qualified eligibles based on the ranking system;

(v) appointments to positions in the career service by selection from the most qualified eligibles certified on eligible lists established in accordance with Subsections (iii) and (iv);

(vi) noncompetitive appointments in the occasional instance where there is evidence that open or limited competition is not practical, such as for unskilled positions for which there are no minimum job requirements;

(vii) limitation of competitions at the discretion of the director for appropriate positions to facilitate employment of qualified applicants with a substantial physical or mental impairment, or other groups protected by Title VII of the Civil Rights Act;

(viii) permanent appointment for entry to the career service which shall be contingent upon satisfactory performance by the employee during a period of six months, with the probationary period extendable for a period not to exceed six months for good cause, but with the condition that the probationary employee may appeal directly to the council any undue prolongation of the period designed to thwart merit principles;

(ix) temporary, provisional, or other noncareer service appointments, which may not be used as a way of defeating the purpose of the career service and may not exceed 90 days, with the period extendable for a period not to exceed an additional 90 days for good cause;

(x) lists of eligibles normally to be used, if available, for filling temporary positions, and short term emergency appointments to be made without regard to the other provisions of law to provide for maintenance of essential services in an emergency situation where normal procedures are not practical, these emergency appointments not to exceed 90 days, with that period extendable for a period not to exceed an additional 90 days for good cause;

(xi) promotion of employees to higher level positions in such a manner that eligible permanent career service employees are considered and it is adequately assured that all persons promoted are qualified for the position;

(xii) recognition of the equivalency of other merit processes by waiving, at the discretion of the director, the open competitive examination for placement in the career service positions who were originally selected through a competitive examination process in another governmental entity, the individual in those cases, to serve a probationary period;

(xiii) preparation, maintenance, and revision of a position classification plan for all positions in the career service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class, the compensation plan, in order to maintain a high quality public work force, to take into account the responsibility and difficulty of the work, the comparative pay and benefits needed to compete in the labor market and to stay in proper alignment with other similar governmental units in the state, and other factors;

(xiv) keeping records of performance on all employees in the career service and requiring consideration of performance records in determining salary increases, any benefits for meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges, and transfers;

(xv) establishment of a plan governing layoffs resulting from lack of funds or work, abolition of positions, or material changes in duties or organization, and governing reemployment of persons so laid off, taking into account with regard to layoffs and reemployment the relative ability, seniority, and merit of each employee;

(xvi) establishment of a plan for resolving employee grievances and complaints with final and binding decisions;

(xvii) establishment of disciplinary measures such as suspension, demotion in rank or grade, or discharge, such measures to provide for presentation of charges, hearing rights, and appeals for all permanent employees in the career service to the career service council;

(xviii) establishment of a procedure for employee development and improvement of poor performance;

(xix) establishment of hours of work, holidays, and attendance requirements in various classes of positions in the career service;

(xx) establishment and publicizing of fringe benefits such as insurance, retirement, and leave programs; and

(xxi) any other requirements not inconsistent with this law that are proper for its enforcement.

Section 162. Section Amended.

Section 17-33-15, Utah Code Annotated 1953, as enacted by Chapter 81, Laws of Utah 1981, is amended to read:

17-33-15. Duty of county legislative body to provide rules or regulations — Conflicts with state or federal law.

(1) It shall be the duty of the [~~governing~~] county legislative body to provide by rule or regulation for the operation and functioning of any activity within the purpose and spirit of the act which is necessary and expedient.

(2) If any provision of this act or the application thereof is found to be in conflict with any state or federal law, conflict with which would impair funding otherwise receivable from the state or federal government, the conflicting part is hereby declared to be inoperative solely to the extent of the conflict and with respect to the department, agency, or institution of the county directly affected, but such finding shall not affect the operation of the remainder of this act in any of its applications.

(3) Notwithstanding any provision to the contrary, no rule or regulation shall be adopted by the [~~governing~~] county legislative body which would deprive the county or any of its departments, agencies, or institutions of state or federal grants or other forms of financial assistance.

Section 163. Section Amended.

Section 17-34-3, Utah Code Annotated 1953, as last amended by Chapter 121, Laws of Utah 1985, is amended to read:

17-34-3. Taxes or service charges.

(1) (a) Whenever a county furnishes the municipal-type services and functions described in Section 17-34-2 [~~of this chapter~~] to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from either [~~(a)~~]:

(i) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities[~~, or (b)~~];

(ii) service charges or fees the county may impose upon the persons benefited in any way by the services or functions[~~,~~]; or [~~(c)~~]

(iii) a combination of these sources.

(b) As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of the services or functions established in Section 17-34-2 within the unincorporated areas of the county.

(2) For the purpose of levying taxes, service charges, or fees provided in this section, the county [~~commission~~] legislative body may establish a district or districts in the unincorporated areas of the county.

(3) Nothing contained in this chapter may be construed to authorize counties to impose or levy taxes not otherwise allowed by law.

Section 164. Section Amended.

Section 17-34-5, Utah Code Annotated 1953, as last amended by Chapter 205, Laws of Utah 1988, is amended to read:

17-34-5. Budgeting, accounting for, and disbursing of funds — Annual Audit.

(1) (a) With respect to the budgeting, accounting for, and disbursing of funds to furnish the municipal-type services and functions described in Section 17-34-2 to areas of the county outside the limits of incorporated towns and cities, including levying of taxes and imposition of fees and charges under Section 17-34-3, each county [~~governing~~] legislative body shall separately budget and strictly account for and apportion to the costs of providing municipal-type services and functions the following:

(i) the salaries of each county commissioner and the salaries and wages of all other elected and appointed county officials and employees;

(ii) the operation and maintenance costs of each municipal-type service or function provided, set forth separately as line items in the Municipal Services Fund budget;

(iii) the cost of renting or otherwise using capital facilities for the purposes of providing municipal-type services or functions; and

(iv) all other costs including, but not limited to, administrative costs associated, directly or indirectly, with the costs of providing municipal-type services or functions.

(b) At all times these funds and any expenditures from these funds shall be separately accounted for and utilized only for the purposes of providing municipal-type services and functions to areas of the county outside the limits of incorporated towns or cities.

(2) To implement Subsection (1):

(a) a budget shall be adopted and administered in the same manner as the budget for general purposes of the county which furnishes the municipal-type services and functions is adopted and administered, either as a part of the general budget or separate from it;

(b) funds for the purposes of furnishing municipal-type services and functions under this chapter shall be collected, held, and administered in the same manner as other funds of the county are collected, held, and administered, but shall be segregated and separately maintained, except that where, in the judgment of the county [~~commission~~] legislative body, advantages inure to the fund from coinvestment of these funds and other funds also subject to control by the county [~~commission~~] legislative body, the county [~~commission~~] legislative body may [~~effect~~] direct this coinvestment, but in no event may the funds to furnish municipal-type services and functions or the income from their investment be used for purposes other than those described in Section 17-34-2;

(c) expenditures shall be made in the same manner as other expenditures of the county are made; and

(d) any taxes levied under this chapter shall be levied at the same time and in the same manner as other taxes of the county are levied.

(3) An annual audit of the budgeting, accounting for, and disbursing of funds used to furnish municipal-type services and functions, shall be conducted by an independent certified public accountant.

Section 165. Section Amended.

Section 17-35a-2, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1973, is amended to read:

17-35a-2. Proceedings for adoption of optional plan — Initiation proceedings in general.

(1) Proceedings for the adoption of an optional plan of county government authorized by this act may be initiated in accordance with any one of the alternative methods provided in this act. When a proceeding has been initiated, no other proceeding may thereafter be initiated except by petition unless the first proceeding:

(a) has been concluded by a negative vote of the [~~governing~~] county legislative body [~~of the county~~];

(b) has been concluded by either an affirmative or negative vote of the electors; or

(c) has been pending for at least two years since its initiation.

(2) Whenever the voters of any county shall have adopted an optional plan of government pursuant to this act, no subsequent proposal leading to possible adoption of a different plan may be initiated until at least six years shall have elapsed after the date of the election at which such plan was adopted.

(3) "Initiation," within the meaning of this section, occurs when the [~~governing body of the~~] county legislative body duly adopts a resolution commencing proceedings under Section 17-35a-3, or when a petition, signed by the requisite number of qualified voters, is filed with the county clerk under Section 17-35a-4.

Section 166. Section Amended.

Section 17-35a-3, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1973, is amended to read:

17-35a-3. Proceedings for adoption of optional plan — Initiation by governing body — Methods.

The [~~governing body of the~~] county legislative body may initiate proceedings for adoption of an optional plan of county government by one of the following methods:

(1) Adopting a resolution of intent to approve an optional plan described in the resolution, fixing the time and place for holding a public hearing or series of public hearings thereon commencing not less than [~~ninety~~] 90 days after the adoption of the resolution, and providing for the giving of a reasonable notice of such hearing or hearings. The optional plan proposal need not be set forth in full in the resolution or in any published or posted notices concerning it if at least three full and complete copies are made available for public inspection and copying in the office of the county clerk, and reference to it is made in the resolution and in all notices of the hearing or hearings. After the conclusion of the last of the hearings, and within six months after the adoption of the resolution, of intent, the county [~~governing~~] legislative body may by final resolution approve the optional plan, amend the optional plan and approve it as amended, or reject it.

(2) Adopting a resolution submitting to the voters of the county, not less than [~~ninety~~] 90 days after the date of the resolution, at a general or special election to be designated by the county [~~governing~~] legislative body the question: "Shall a study commission be established to study the present form of government in ____ county, and to consider and make recommendations respecting the adoption of an optional plan of county government?" The resolution shall specify the total membership of the proposed study commission at not less than seven nor more than eleven persons and shall designate whether the members are to be elected or appointed if the question receives an affirmative vote. If the resolution provides that the members are to be elected, it shall also provide procedures for nonpartisan nomination and election of the members at the same election at which the question of the establishment of the study commission is submitted to the voters. If the resolution provides that the members are to be appointed, the appointing process shall be governed by [~~subsection (2) of section~~] Subsection 17-35a-5(2).

(3) Adopting a resolution establishing a study commission with an appointed membership to study the present form of government in the county, specifying the total membership of the commission at not less than seven nor more than [~~eleven~~] 11 persons, and providing for the appointment of the membership of the commission in the manner provided by [~~subsection (2) of section~~] Subsection 17-35a-5 (2).

Section 167. Section Amended.

Section 17-35a-4, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1973, is amended to read:

17-35a-4. Proceedings for adoption of optional plan — Initiation by citizens of county — Methods.

The citizens of a county may initiate proceedings for the adoption of an optional plan of county government by one of the following methods:

(1) Filing with the county clerk a petition bearing signatures of registered voters, equal to or exceeding in number 15% of the total number of votes cast in the county at the next preceding gubernatorial election, calling upon the [~~governing body of the~~] county legislative body to submit to the voters of the county the question of adoption of an optional plan of county government described in, or annexed to, the petition. The full and complete text of the proposed optional plan is not required to be included in, or to be annexed to, the petition at the time of its circulation to or signature by the voters, if it and each

of its parts contains a general description of the proposed optional plan, and makes reference to full and complete copies of it, not less than three in number, which prior to circulation of the petition shall have been filed and made available for public inspection in the office of the county clerk.

Within [~~thirty~~] 30 days after the date of filing of the petition, the clerk shall report to the [~~governing body of the~~] county legislative body whether it is signed by a sufficient number of qualified voters. If the clerk reports that the petition is insufficient, the governing body shall publicly so declare, and the asserted insufficiencies may thereafter be cured by filing an amended or supplementary petition within [~~twenty~~] 20 days after the date of such declaration of insufficiency. When the clerk reports to the governing body that a sufficient petition, as amended or supplemented, is on file, the petition shall be deemed to be a final proposal, and the governing body shall, within [~~thirty~~] 30 days thereafter, take action with respect to the proposed optional plan, without change in it, pursuant to Section 17-35a-6.

(2) (a) Filing with the county clerk a petition bearing the signatures of registered voters equal to or exceeding in number 10% of the total number of votes cast in the county in the next preceding gubernatorial election, calling upon the [~~governing body of the~~] county legislative body either:

(i) to adopt a resolution, after public hearing or hearings, establishing a study commission of not less than seven nor more than eleven members and causing its members to be appointed pursuant to Subsection [~~(2) of section~~] 17-35a-5[~~,~~] (2); or

(ii) to submit to the voters of the county at either a general or special election to be designated by the governing body, but not later than the next general election held more than 90 days after the filing of the petition, the question: "Shall a study commission be established to study the present form of government in ____ county, and to consider and make recommendations respecting the adoption of an optional plan of county government?"

(b) Within [~~thirty~~] 30 days after the date of the filing of the petition, the county clerk shall report to the county [~~governing~~] legislative body whether the petition is signed by a sufficient number of qualified voters. If the clerk reports that the petition is insufficient, the governing body shall publicly so declare, and the insufficiencies may thereafter be cured by the filing of amended or supplementary petitions within twenty days after the date of the declaration of insufficiency. When the clerk reports to the governing body that a sufficient petition, as amended or supplemented, is on file, it shall provide by resolution for the holding of one or more duly noticed public hearings upon the petition within [~~ninety~~] 90 days after the date of filing of the petition, or of the last amended or supplemental petition, as the case may be.

(c) At the conclusion of the last hearing on the petition, the governing body shall either:

(i) adopt a resolution establishing the study commission, as proposed in the petition, and convening within ten days thereafter a meeting of the committee of appointment pursuant to Subsection [~~(2) of section~~] 17-35a-5[~~,~~] (2); or

(ii) adopt a resolution in conformity with Subsection [~~(2) of section~~] 17-35a-3 (2) submitting to the voters of the county the question specified in the petition.

Section 168. Section Amended.

Section 17-35a-5, Utah Code Annotated 1953, as enacted by Chapter 23, Laws of Utah 1975, is amended to read:

17-35a-5. Study commission — Appointment — Powers and duties — Meetings — Final report.

(1) If a majority of the votes cast on the question of the establishment of a study commission with an elected membership, as duly submitted to the voters pursuant to Subsection [~~(2) of Section~~] 17-35a-3 (2) or Subsection [~~(2) of Section~~] 17-35a-4 (2), are in the affirmative, the county [~~governing~~] legislative body shall proceed immediately to organize the study commission and convene the first meeting of its elected members within [~~thirty~~] 30 days after the election.

(2) (a) If a resolution by the governing body provides for the establishment of a study commission pursuant to Subsection [~~(3) of Section~~] 17-35a-3 (3) or Subsection [~~(2) (c) of Section~~] 17-35a-4 (2)(c), or if a majority of the votes cast on the question of the establishment of a study commission with an appointed membership, duly submitted to the voters pursuant to Subsection [~~(2) of Section~~] 17-35a-3 (2) or Subsection [~~(2) of Section~~] 17-35a-4 (2), are in the affirmative, the county [~~governing~~] legislative body shall, within [~~10~~] ten days after the election, convene a meeting of a committee of appointment composed of: [~~(a)~~]

(i) the governor, or his designee; [~~(b)~~]

(ii) the speaker of the House of Representatives, or his designee; [~~(c)~~]

(iii) the president of the Senate, or his designee; [~~(d)~~]

(iv) a resident of the county designated by the [~~governing body of the~~] county legislative body; [~~(e)~~]

(v) a resident of the county designated by majority vote of the mayors and town presidents of all cities and towns in the county; and [~~(f)~~]

(vi) four other residents of the county designated by majority vote of the first five.

(b) The committee of appointment shall, within ten days after its initial meeting, appoint the members of a broadly representative study commission, each of whom must be a qualified elector of the county not then holding any public office or employment other than membership on the committee of appointment, and shall convene the first meeting of the study commission within [~~fifty~~] 50 days after the date of the election.

(3) It shall be the duty of the study commission to study the form of government of and existing proce-

dures for delivery of local governmental services within the county and compare them with other forms available under the laws of the state of Utah to determine whether in its judgment the administration of local government within the county could be strengthened, made more clearly responsive or accountable to the people, or significantly improved in the interest of economy and efficiency, by a change in the form of such government.

(4) The study commission shall have the power to adopt rules for its own organization and procedure, and to fill vacancies in its membership. It may establish advisory boards and committees, including on them persons who are not members of the study commission which it deems to be conducive to the discharge of its duties and may request the assistance and advice of any officers or employees of any agency of state or local government. Members of the commission shall serve without compensation but shall be reimbursed by the county for necessary expenses incurred in the performance of their duties. The county [~~governing~~] legislative body shall provide suitable meeting facilities, necessary secretarial, printing or photo-reproduction services, clerical and staff assistance, and reasonably adequate funds for the employment of independent legal counsel and professional consultants by the commission.

(5) All meetings of the commission shall be open to the public. The commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, and conclusions. It shall report its findings and recommendations not later than one year after the date of its first organizational meeting by filing a final report in written form with the governing body.

(6) The study commission shall include in its final report: (a) a recommendation as to whether the form of government of the county should be changed to an optional form authorized by law; (b) if an optional form is recommended, a complete detailed draft of the proposed plan including all necessary implementing provisions authorized by law; and (c) any additional recommendations the commission deems appropriate to improve the efficient and economical administration of local government within the county.

(7) The study commission may make alterations in its final report, following public hearings, up to 120 days prior to the election, but shall make no alterations which would lead to adoption of an optional form different from that proposed in the final report. The commission shall be discharged 90 days prior to the election.

Section 169. Section Amended.

Section 17-35a-6, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1987, is amended to read:

17-35a-6. Optional plan — Proceedings for election — Operation and effect of passage.

(1) (a) Whenever an optional plan of county government has been finally proposed by any one of the methods provided in Section 17-35a-3, 17-35a-4, or 17-35a-5, the county [~~governing~~] legislative body shall:

(i) cause the proposed optional plan of government to be submitted to the voters of the county for their approval or rejection at the next general election, or at a special election, to be held not less than three nor more than 18 months thereafter;

(ii) cause the complete text of the proposed optional plan to be published in a newspaper of general circulation within the county, at least once during two different calendar weeks within the 30-day period immediately preceding the date of the election; and

(iii) cause the complete text of the optional plan, together with the rest of the report of the study commission, if any, to be printed and made available to the public at cost, not later than 30 days prior to the election, in sufficient number to equal at least 1% of the number of voters in the county who were registered to vote at the next preceding gubernatorial election.

(b) The question to the ballot at the election shall be framed in a manner which fairly and adequately describes the substance of the proposed plan.

(2) (a) If the proposed optional plan is approved by a majority of the votes cast at the election upon the question of its adoption, the plan is effective according to its own terms and provisions and at the time specified in it.

(b) All public officers and employees shall cooperate fully in making the transition between forms of county government.

(c) The county [~~governing~~] legislative body may enact and enforce necessary ordinances to bring about an orderly transition to the new plan of government, including any transfers of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved optional plan and necessary or convenient to place it into full effect.

(3) (a) When a proposed optional plan has been approved by the voters, the county clerk shall immediately file a copy of the plan, duly certified by him to be a true and correct copy, with the lieutenant governor.

(b) The approved plan is then the organic act for the government of the county, is a public record open to inspection of the public, and is judicially noticeable by all courts.

Section 170. Section Amended.

Section 17-35a-9, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1979, is amended to read:

17-35a-9. "General county (modified)" form of county government.

(1) The structural form of county government known as the "general county (modified)" form retains, without change or modification, except to the extent that changes or modifications may be effectuated under other proceedings authorized by law, all existing incorporated cities and towns, special tax-

ing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county. Under this form of government, the county remains vested with all powers and duties vested in counties by general law, but the [~~governing~~] county legislative body [~~of the county~~], together with such other officers as may be specified in the optional plan, shall be elected or appointed in the manner authorized by this act and as provided in the optional plan.

(2) An optional plan for this form of county government shall provide for the election of a county council, composed of not less than three members, which shall be the [~~governing body of the~~] county legislative body and shall exercise all legislative powers authorized by law. The plan shall specify: (a) whether the members of the council are to be elected from districts, at large, or by a combination of district and at-large constituencies; (b) their qualifications and terms of office, and whether such terms are concurrent or overlapping; (c) grounds for and methods of removal of council members from office; (d) procedures for filling vacancies on the council, provided that the procedures shall conform with section 17-5-4; and (e) the compensation, if any, of council members together with procedures for prescribing and changing such compensation from time to time.

Section 171. Section Amended.

Section 17-35a-10, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1979, is amended to read:

17-35a-10. "Urban county" form of county government.

(1) The structural form of county government known as the "urban county" form retains, without change or modification, except to the extent that changes or modifications may be effectuated under other proceedings authorized by law, all existing incorporated cities and towns, special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county. Under this form of government, the county remains vested with all powers and duties vested in counties by general law, but in addition is vested with and empowered to exercise within the unincorporated territory of the county all powers and duties which, by general law, are conferred upon cities whose population is equal to that of the unincorporated territory of such county.

(2) The urban county is empowered to enter into contractual arrangements for the joint exercise of powers or for performance of services and, for that purpose, may employ and be subject to the provisions of the Interlocal Co-operation Act, Title 11, Chapter 13. By contract, the urban county may perform for any city, town, special taxing district, public authority, county service area, or other local public entity within the county any governmental service or function which such entity is lawfully empowered to perform for itself within its own territory, or which the county is lawfully empowered to perform anywhere within the county boundaries. No contract service or function shall be performed by the county except for a consideration which is at least substantially equal to the cost of performing it.

(3) The plan for an urban county form of county government may provide for organization of the unincorporated territory of the county into one or more county service areas and, for this purpose, may provide for special organizing or implementing procedures which differ from those provided in the County Service Area Act, Title 17, Chapter 29. Except to the extent that the plan provides to the contrary, all noncontract services and functions lawfully performed by the county solely within unincorporated territory and not on a county-wide basis shall, after the effective date of the plan, be deemed performed and extended solely as services of, and financed by and through, the county service area or areas subject to the County Service Area Act. The plan may provide for, limit, or condition the services and functions which the urban county is authorized to perform and extend within the territory of incorporated cities and towns within the county and may provide procedures by which such provisions, limits, or conditions may be established and changed from time to time.

(4) The plan for the urban county shall provide for the election of a county council, composed of not less than three members. The council shall be the [~~governing~~] county legislative body [~~of the county~~] and shall exercise all legislative powers authorized by law. The plan shall specify: (a) whether the members of the council are to be elected from districts, at large, or by a combination of district and at-large constituencies; (b) their qualifications and terms of office, and whether such terms are concurrent or overlapping; (c) grounds for and methods for removal of council members from office; (d) procedures for filling vacancies on the council, provided that the procedures shall conform with Section 17-5-4; and (e) the compensation, if any, of council members together with procedures for prescribing and changing such compensation from time to time.

Section 172. Section Amended.

Section 17-35a-11, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1973, is amended to read:

17-35a-11. "Community council" form of county government.

(1) The structural form of county government known as the "community council" form unites in a single consolidated city and county government the powers, duties, and functions which, immediately prior to its effective date, are vested in the county, the largest city in the county, such other cities and towns as elect to merge in it, and all special taxing districts, public authorities, county service areas, and other local public entities functioning within the boundaries of the county, except school districts. The consolidated government shall have power to extend on a county-wide basis any governmental service or function which is authorized by law or which the previous county, cities, and other local public agencies included therein were empowered to provide for their residents, but no such service shall be provided within an incorporated municipality which continues to provide that service for its

own inhabitants, except upon a contract basis for the municipality, and no taxes, assessments, fees, or other charges shall be extended or collected within the municipality for the purpose of financing any service which is not provided by the consolidated government within the municipality. "Largest city," as used in this section, means a city or cities the population of which, as shown by the most recent decennial or special census, exceeds 35% of the total county population.

(2) The incorporated cities and towns, other than the largest city, in the county shall retain independent corporate existence and shall continue to provide local services to their inhabitants of the type and to the extent provided in the plan, but any such city or town, by majority vote of its qualified voters, cast either concurrently with the election at which the plan is approved or subsequently to it, as provided by the governing body of the city or town, may cause the city or town to be dissolved and its powers, duties, and functions vested in the county-wide government.

(3) The [governing] county legislative body of the county-wide government shall be a council composed of not less than five persons as specified in the plan, elected respectively from communities, which collectively include all of the territory within the county, having boundaries described in the plan embracing substantially equal populations. In addition to other powers vested in the county-wide government by law or pursuant to this act, the county council shall have all of the legislative and policy-making powers which it is possible for the governing body of a county or a city to possess and which are not expressly denied by the constitution, by a general law applicable to all cities or all counties, or by a specific restriction in the plan itself.

(4) The voters of each community shall elect a community council composed of the community's elected member of the county council, who shall be chairman of the community council, and not less than two nor more than four additional members elected either from districts of substantially equal population within the community, or at large therein, as may be provided in the plan. A community council shall have the power and duty, in conformity with guidelines prescribed by the county council, to adopt policies and formulate specific programs relating to and defining the kinds and levels of local governmental services necessary to satisfy the needs and desires of the citizens within the community, but a community council shall have no power to engage personnel or to acquire facilities, property, or equipment for the administration or performance of such services. Authorized programs for local governmental services which have been approved by a community council shall be submitted to the county council for implementation and shall be carried into effect by the county council and county executive unless, by a vote of not less than three-fourths of its entire membership, the county council determines that a particular program, in whole or in part, should be rejected as contrary to the general welfare of the county. A community council program for local governmental services within a community: (a) shall include a method or methods for financing such services; (b) may provide for supplying of such services by contract or by joint or co-operative action pursuant to the Interlocal Co-operation Act, Title 11, Chapter 13, in which case the community council shall be deemed a "public agency" within the meaning of said act; and (c) may provide for supplying of such services through the creation of county service areas pursuant to the County Service Area Act, Title 17, Chapter 29.

(5) Notwithstanding Subsection (4) of this section, in any community which includes, in whole or in part, the territory of any incorporated city or town, no community council program for local government services above the minimum level of area-wide services provided county-wide shall be submitted to the county council for implementation unless it first is submitted to the governing body of each such city or town for review. Within [~~thirty~~] 30 days after such submission, the governing body of the city or town (a) may file with the community council a written statement of its comments, suggestions, and recommendations relating to the program, and the community council shall give due consideration thereto: or (b) may, by resolution or ordinance, provide that any designated part of the community council program relating to a service to be provided within the city or town shall be submitted to the voters thereof at a general or special election to be held therein within [~~sixty~~] 60 days after the date of the resolution or ordinance. Any part of the program submitted to the voters of a city or town pursuant to this subsection shall not be included in the program as submitted to the county council unless it receives an approving vote at such election by majority of all votes cast on the question.

(6) Except as provided herein, the qualifications, mode of election, term of office, method of removal, procedure to fill vacancies, compensation, and other appropriate provisions relating to membership on the county council or community councils shall be provided in the plan.

(7) Upon the effective date of the plan and as provided in it, all properties and assets, whether tangible or intangible, and all obligations, debts, and liabilities, of those governmental entities which are merged into the new county-wide government shall become vested and transferred by operation of law in and to the new county-wide government. The properties, assets, obligations, debts, and liabilities of any city or town not merged into the new county-wide government, so far as allocated, used, or incurred primarily to discharge a function which under the plan will no longer be a responsibility of the city or town, shall likewise be vested in and transferred to the new county-wide government. All transfers under this subsection shall be subject to equitable adjustments, conditions, and limitations provided in the plan and determined by procedures specified in the plan; but the contractual rights of any bondholder or creditor shall not be impaired.

(8) Upon the effective date of the plan and as provided in it, non-elective officers and employees of governmental entities which are merged into the new county-wide government and such officers and employees of nonmerged cities or towns whose qual-

ifications and duties relate primarily to functions which under the plan will no longer be a responsibility of those cities or towns, shall be blanketed in and transferred to the new county-wide government as officers and employees of it. Standards and procedures relating to such personnel transfers, and for resolving disputes or grievances relating thereto, shall be provided in the plan.

Section 173. Section Amended.

Section 17-35a-16, Utah Code Annotated 1953, as enacted by Chapter 87, Laws of Utah 1981, is amended to read:

17-35a-16. Restricted taxing authority form of county government — Procedure for adoption.

(1) In addition to the optional forms of county government specified in Section 17-35a-8, there is authorized an additional form of county government; the structure and power of which may differ from the forms expressly provided under this chapter.

(2) Under the optional form of county government allowed by this section, the county shall possess all powers granted to county government by the Constitution, the general law, or by the county government charter; except, it shall possess no power to levy any tax, unless the legislature has expressly authorized the several counties to levy such tax.

(3) The optional form of county government allowed by this section may be proposed by any one of the methods specified in [~~sections~~] Section 17-35a-3 or 17-35a-4. If the optional form of county government allowed by this section is finally proposed, the [~~governing~~] county legislative body [~~of the county~~] shall cause the proposal to be submitted to the voters of the county for their approval or rejection in conformance with the requirements of Section 17-35a-6.

(4) The structure and management of the optional form of county government allowed by this section shall be set forth in the charter.

Section 174. Section Amended.

Section 17-36-31, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1987, is amended to read:

17-36-31. Tax levy — Amount.

(1) Before June 22 of each year, the [~~governing~~] county legislative body shall levy a tax on the taxable real and personal property within the county. In its computation of the total levy subject to Sections 59-2-908 and 59-2-911, it shall determine the requirements for each fund and specify the amount of the levy apportioned to each fund.

(2) The proceeds of the tax apportioned for purposes of the General Fund shall be credited in the General Fund.

(3) The proceeds of the tax apportioned for utility and other special fund purposes shall be credited to the appropriate accounts in the utility or other special funds.

Section 175. Section Amended.

Section 17-36-43, Utah Code Annotated 1953, as enacted by Chapter 73, Laws of Utah 1983, is amended to read:

17-36-43. Financial administration ordinance — Purposes.

The county [commission] legislative body, after consultation with the county auditor, may adopt a financial administration ordinance authorizing the county auditor, or appointed administrator in the case of county operated hospitals or mental health districts to act as the financial officer for the purpose of approving:

(1) payroll checks, if the checks are prepared in accordance with a salary schedule established in a personnel ordinance or resolution; or

(2) routine expenditures, such as utility bills, payroll-related expenses, supplies, materials, and payments on county-approved contracts and capital expenditures which are referenced in the budget document and approved by an appropriation resolution adopted for the current fiscal year.

Section 176. Section Amended.

Section 17-36-44, Utah Code Annotated 1953, as enacted by Chapter 73, Laws of Utah 1983, is amended to read:

17-36-44. Financial administration ordinance — Required provisions.

The financial administration ordinance, adopted pursuant to Section 17-36-43, shall provide:

(1) a maximum amount over which purchases may not be made without the approval of the county [~~commission~~] executive;

(2) that the financial officer be bonded for a reasonable amount; and

(3) any other provisions the commission deems advisable.

Section 177. Section Amended.

Section 17-37-3, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1978, is amended to read:

17-37-3. Appointment of directors — Terms — Removal of directors — Vacancies.

Directors shall be appointed for three year terms, or until their successors are appointed. Initially, appointments shall be made for one, two, and three year terms. Annually thereafter, the county [commissioners] executive, with the advice and consent of the county legislative body shall, before the first day of July of each year, appoint for a three-year term, directors to take the place of the retiring directors. Directors shall serve not more than two full terms in succession. Following such appointments, the directors shall meet and select a chairman and such other officers, as they deem necessary, for one-year terms. The county [commissioners] executive may remove any director for misconduct or neglect of duty. Vacancies in the board of directors, occasioned by removals, resignations, or otherwise,

shall be filled for the unexpired terms in the same manner as original appointments.

Section 178. Section Amended.

Section 17-37-4, Utah Code Annotated 1953, as enacted by Chapter 16, Laws of Utah 1982, is amended to read:

17-37-4. Delegation of management and control authority to directors by county legislative body — Contract or lease with private entity for management — Deposit of money collected — Expenditures — Recommendations by directors to county legislative body.

(1) Upon the appointment of a planetarium board of directors, the [~~board of~~] county [~~commissioners~~] legislative body may delegate to the board of directors the authority to manage and control the functions, activities, operations, maintenance, and repair of any county planetarium, and shall include in its delegation the authority to approve and control all expenditures from the county planetarium fund. Any delegation of authority made to the board of directors under this section shall be by resolution of the [~~board of~~] county [~~commissioners~~] legislative body, and shall at all times be subject to the ultimate authority and responsibility of the [~~board of~~] county [~~commissioners~~] legislative body for the management and control of all county funds and properties as conferred upon that board by general law applicable to counties.

(2) Upon the recommendation of the board of directors, the county may enter into a contract or lease agreement with a private organization or entity for partial or full management, operation and maintenance of any county planetarium and for other planetarium services, which may include providing the physical facilities and equipment for the operation of a planetarium. A contract or lease for such purposes shall not extend for more than a four-year period and shall be subject to annual review by the board of directors to determine if performance is in conformance with the terms of the contract or lease and to establish the level of the subsequent funding pursuant to the contract or lease.

(3) All money collected from a county planetarium tax levy shall be deposited in the county treasury to the credit of the county planetarium fund. All money collected from operations of or from donations to any planetarium owned and operated by the county shall also be deposited in the county treasury to the credit of the planetarium fund. Any money collected from operations of a planetarium by a contracting party or lessee shall be used or deposited as the contract or lease may provide. Income or proceeds from any investment by the county treasurer of county planetarium funds shall be credited to the county planetarium fund and used only for planetarium purposes.

(4) Expenditures from the county planetarium fund shall be drawn upon by the authorized officers of the county upon presentation of properly authenticated vouchers or documentation of the board of directors or other appropriate planetarium official. The fund shall not be used for any purpose other than to pay the costs of acquiring, constructing, operating, managing, equipping, furnishing, maintaining or repairing a planetarium, including appropriate, reasonable and proportionate costs allocated by the county for support of the planetarium, or to pay the cost of financing and funding a contract or lease agreement for facilities, equipment, management, operation, and maintenance of a planetarium.

(5) The board of directors shall provide recommendations to the [~~board of~~] county [~~commissioners~~] legislative body with respect to the purchase, lease, exchange, construction, erection, or other acquisition of land, real property improvements, and fixtures or the sale, lease, exchange, or other disposition of land, real property improvements, and fixtures for the use or benefit of a county planetarium.

Section 179. Section Amended.

Section 17-37-5, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

17-37-5. Budget prepared by directors — Fiscal year — Tax levy.

The planetarium board of directors shall prepare an annual budget and estimate of expenditures and in all other respects comply with the requirements of the Uniform Fiscal Procedures Act for counties and all other general laws relating to budgeting, accounting, disbursing of funds, and other financial matters applicable to counties. A county planetarium shall operate on the same fiscal year as the county and upon approval by the county [~~governing~~] legislative body of a final fiscal year budget submitted by the board of directors, the county [~~governing~~] legislative body may, at the time and in the manner prescribed by law for levying general county taxes, levy a tax for planetarium purposes, as provided in this chapter, which shall be sufficient to provide funds for the approved annual budget; but the tax levy imposed may not exceed in any one year .00004 of taxable value of taxable property in the county.

Section 180. Section Amended.

Section 17-37-7, Utah Code Annotated 1953, as last amended by Chapter 16, Laws of Utah 1982, is amended to read:

17-37-7. Annual report — Financial statement.

To the extent that independent accounting records are prepared and maintained by the planetarium, the planetarium board of directors shall make, or in the case of a contracting entity, require that there be made, an annual report to the county [~~commission~~] legislative body on the condition and operation of the planetarium, including a financial statement. The financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be reviewed by the county auditor. The planetarium shall be included in the annual audit of the county conducted by an independent public accountant as required by Title 51, Chapter 2.

Section 181. Section Amended.

Section 17-37-8, Utah Code Annotated 1953, as last amended by Chapter 16, Laws of Utah 1982, is amended to read:

17-37-8. Director to be appointed — Duties and compensation — Other personnel.

The county [commissioners] executive, with the advice and consent of the county legislative body, shall appoint a competent person as planetarium director to have immediate charge of planetarium facilities and activities not contracted to an outside entity, and of overseeing the performance of the terms of any contract or lease entered into with a contracting entity. The planetarium director shall have such duties and receive such compensation for his or her services as the county [commission] executive shall determine. The planetarium director shall act as the executive officer for the planetarium board and shall implement the policies of the board. The county [commissioners] legislative body shall appoint, upon the recommendation of the planetarium director, other personnel as required ; however, any county employees working at the planetarium shall be subject to the provisions of the County Personnel Management Act and other general laws as relating to personnel matters that are applicable to counties.

Section 182. Section Amended.

Section 17-37-9, Utah Code Annotated 1953, as last amended by Chapter 16, Laws of Utah 1982, is amended to read:

17-37-9. Donations permitted — Use.

If a person desires to make donations of money, personal property, or real estate specifically for the benefit of a county planetarium, the board of directors may, with the consent of the [~~board of~~] county [~~commissioners~~] legislative body, accept those donations or other contributions. The board of directors shall manage and administer the donations or contributions in accordance with the terms and conditions of the donating or contributing instrument. All real property and improvements acquired by or specifically for a county planetarium by any means whatsoever, including gift, devise or donation, shall be deeded to and held in the name of the county.

Section 183. Section Amended.

Section 17-38-2, Utah Code Annotated 1953, as enacted by Chapter 14, Laws of Utah 1982, is amended to read:

17-38-2. Operation and maintenance of zoo — Advisory board — Contract for services.

Upon the establishment of a county zoo under this act, the county [~~commissioners~~] legislative body may provide rules and regulations for its governance and operation, including the establishment of an advisory board. The county [commission] executive may contract with an agency or vendor to supply all or part of the services necessary for the operation and maintenance of a county zoo.

Section 184. Section Amended.

Section 17-40-2, Utah Code Annotated 1953, as enacted by Chapter 264, Laws of Utah 1991, is amended to read:

17-40-2. Salt Palace Convention Center — Oversight committee.

It is the intent of the Legislature that the funds appropriated to the Salt Palace Convention Center renovation under Section 17-40-1 be subject to the following conditions:

(1) The [Board of] county [Commissioners] legislative body of Salt Lake County shall create by June 1, 1991, a Salt Palace Convention Center Oversight Committee composed of seven members as follows:

(a) three members shall be appointed by the county [governing] legislative body, one of whom shall chair the committee;

(b) two members shall be appointed by Salt Lake City; and

(c) two members shall be appointed by the governor and shall represent the state of Utah.

(2) Funds from this appropriation shall be released to Salt Lake County. The funding necessary for each phase of work shall be disbursed by Salt Lake County only upon formal recommendation of the oversight committee.

(3) (a) Minimum review and formal approval phases by the Salt Palace Convention Center Oversight Committee shall include:

(i) master plan development;

(ii) project design program and cost estimate;

(iii) schematic design;

(iv) design development;

(v) construction documents; and

(vi) bidding and award for construction.

(b) Approval to proceed to each successive phase of the project will occur only when the oversight committee has provided approval by formal motion and vote.

(c) The committee shall meet at least monthly during the construction phase for project status reports and review of potential change orders.

(4) All expenditures of public funds for this project shall be subject to review and audit by the state, Salt Lake City, and Salt Lake County. They shall specifically be subject to review by the Office of the Legislative Fiscal Analyst and audit by the state auditor and the legislative auditor general.

(5) All procurement of consultants, contractors, and materials shall be conducted by Salt Lake County through its normal procurement and bidding procedures as established by ordinance.

(6) The state's funding portion of the Salt Palace Convention Center renovation project shall be invested by Salt Lake County and interest earned. Upon completion of the renovation project the accrued interest shall be repaid to the state.

(7) Notwithstanding this section or Section 17-40-1, no part of the state's funding portion of the Salt Palace Convention Center renovation project may be expended until Salt Lake County and Salt Lake City have guaranteed their respective funding portions available for immediate expenditure.

(8) The Salt Palace Convention Center shall be made available for state functions during each calendar year.

Section 185. Section Amended.

Section 17A-2-202, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-202. Creation and organization of district.

If the owners of at least 55% of the taxable value of lands and not less than 55% of the total land area aggregating not less than 3,000 acres of contiguous territory or consisting of contiguous territory of less extent but having a taxable value of at least $500,000 at the last preceding county assessment, desire to provide for the organization of the territory as a cemetery maintenance district, none of their lands being included within the boundaries of an already created and organized cemetery maintenance district under the terms of this part, the district may be created and organized as provided in this part. For purposes of this section, the taxable value of the property within the proposed district shall be determined from the last assessment roll for ad valorem taxes completed prior to the submission of the petition to the county [~~governing~~] legislative body.

Section 186. Section Amended.

Section 17A-2-203, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-203. Procedure — Petition — Contents and sufficiency of petition.

A petition shall first be presented to the [~~board of~~] county [~~commissioners~~] legislative body and filed with the clerk of the [~~board of commissioners~~] county legislative body of the county in which the proposed cemetery maintenance district is situated signed by the number of holders of title or evidence of title specified in Section 17A-2-202 which petition shall plainly and clearly designate the boundaries of the proposed cemetery maintenance district, and shall state the name of the proposed district and shall be accompanied by a map thereof. The petition together with all maps and other papers filed therewith shall at all proper hours be open to public inspection in the office of said clerk of the [~~board of commissioners~~] county legislative body between the date of their said filing and the date of the election. The petition may be in one paper or in several papers.

Section 187. Section Amended.

Section 17A-2-204, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-204. Hearing and determination — Notice — Boundaries.

When such petition is presented to the [~~board of~~] county [~~commissioners~~] legislative body and filed in the office of the clerk of such board the said board shall set a time for hearing upon such petition which time shall be not less than four nor more than six weeks from the date of the presentation and filing of such petition. A notice of the time of such hearing shall be published by said board once each week for three successive weeks previous to the time set for such hearing in a newspaper published within the county in which said district is situated. Said notice shall state that a cemetery maintenance district is proposed to be organized giving the proposed boundaries thereof and that any taxpayer within the proposed boundaries of such proposed district may on the date fixed for such hearing appear and offer any objection to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property therein or therefrom. After hearing and considering any and all objections, if any such be interposed, the county [~~commissioners~~] legislative body shall thereupon make an order thereon either denying such petition or granting the same with or without modification and shall accordingly fix the boundaries of such proposed district in any order granting such petition. The boundaries so fixed shall be the boundaries of said district after its organization be completed as provided by this part and a map showing the boundaries of such proposed district as finally fixed and determined by the [~~board of~~] county [~~commissioners~~] legislative body shall be prepared and filed in the office of the clerk of said board.

Section 188. Section Amended.

Section 17A-2-205, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-205. Election to determine organization of district — Notice — Eligibility of voters.

After the county [~~commissioners have~~] legislative body has made their final order [~~finally~~] fixing and determining the boundaries of the proposed district, the clerk of the [~~board of~~] county [~~commissioners~~] legislative body shall cause to be published a notice of an election to be held in such proposed cemetery maintenance district for the purpose of determining whether or not the same shall be organized under the provisions of this part. Such notice shall plainly and clearly designate the boundaries of such proposed cemetery maintenance district and shall state the name of the proposed district as designated in the petition and shall state that a map showing the boundaries of said district is on file in his office.

Such notice shall be published once in each week for three successive publications prior to such election in a newspaper within the county aforesaid. Such notice shall require the electors to cast ballots which shall contain the words "____ cemetery maintenance district, yes" or "____ cemetery maintenance district, no" or words equivalent thereto. No person shall be entitled to vote at any election held

under the provisions of this part unless he shall possess all the qualifications required of electors under the general laws of the state and be a resident of the proposed district.

Section 189. Section Amended.

Section 17A-2-206, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-206. Conduct of election — Precincts — Judges.

Such election shall be conducted as nearly as practicable in accordance with the general laws of the state. The [~~board of~~] county [~~commissioners~~] legislative body shall establish as many election precincts within such proposed cemetery maintenance district as will be convenient. Said [~~board of~~] county [~~commissioners~~] legislative body shall also appoint three judges of election for each such election precinct who shall perform the same duties as near as may be as judges of election under the general laws of the state and the result of such election shall be certified and canvassed and declared by the [~~board of~~] county [~~commissioners~~] legislative body.

Section 190. Section Amended.

Section 17A-2-208, Utah Code Annotated 1953, as last amended by Chapter 273, Laws of Utah 1991, is amended to read:

17A-2-208. Maintenance board — Appointment — Oath.

(1) There shall be three cemetery maintenance commissioners in each cemetery district who shall constitute the cemetery maintenance board.

(2) (a) The county [~~governing~~] legislative body shall appoint the first cemetery maintenance commissioners of the cemetery maintenance district according to the requirements of Title 17A, Chapter 1, Part 3.

(b) The certificate of appointment shall be filed with the clerk of the county [~~governing~~] legislative body.

(3) Every cemetery maintenance commissioner shall take and subscribe the official oath, and shall file the oath with the county [~~governing~~] legislative body.

Section191. Section Amended.

Section 17A-2-209, Utah Code Annotated 1953, as last amended by Chapter 273, Laws of Utah 1991, is amended to read:

17A-2-209. Terms of office.

The first commissioners appointed by the county [~~governing~~] legislative body shall serve terms of 2 and 4 years respectively until the next commissioners are elected or appointed.

Section 192. Section Amended.

Section 17A-2-214, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-214. Annexation of additional territory within adjoining county — Requirements.

After the organization of a cemetery maintenance district additional territory adjoining and contiguous to the district and located wholly within an adjoining county may be added to the district and become a part of it as provided in this part. The proceedings for the annexation shall be the same as the proceedings for the creation and organization of a cemetery maintenance district with the following exceptions and modifications:

(1) The proceeding may be initiated by the owners of at least 55% of the taxable value of contiguous lands and not less than 55% of the total land areas aggregating not less than 2,000 acres or of less area but having a taxable value of at least $500,000. For purposes of this section, the taxable value of the property within the proposed district shall be determined from the last assessment roll for ad valorem taxes completed prior to the submission of the petition to the county [~~governing~~] legislative body.

(2) The petition required by Section 17A-2-203 shall (a) be filed with the county [~~governing~~] legislative body of the county in which the territory proposed to be annexed is situated, (b) accurately describe the boundaries of the territory, (c) name and describe the cemetery maintenance district to which annexation is sought, and (d) be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed and showing the location of the intervening county line. The petition must be accompanied by a certified copy of a resolution of the Board of Cemetery Maintenance Commissioners of the original district consenting to the annexation.

(3) The notice of hearing on the petition shall state that certain described territory is proposed to be annexed to a named cemetery maintenance district and that any taxpayer within the boundaries of the territory proposed to be annexed may offer and file any objections at the time and place specified. An objection filed by a corporation owning property in the proposed district shall be sufficient if signed by any officer or duly authorized agent of the corporation. The order entered by the local county [~~governing~~] legislative body on the petition, if the petition is granted, shall fix the boundaries of the annexed territory and direct that a map be prepared under the direction of the clerk of the county [~~governing~~] legislative body of the county in which the original cemetery maintenance district is situated.

(4) An election shall be held in the territory proposed to be annexed and shall state the name of the district to which annexation is sought and that a map showing the boundaries of the district and of the territory proposed to be annexed is on file in the office of the clerk of the local county [~~governing~~] legislative body. The notice shall prescribe the form of ballot to be cast which shall contain the words "In favor of annexation to ..... Cemetery Maintenance District" and "Against annexation to ..... Cemetery Maintenance District."

(5) The territory proposed to be annexed shall constitute one election and shall direct that the voter indicate the voter's choice by a cross (X).

(6) The territory proposed to be annexed shall constitute one election precinct and there shall be added to the usual elector's oath in case of challenge, the following words: "and I am a resident within the boundaries of the territory proposed to be annexed to ..... Cemetery Maintenance District." The returns of the election shall be canvassed by the county [~~governing~~] legislative body of the county in which the territory proposed to be annexed is situated and if it appears from the canvass that more than one-half the votes cast by the qualified voters in the district who have paid a property tax in the district in the year next preceding the election are in favor of the annexation, the board by order entered on its minutes shall declare the territory a part of the cemetery maintenance district to which annexation is sought and a certified copy of the order shall be transmitted to the cemetery maintenance board of the original district and also to the county [~~governing~~] legislative body of the county in which the original district is situated. A certified copy of the order shall also be filed in the office of the county recorder of the county in which the territory proposed to be annexed is situated. Prior to the next district election following the annexation the cemetery maintenance board shall divide the district into two subdistricts each of which shall comprise all territory of the district situated within the boundaries of one county. The commissioners of the district shall then be elected at large but no more than two members of the cemetery maintenance board may be residents of the same county and the commissioner whose term of office first expires after the annexation shall be elected by the voters of the entire district from among the qualified electors of the annexed territory. Certified copies of appointments of secretary and treasurer of the district shall be filed with the clerk of the county [~~governing~~] legislative body and with the tax collector of each county in which any portion of the district is situated, and all taxes levied by the district shall be certified to and extended, collected, and remitted by the proper officers of the county in which the property subject to the levy is situated.

Section 193. Section Amended.

Section 17A-2-215, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-215. Board of cemetery maintenance commissioners — Organization — Vacancies — Officers — Certified copies of appointments — Regular and special meetings — Bills payable — Oath of office and bond.

Immediately after qualifying, the board of cemetery maintenance commissioners shall meet and organize as a board and at that time, and whenever thereafter vacancies in the respective offices may occur they shall elect a president from their number and shall appoint a secretary and treasurer who may also be from their number all of whom shall hold office during the pleasure of the board or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments under the hand of each of the commissioners shall be forthwith filed with the clerk of the [~~board of~~] county [~~commissioners~~] legislative body and with the tax collector of the county.

As soon as practicable after the organization of the first board of cemetery maintenance commissioners and thereafter when deemed expedient or necessary such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof which shall be within the district. Regular meetings must show what bills are submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be signed by the chairman and attested by the secretary; provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order, five days notice of special meetings; provided further, that whenever all members of the board are present the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public and a majority shall constitute a quorum for the transaction of business. All records shall be open to the inspection of any elector during business hours.

The officers of the district shall take and file with the secretary an oath for the faithful performance of the duties of the respective officers. The treasurer shall on his appointment execute and file with the secretary an official bond in such an amount as may be fixed by the cemetery maintenance board which amount shall be at least sufficient to cover the probable amounts of money coming into his hands and 25% thereof in addition thereto.

Section 194. Section Amended.

Section 17A-2-216, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-216. Body politic and corporate — Exercise of powers — Corporate name.

Every cemetery maintenance district organized as provided by law is a body politic and corporate and as such has the power specified in this part. Its powers can be exercised only by the cemetery board or by agents and officers acting under their authority or authority of law. The name of the district designated in the order of the [~~board of~~] county [~~commissioners~~] legislative body declaring the territory duly organized as a cemetery maintenance district shall be the corporate name of such district and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

Section 195. Section Amended.

Section 17A-2-301, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-301. Establishment — Authority — Area.

(1) Improvement districts may be established in any county in this state as provided in this part for the purposes hereinafter stated and may acquire through construction, purchase, gift, or condemnation, or any combination of these methods, and may operate all or any part of the following:

(a) systems for the supply, treatment, and distribution of water;

(b) systems for the collection, treatment, and disposition of sewage;

(c) systems for the collection, retention, and disposition of storm and flood waters;

(d) systems for the generation, distribution, and sale of electricity; and

(e) systems for the transmission of natural or manufactured gas that are (i) connected to a gas plant, as defined in Subsection 54-2-1 (14), of a gas corporation, as defined in Subsection 54-2-1 (13), regulated under Section 54-4-1, and (ii) to be used to facilitate gas utility service within the district if such gas utility service is not available within the district prior to the acquisition or construction of such systems. Such new gas utility service shall be provided by a gas corporation regulated under Section 54-4-1 and not by the district.

(2) The area of any district created under this part may include all or part of any county or counties including all or any part of any incorporated municipalities, other incorporated areas, and unincorporated areas, as the needs of the inhabitants of the proposed districts may appear. Where a district created under this part is operating any facility or system mentioned in this part, no other district overlapping that district, in whole or in part, may be created in a manner as to have authority to own or operate a facility or system of like kind.

(3) Where any district is created under this part solely for the purpose of acquiring a system for the collection, retention, or disposition of storm and flood waters, the [~~board of~~] county [~~commissioners~~] legislative body creating the district may, in its discretion and despite anything to the contrary in Section 17A-2-305, act as the board of trustees of the district for so long as it considers desirable.

Section 196. Section Amended.

Section 17A-2-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-303. Procedure for creation of district.

Any [~~board of~~] county [~~commissioners~~] legislative body, upon its own motion, may by resolution declare that the public health, convenience and necessity requires the creation of an improvement district. Such resolution shall define the boundaries thereof and the purposes for which such district is to be created. Upon presentation to any [board of] county [commissioners] legislative body of a petition signed by the legislative body of any city or town included within the proposed district, or by 25% or more of the owners of real property included within the proposed district, proposing the creation of an improvement district, and setting forth the boundaries and purposes of such improvement district, it shall be the duty of the [board of] county [commissioners] legislative body to adopt a resolution as aforesaid. In the event the proposed district includes any part of another county or counties, the above resolution shall further state the name or names of the other county or counties and the areas within such other county or counties proposed to be included within such district. A certified copy of such resolution shall then be presented to the [board or boards of] county [commissioners] legislative body of such other county or counties. It shall be the duty of such other [board or boards of] county [commissioners] legislative body within 60 days thereafter to approve or reject such resolution. After the approval of such resolution by such other board or boards, the [board of] county [commissioners] legislative body of the county adopting the original resolution shall thereafter have complete jurisdiction over the entire district and its creation and shall proceed as hereinafter provided in all respects as though only a single county were involved.

Section 197. Section Amended.

Section 17A-2-304, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-304. Notice of hearing and intent — Protests — Resolution establishing district — Writ of review.

(1) (a) After the resolution described in Section 17A-2-303 has been adopted by the county [governing] legislative body, the governing body shall give notice of:

(i) its intent to establish the improvement district; and

(ii) a public hearing to discuss the establishment of the improvement district.

(b) That notice shall:

(i) define the area to be included in the district;

(ii) define the district's boundaries;

(iii) describe the nature and extent of the improvements proposed;

(iv) estimate the cost of the proposed improvements;

(v) estimate the amount of bonds proposed to be issued;

(vi) designate whether these bonds are to be payable from taxes, from operating revenues of the district, or from both; and

(vii) designate a time for the public hearing that is not more than 40 days after and not less than 21

days after the notice required by Subsection (3) is first published.

(c) The estimates required in this subsection may not be construed as establishing a limit upon the costs of the improvements constructed or upon the amount of the bonds issued.

(2) If the district is an electric service district, the notice shall contain a statement that the district complies with the requirements of Section 17A-2-302.

(3) (a) The county [governing] legislative body shall publish the notice once a week for three successive weeks in a newspaper of general circulation in each county that contains some or all of the proposed district.

(b) Any taxpayer within the district may, on or before the date of the public hearing, protest against the establishment of the district by filing a signed written protest with the county clerk of the county in which the district is located.

(c) If, at or before the time fixed in the notice, a written protest is filed that is signed by more than 25% of the real property owners within the proposed district, according to the last assessment roll for county taxes completed prior to publishing the notice, the district may not be established.

(d) Any person who has filed a protest and wishes to withdraw that protest, or who has filed a protest, withdrawn the protest, and wishes to cancel the withdrawal, shall do so on or before the date set for the public hearing.

(e) The board may require:

(i) the county surveyor to check and report on the accuracy of the proposed boundaries of the district; and

(ii) the officials who prepared the assessment roll to segregate and certify to the governing authority the taxable value of the real property appearing on the roll that lies within the proposed boundaries of the district.

(f) A written protest filed by a corporation owning real property in the district is sufficient if it is signed by the president, vice-president, or duly authorized agent of the corporation.

(g) (i) Where title to any real property in the district is held in the name of more than one person, all of the persons holding the title to that property must join in the signing of the written protest.

(ii) The deed records of the county shall be accepted as final and conclusive evidence of the ownership of the real property in the district.

(h) If any written protests are filed, and the board determines that the protests filed represent less than 25% of the property owners in the district, the resolution of the governing authority establishing the district shall contain a recital to that effect and that recital is binding and conclusive for all purposes.

(i) In the resolution establishing the district, the county [governing] legislative body shall eliminate from the proposed district any property originally included in the district that it determines will not be benefited by the proposed improvements.

(j) At the public hearing, or at any subsequent time to which the hearing may be adjourned, the county [governing] legislative body shall give full consideration to all protests that have been filed and shall hear all persons desiring to be heard.

(k) Following the hearing, the county [governing] legislative body shall adopt a resolution either creating the district or determining that it may not be created.

(l) Any resolution creating a district may contain any changes considered by the body to be equitable and necessary, including changes in the boundaries of the district, to assure that the district does not contain property that will not be benefited by the proposed improvements.

(4) After an improvement district is established, a property owner may petition the district court for a writ of review of the actions of the governing authority in establishing the district if:

(a) the person filed a written protest as provided in Subsection (3);

(b) the petition is filed within 30 days after the date of the resolution establishing the improvement district; and

(c) (i) the petition alleges that the person's property will not be benefited by one or more of the services to be provided by the improvement district; or

(ii) the petition alleges that the procedures used to establish the improvement district violated the law.

(5) If a petition for a writ of review is not filed within the time limits established by this section, owners of property and qualified voters within the improvement district may not object to the establishment of the district.

(6) The provisions of this section may not be considered to be a limitation on the rights of the governing authority to submit a bond issue in whatever amount and for whatever improvements that may be found desirable after the district has been organized.

Section 198. Section Amended.

Section 17A-2-310, Utah Code Annotated 1953, as renumbered and amended by Chapter 186 and last amended by Chapter 314, Laws of Utah 1990, is amended to read:

17A-2-310. Certification of bond issue to county legislative body — Tax levy — Payment of revenue bonds — Election on general obligation bonds and revenue bonds — Bonds for sewer purposes — Collection of charges.

(1) Except as to bonds issued payable solely from revenues derived from the district's facilities, it is the duty of each board of trustees which has issued bonds under this part to certify annually to each ap-

propriate [board of] county [commissioners] legislative body as provided in Section 17A-2-308, and it is the duty of the [board of] county [commissioners] legislative body to levy annually until principal and interest shall have been fully paid, taxes on all taxable property in the district, sufficient to assure the prompt payment of principal and interest as each falls due, all as provided in Section 17A-2-309.

(2) If any bonds issued under this part are issued in a manner as not to be payable from taxes but to be payable solely from the revenues to be derived by the district from the operation of its facilities, the bonds so issued shall be payable from and secured by the pledge of all or any specified part of the revenues to be derived by the district from the operation of its facilities; and where the bonds are so issued, it is the duty of the board of trustees to impose for all services rendered thereby rates fully sufficient to pay principal of and interest on the bonds and to carry out all commitments made in the resolution authorizing the bonds. The board may in the resolution enter into such covenants with the future holders of the bonds as to the management and operation of the facilities, the imposition and collection of fees and charges for water and services furnished by these facilities, the disposition of these fees and revenues, the issuance of future bonds and the creation of future liens and encumbrances against these facilities and the revenue from them, and carrying of insurance on the facilities, the keeping of books and records, and other pertinent matters, as considered proper by the board of trustees to assure the marketability of the bonds. The board may undertake in the resolution to make the revenues of the facilities sufficient to pay the expense of their operation and maintenance and may undertake to make the revenues or net revenues of the facilities sufficient to produce in each year an amount in such specified excess of actual requirements for principal of and interest on the bonds in that year as the board may consider necessary to assure the highest marketability of the bonds. If the board provides in the resolution authorizing the revenue bonds for the creation of a reserve fund to assure the prompt payment of principal and interest, the board may provide for the accumulation of this fund not only from the revenues of the facilities but also through the paying into it of such part of the bond proceeds as it may consider advisable. A proposition of issuing general obligation bonds and a proposition of the issuance of revenue bonds, or any combination of them, may be voted upon at the same election.

(3) When bonds are issued under this part in whole or in part for sewer purposes and the district operates a waterworks system, provision may be made in the bond resolution under which charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer service is paid at the same time. The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district. Whether or not a district operates a waterworks system, any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located. The amount of the delinquent charges, together with interest and penalties, shall immediately upon the certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on the premises and are collectible. All methods of enforcement available for the collection of general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges. However, when the customer is a renter of residential property covered by Title 57, Chapter 22, any unpaid and delinquent charges are a personal liability for the customer and may not be placed as lien on the property.

Section 199. Section Amended.

Section 17A-2-317, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-317. Ratification of districts created under prior laws — Issuance of authorized bonds — Amendatory proceedings.

Whenever any district has been heretofore created or purported to be created under authority of Chapter 25, Laws of Utah 1947, Chapter 24, Laws of Utah 1949, or the act hereby amended and where proceedings have been adopted by the governing body of such district for the purpose of authorizing the bonds of such district, whether or not such bonds are payable from operating revenues or from taxes or both, and whether or not such bonds have been heretofore delivered, all proceedings had in connection with the creation of such district, the organization of the governing body thereof, and all proceedings had in connection with the authorization of such bonds, and, when duly delivered and paid for as required by such proceedings, the bonds themselves are hereby validated, ratified and declared to be binding and effective in accordance with their terms notwithstanding any failure to comply with any one or more pertinent statutory provisions and notwithstanding whether such proceedings have been continuously in effect from the date of their adoption to the date of the passage of this part.

As to each district coming within the purview of this section which has heretofore authorized bonds which have not yet been issued, the governing body of such district is hereby authorized and empowered to do all things necessary to the issuance of such bonds and to the performance and carrying out of the contracts of such district, and such things may be done and such bonds when issued shall benefit from the curative provisions of this section whether or not changes in the details of the bonds and in the proceedings authorizing the issuance thereof have been made since the original adoption thereof or may hereafter be made and without regard to the nature of such changes.

Where any district has been originally initiated or created under authority of either Part 3, Chapter 2 or Part 2, Chapter 3, the governing authority of such district may proceed to issue bonds and operate facilities under the authority of the law under which it

was created or may, if in so doing provision is made for the payment in full of all expenses and obligations heretofore incurred by such district for legal, engineering, fiscal agent's and other proper services, make such changes and amendments in the proceedings for the authorization of such bonds as may be necessary to effect the authorization and issuance of such bonds under the provisions of this part as amended, and to that end, may increase or decrease the amount of bonds so authorized, may make such bonds payable in whole or in part from the operating revenues of the district or from taxes or both as herein provided, and may make any other changes in such proceedings it may deem to the best interests of the district. If any such change has the effect of pledging or allocating to the payment of any such bond taxes to be levied by such district, such amendatory proceedings shall become effective only when there shall have been given the notice contemplated by Section 17A-2-304 hereof, and when the hearing required by such section shall have been held and appeals taken therefrom, if any, terminated. For the purpose of this section, the [~~board of~~] county [~~commissioners~~] legislative body under districts initiated or created under said Part 2, Chapter 3, shall at its option, if it elects hereafter to proceed hereunder, exercise all duties and functions provided by this part to be exercised by the board of trustees of any district created hereunder or may cause an election to be held for the election of trustees in accordance with the provisions of this part.

Section 200. Section Amended.

Section 17A-2-322, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-322. Ratification of districts created under prior laws.

All improvement districts heretofore created or purported to be created within counties of the first class under the provisions of Chapter 24, Laws of Utah, 1949, are hereby validated, ratified, and confirmed and declared to be validly created improvement districts with the boundaries given them by the [~~boards of~~] county [~~commissioners~~] legislative bodies creating such districts.

Section 201. Section Amended.

Section 17A-2-332, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-332. Methods of annexation — Resolution — Proposed area including part of another county.

Any [~~board of~~] county [~~commissioners~~] legislative body, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the annexation of an area into an improvement district. Upon presentation to any [~~board of~~] county [~~commissioners~~] legislative body of a petition setting forth the area and boundaries thereof proposed to be annexed to an improvement district, signed by the legislative body of any city or town included or partially included within such area, or by 25% or more of the owners of real property included within such proposed area, or when the district to which it is proposed annexation shall be made is already providing district services for such area, then, signed by the board of trustees of such district, it shall be the duty of such [~~board of~~] county [~~commissioners~~] legislative body to adopt a resolution as aforesaid. In the event the proposed area includes any part of another county or counties, the above resolution shall further state the name or names of such county or counties, and the areas within such other county or counties proposed to be annexed to an improvement district. A certified copy of such resolution shall then be presented to the [~~board or boards of~~] county [~~commissioners~~] legislative body of such other county or counties. It shall be the duty of such other [~~board or boards of~~] county [~~commissioners~~] legislative bodies within 60 days thereafter to approve or reject such resolution. After the approval of such resolution by such other [~~board or boards~~] county legislative bodies, the [~~board of~~] county [~~commissioners~~] legislative body of the county adopting the original resolution shall thereafter have complete jurisdiction over the proposed area and its annexation to an improvement district and shall proceed as hereinafter provided in all respects as though only a single county were involved.

Section 202. Section Amended.

Section 17A-2-333, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-333. Notice of intention to annex — Resolution — Writ of review.

After such resolution shall have been adopted by the [~~board of~~] county [~~commissioners~~] legislative body, said [~~board~~] body shall give notice of its intention to annex said area to a specified improvement district. The notice shall define the area to be included therein and the boundaries thereof. After complying with provisions of Section 17A-2-304 as to notice, publication, taxpayer's protests, evidence of ownership and public hearing, the [~~board of~~] county [~~commissioners~~] legislative body shall adopt a resolution either annexing the property into the district or determining that it shall not be annexed into the district. Any resolution so annexing an area into the district may contain such changes as may be considered by the [~~board of~~] county [~~commissioners~~] legislative body to be equitable and necessary including changes in the boundaries thereof to assure that the district shall contain no property which will not be benefited by being included in the district. Upon the adoption of said resolution, the annexed area shall become, and be, an integral part of such district, and the taxable property therein shall be subject to taxation for the purposes of said district including the payment of bonds and other obligations of such district at the time authorized or outstanding. Writ of review from the determination of the [~~board of~~] county [~~commissioners~~] legislative body and the effect thereof shall be controlled by provisions of said Section 17A-2-304.

Section 203. Section Amended.

Section 17A-2-337, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-337. Payment of indebtedness after withdrawal from district.

The court shall have the power to order such taxes levied from time to time upon the property included within the withdrawn territory as above required under the provisions of Section 17A-2-312 and as may be requisite for the purpose of paying its just proportion of the general obligation bonds of the improvement district outstanding at the time of the filing of the petition. The [~~board of~~] county [~~commissioners~~] legislative body shall levy such taxes under the direction of the court and the same shall be collected by the county treasurer as other taxes.

Section 204. Section Amended.

Section 17A-2-404, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-404. Establishment of service area.

A county service area shall be established if:

(1) The [~~board of~~] county [~~commissioners~~] legislative body determines that such service should be provided on an extended basis within an unincorporated area in the county; or

(2) Such services are requested in a petition for the initiation of proceedings for the formation of a county service area or for the furnishing of additional types of service within an unincorporated area in the county.

Section 205. Section Amended.

Section 17A-2-405, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-405. Area in county service area — Overlapping of areas — Instituting proceedings for establishment.

(1) A county service area may consist of all or part of any unincorporated area of one county. County service areas may overlap if the service area which overlaps is entirely within the boundaries of the service area which it overlaps. Not more than two (three, if one is countywide) service areas may occupy the same area in the county and no overlapping areas may perform the same services. All parts of a county service area need not be contiguous.

(2) Proceedings for the establishment of a county service area may be commenced at any time and shall be instituted by the [~~Board of~~] county [~~Commissioners~~] legislative body if any one of the following occurs:

(a) The majority of the [~~board of~~] county [~~commissioners~~] legislative body vote in support of a resolution made by a member of that board, describing the boundaries of the territory proposed to be included in the area and specifying the type or types of extended county services already provided or to be provided.

(b) A petition is filed with the county clerk, requesting the institution of such proceedings signed by not less than 25% of the taxpayers owning real property which is located in the territory proposed to be included within the area. The petition may consist of any number of separate instruments.

(c) A petition is filed with the county clerk, requesting the institution of such proceedings signed by not less than 25% of the qualified voters residing in the territory proposed to be included within the area. The petition may consist of any number of separate instruments.

(3) The resolution or the petitions described in Subsection (2) and all separate instruments related to them shall describe the boundaries of the proposed area with definiteness and certainty.

Section 206. Section Amended.

Section 17A-2-406, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

17A-2-406. Resolution of county.

Within one month after the resolution has passed or the petition mentioned in Section 17A-2-404 has been filed with the county clerk, the [~~board of~~] county [~~commissioners~~] legislative body shall pass a resolution:

(1) describing the boundaries of the proposed territory;

(2) stating the type or types of services proposed to be provided;

(3) stating the name proposed for the area in substantially the following form:

"(Name of County) County Service Area No. ____";

(4) stating that a tax sufficient to pay for all such services which are furnished on an extended basis will be annually levied upon all taxable property within such area or that a service charge will be collected from the users of such services within the area, or by a combination of the property tax and the service charge;

(5) fixing a time and place for a public hearing on the establishment of the area which shall be not less than 30 nor more than 60 days after the adoption of the resolution mentioned in this section; and

(6) providing that all interested persons who desire to object shall be heard at that time and place.

Section 207. Section Amended.

Section 17A-2-408, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-408. Hearing — Protests — Report of officers — Record.

(1) At the hearing, protests against the establishment of the area or the furnishing of specified types

of extended services within the area may be made orally or by a signed writing, by any interested person.

(2) A protestant may withdraw a protest, or cancel a withdrawal of the protest, by submitting a signed writing within 30 days after the public hearing.

(3) (a) Prior to, or during the hearing, the county [~~governing~~] legislative body may require any county officer or employee to file a report giving an opinion or providing any technical information available to him, and may make the report part of the record of the hearing.

(b) The county [~~governing~~] legislative body may continue the hearing, but shall complete it within three months.

(c) The county clerk shall keep a record of the proceedings and minutes of the hearing.

(4) Voter registration records of the county are conclusive evidence of residency in the service area.

Section 208. Section Amended.

Section 17A-2-409, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-409. Abandonment of proposed service area — Procedures.

(1) The county [~~governing~~] legislative body shall abandon the proposed establishment of the county service area or eliminate those types of services objected to within the service area, if, within 30 days after the end of the hearing, written protests against establishing the service area or against types of services proposed to be provided by the district are filed by:

(a) property owners owning taxable property in the proposed service area with a taxable value greater than 40% of the taxable value of all the taxable property within the proposed service area according to the last assessment roll for county taxes completed prior to the end of the hearing; or

(b) 25% of the registered voters of the territory proposed to be included within the area.

(2) A corporation owning property in the proposed service area may file a protest by submitting a protest signed by any officer or authorized agent of the corporation.

(3) A person or corporation may withdraw a protest, or cancel the withdrawal of a protest, by filing a signed withdrawal or cancellation of withdrawal within 30 days after the end of the hearing.

(4) Voter registration records of the county are conclusive evidence of residency in the service area.

Section 209. Section Amended.

Section 17A-2-410, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-410. Ordinance to establish area — Appeals — Exclusion of lands from area — Inclusion of unspecified services prohibited.

(1) The county [~~governing~~] legislative body shall establish the area by enacting an ordinance that:

(a) declares the district established;

(b) determines and establishes the boundaries of the county service area, which may not exceed the territory proposed;

(c) designates the types of service to be performed by the area; and

(d) sets forth in detail whether the services are to be paid for by a property tax, service charge, or a combination of both.

(2) The ordinance may contain any changes that the county [~~governing~~] legislative body considers equitable and necessary, including the reduction of the boundaries of the service area and the elimination of one or more of the types of service proposed.

(3) (a) Any aggrieved property owner or person qualified to vote, who has filed a signed written protest within the time provided in Section 17A-2-409, may appeal the decision of the county [~~governing~~] legislative body to establish the county service area to the district court.

(b) That appeal shall be filed within 30 days after the effective date of the ordinance establishing the district.

(4) (a) Upon a signed petition by the property owner or person qualified to vote made within the time for filing protests as provided in Section 17A-2-409, the county [~~governing~~] legislative body shall exclude land from the county service area if:

(i) the land is contiguous to other land not included in the area; and

(ii) the county [~~governing~~] legislative body finds that the land, the real property owner, or the person qualified to vote will not benefit from any of the types of extended services proposed to be provided within the county service area.

(b) The land may be included within the boundaries of the county service area at the request of the owner.

(5) (a) The county [~~governing~~] legislative body may not authorize the county service area to provide services not specified in the resolution or petition required by Section 17A-2-405.

(b) Voter registration records of the county are conclusive evidence of residency in the service area.

Section 210. Section Amended.

Section 17A-2-411, Utah Code Annotated 1953, as last amended by Chapter 273, Laws of Utah 1991, is amended to read:

17A-2-411. Board of trustees — Selection procedures — Terms — Surety bonds.

(1) Each service area created by this part shall be governed by a board of trustees consisting of three or more members created as provided in this section.

(2) (a) In the ordinance creating the service area, the county legislative body may declare that the county legislative body of the county shall act as the trustees of the service area.

(b) Upon passage of the ordinance, the county legislative body of the county shall act as trustees of the service area with all the powers, authority, and responsibility vested in the trustees under this part.

(c) (i) The county legislative body, when acting as trustees, may use any existing county offices, officers, or employees for the purposes of the service area.

(ii) The county legislative body shall charge costs of those services to the service area and require them to be paid to the county treasurer for the general fund of the county.

(3) At any time after the creation of a board of trustees as provided in Subsection (1), if no elected board has been established as provided in this section, the county [~~governing~~] legislative body of the initiating county may:

(a) by ordinance, delegate its powers to an appointed or elected board of trustees as provided in Title 17A, Chapter 1, Part 3; and

(b) provide for the appointment or election of the board by following the procedures and requirements of Title 17A, Chapter 1, Part 3.

(4) At any time after the creation of a board of trustees as provided in Subsections (2) and (3), the county [~~governing~~] legislative body shall hold an election by following the procedures and requirements of Title 17A, Chapter 1, Part 3 when the county legislative body receives a petition requesting that an election for trustees be held that is:

(a) signed by at least 10% of persons eligible to vote in any election in any service area created under this part; and

(b) filed with the county legislative body at least 30 days before the date set for a bond election or 90 days before the date set for any municipal election.

(5) (a) If there is no elected board of trustees at the time of the first bond election, trustees shall be elected in conjunction with that bond election.

(b) Candidates for election to the board of trustees shall be taxpayers and qualified voters in the service area.

(c) At any time within 30 days after the county [~~governing~~] legislative body has called a bond election, but not less than 15 days before the day of election, any person who is qualified to vote in the service area may file a signed statement with the county clerk announcing that he is a candidate to be one of the first elected trustees of the service area.

(d) The board of trustees shall provide a ballot separate from the bond ballot that contains the names of the candidates and blanks in which the voters may write in additional names.

(e) Each voter at the election may vote for the number of trustee positions to be filled.

(f) The persons receiving the highest number of votes at the election are members of the board of trustees.

(6) (a) Members of the first board of trustees shall serve for two and four year terms, beginning on the first Monday in January after the election.

(b) Initial terms shall be selected by lot and shall be apportioned so that, whenever possible, equal numbers of the board will serve for two years and four years.

(c) After the first election, except for appointments made to fill unexpired terms, the term of each member is four years.

(7) (a) Each member of the board of trustees may vote on all questions, orders, resolutions, and ordinances coming before the board.

(b) Each trustee shall receive compensation of not more than $1,500 per year as determined by the board of trustees, except that when the county legislative body acts as the board of trustees, no compensation may be paid to them as trustees.

(c) Each trustee who is also a member of the county legislative body shall take the oath of office and shall give the bond that is required by law for members of the county legislative body.

(d) All laws pertinent to the giving and filing of oaths and bonds for members of the county legislative body apply to the trustees.

(e) Trustees who are not members of the county legislative body shall take the oath of office and shall give a bond in the amount, and with the sureties, prescribed by the county legislative body.

(8) All qualified voters in the service area may vote in elections to select trustees and in elections to approve the issuance of bonds.

(9) (a) Following the election or appointment of the first trustees, any elected trustee shall be elected according to the procedures and requirements of Title 17A, Chapter 1, Part 3.

(b) Each trustee shall take office on the first Monday in January following his election. and

(10) Within a reasonable time after their appointment, the trustees shall meet and elect one of their members as chairman and shall appoint a clerk and a treasurer, or a clerk-treasurer.

(11) All vacancies of elected trustees in office shall be filled according to the procedures and requirements of Title 17A, Chapter 1, Part 3.

Section 211. Section Amended.

Section 17A-2-412, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-412. Service area deemed body corporate — Powers.

On and after the effective date of the ordinance creating a county service area the service area shall be deemed a body corporate and politic and a quasi-municipal public corporation and the service area,

acting through its board of trustees, shall have the following powers and authority provided by the County Service Area Act:

(1) The power to exercise all powers of eminent domain possessed by counties in Utah in the manner provided by law for the exercise of eminent domain power by counties.

(2) The right to sue and be sued.

(3) The power to enter into contracts considered desirable by the board of trustees of the service area to carry out the functions of the service area including, but without limitation, the power to enter into contracts with municipal corporations, counties or other public corporations, county service areas or districts.

(4) The power to impose and collect charges or fees for any commodities, services or facilities afforded by the service area to its consumers and to pledge all or any part of the revenues so derived to the payment of any bonds of the service area, whether the bonds are issued as revenue bonds or as general obligations of the service area. Where revenue bonds are issued payable solely from the revenue of commodities, services and facilities, the fees and charges imposed shall always be sufficient to carry out the provisions of the resolution authorizing the bonds. The board of trustees may do such things and adopt such regulations necessary to assure the collection and enforcement of all fees and charges imposed. Where more than one commodity, service or facility is furnished to a consumer by the service area, the fees and charges for all commodities, services and facilities may be billed to the consumer in a single bill. All or any of the commodities, services and facilities furnished to a consumer by the service area may be suspended if any fees and charges due the service area are not paid in full when due.

(5) The power to sell, lease, mortgage, encumber or otherwise dispose of any properties, including water and water rights, owned by the service area upon such terms and conditions as the board of trustees may determine.

(6) The power to own any and all property or interests in property including water and water rights, deemed necessary or appropriate by the board of trustees in carrying out the purposes of the service area and the power to acquire the same by purchase, lease, gift, devise or bequest.

(7) The right to request the county executive to utilize any existing county offices, officers, or employees for purposes of the service area when in the opinion of the board of trustees it is advisable to do so; but in any event, the [~~board of~~] county [~~commissioners~~] executive may charge the service area a reasonable amount for the services rendered, other than for services rendered by the county [commissioners] executive.

(8) The right to employ officers, employees and agents of the service area, including attorneys, accountants, engineers and fiscal agents, and to fix their compensation. The board of trustees may require officers and employees charged with the handling of funds to furnish good and sufficient surety bonds or the board may purchase a blanket surety bond for all officers and employees.

(9) The right to fix the times for holding regular meetings.

(10) The right to adopt an official seal.

(11) The right to adopt bylaws and regulations for the conduct of its business and affairs.

Section 212. Section Amended.

Section 17A-2-413, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-413. Procedure for extension or discontinuance of services or dissolution of a service area.

(1) (a) After a county service area is established, the board may extend the types of services provided by the area by using the procedures set forth in this part for the creation of the service area.

(b) If the board extends the services provided, it shall make the appropriate changes in the wording of the required instruments.

(2) If a county service area is abandoned as provided in this part, the county [~~governing~~] legislative body may:

(a) discontinue any services for which the county service area was created; or

(b) dissolve the county service area if the area has no bonds or other indebtedness outstanding.

Section 213. Section Amended.

Section 17A-2-414, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-414. Tax rate — Limitation.

Each year prior to the time the county [~~governing~~] legislative body fixes and levies taxes for county purposes, the board of trustees of each service area within the county shall fix the rate of county service area taxes or charges or combination of both and shall certify the rate to the county [~~governing~~] legislative body. The tax levy rate so certified for any service area may not in any year exceed .0014 per dollar of taxable value of taxable property located in the service area, except as provided in Section 17A-2-424.

Section 214. Section Amended.

Section 17A-2-417, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-417. Annexation of other areas.

Whenever the services of the type being provided within a county service area should be provided in any other unincorporated portion of the county whether contiguous to the existing area or not, the [~~board of~~] county [~~commissioners~~] legislative body may annex that territory to the area in the manner provided by this part for the formation of a new service area in such territory with such changes as are

necessary to make the proceedings germane to the proposed action without denying any person his substantive rights.

Section 215. Section Amended.

Section 17A-2-418, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-418. Annexation of all or part of county service area into city or town — Petition and election on exclusion — Exclusion of territory from area — Unencumbered funds — Service area facilities.

(1) (a) If all or any portion of a county service area is annexed into an incorporated city or town, the annexed territory may not be excluded from the county service area unless a petition is filed with the governing body of the city or town requesting that the territory described in the petition be excluded from the service area.

(b) The petition shall be signed by:

(i) property owners owning taxable property in the territory to be excluded from the service area that has a taxable value in excess of 40% of the taxable value of all taxable property within the area to be excluded, according to the last assessment roll for county taxes completed prior to the date of filing of the petition; or

(ii) 25% of the registered voters residing within the territory to be excluded.

(c) Upon receipt and verification of the validity of the petition, the governing body of the city or town shall, at the next general election, place the following proposition before the qualified voters residing within that portion of the city or town lying within the boundaries of the county service area as described in the petition: "Shall the territory lying within (name of city or town) which is also within the boundaries of (name of county service area) be excluded from (name of county service area)?"

(d) If a majority of the qualified voters cast their ballots in favor of excluding the territory from the county service area, the territory within the county service area that is included within the city or town is excluded from the county service area, effective as of the date of election.

(e) If a majority of the qualified voters cast their ballots against excluding the territory lying within the city or town from the county service area, the territory shall remain within the service area.

(2) (a) If all or any portion of a county service area is included within a newly incorporated city or town, that territory may not be excluded from the county service area unless a petition is filed with the governing body of the city or town, requesting that the territory be excluded from the county service area.

(b) The petition shall be signed by:

(i) owners of taxable property in the territory to be excluded from the service area that has a taxable value in excess of 40% of the taxable value of all taxable property within the area to be excluded, according to the last assessment roll for county taxes completed prior to the date of filing of the petition; or

(ii) by 25% of the registered voters residing within the territory to be excluded.

(c) Upon receipt and verification of the validity of the petition, the governing body of the city or town shall, at the next general election, place the following proposition before the qualified voters residing within that portion of the city or town lying within the boundaries of the county service area: "Shall all territory lying within (name of city or town) which is also within the boundaries of (name of county service area) be excluded from (name of county service area)?"

(d) If a majority of the qualified voters cast their ballots in favor of excluding the territory from the county service area, the territory within the county service area that is included within the city or town shall be excluded from the county service area, effective as of the date of the election.

(e) If a majority of the qualified voters cast their ballots against excluding the territory lying within the city or town from the county service area, the territory shall remain within the county service area.

(3) (a) For purposes of this section, "unencumbered funds" means the sums of money, uncollected taxes, and other uncollected accounts due a county service area, in excess of an amount sufficient to pay all claims.

(b) When territory is excluded from a county service area, all unencumbered funds standing to the credit of the county service area upon the date of the exclusion shall be divided between the incorporated area and the county service area in proportion to the taxable value of the taxable property of the territory excluded and the portion remaining within the county service area if the incorporated area within which the excluded area is located:

(i) undertakes to provide the services previously provided by the service area; and

(ii) assumes a proportionate share of the debt, both bonded and otherwise, of the service area.

(c) The outstanding debts of the service area shall be divided between the incorporated area and the service area based upon the same formula and same proportion specified in Subsection (b).

(d) (i) If, at the time of the exclusion of any territory from a county service area, the county service area has outstanding indebtedness payable from taxes, the exclusion shall relieve the excluded territory from liability for the payment of taxes for any indebtedness except as specified in this Subsection (d).

(ii) The excluded area may be taxed to pay voted indebtedness existing at the time of exclusion, but only to the extent, and only in the years where, it is necessary to levy that tax in the excluded area in order to forestall or prevent a default in the payment of principal and interest on that indebtedness.

(iii) If the county [~~governing~~] legislative body levies those taxes, the county treasurer shall collect them as other county taxes are collected.

(4) If the area annexed into an incorporated area and excluded from the service area encompasses service area facilities, the county service area shall continue to own and operate those facilities so that the service area's ability to provide services and facilities to the residents and occupants of the service area is unabated and undiminished.

Section 216. Section Amended.

Section 17A-2-420, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-420. Existing districts may dissolve.

Any existing special improvement districts in any unincorporated area of the county not under the direct supervision and control of the county [~~commission~~] legislative body may dissolve in the same manner as is provided for disincorporation of cities and towns and the residents of the unincorporated areas involved may be furnished extended services under the provisions of this part.

Section 217. Section Amended.

Section 17A-2-503, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-503. Petition — Bond — Name of district.

A petition shall first be presented to the [~~board of~~] county [~~commissioners~~] legislative body of the county in which the land is situated, and if the proposed district shall contain lands situated in more than one county, then in the county in which the greatest portion thereof is situated, signed by the required number of holders of title, or evidence of title, of such proposed district, evidenced as above provided, which petition shall contain a general description of said proposed work of such district, and shall pray that and shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this part. Such petition shall be presented at a regular meeting of [~~said board of~~] the county [~~commissioners~~] legislative body, and due notice thereof shall be given as hereinafter provided. Said petitioners shall file with the [~~board of~~] county [~~commissioners~~] legislative body a good and sufficient undertaking in the sum of 2% of the estimated cost of the proposed improvements in said drainage district. The condition of such undertaking shall be to the effect that if the said [~~board of~~] county [~~commissioners~~] legislative body shall find no merit in said petition and shall find that the cost of the proposed improvement or improvements will be in excess of the benefit or benefits to be derived therefrom, that the petitioners will pay all cost of preliminary surveys and the publication of notice and such other lawful expenses as may have been incurred by the petitioners or by the said [~~board of~~] county [~~commissioners~~] legislative body. The petition shall also contain the name proposed to be given to the drainage district.

Section 218. Section Amended.

Section 17A-2-505, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-505. Hearing — Petition may be amended.

The county [~~commissioners~~] legislative body of the county in which said petition shall be filed may hear the petition at any regular or special meeting, and may determine all matters pertaining thereto, and all subsequent proceedings of the district when organized under this part, and may adjourn the hearing from time to time, or continue the case for want of sufficient notice or other good cause. The commissioners, upon application of the petitioners, shall permit the petition, affidavit, and orders to be amended, and no petitioner shall have the right to withdraw from said petition, except by the consent of the majority of the other petitioners thereon or where it shall be shown to the satisfaction of the commissioners that the signature of the petitioner was obtained by fraud or misrepresentation.

Section 219. Section Amended.

Section 17A-2-506, Utah Code Annotated 1953, as last amended by Chapter 273, Laws of Utah 1991, is amended to read:

17A-2-506. Petition — Hearing — Board of supervisors — Change of boundaries — Proclamation.

When such petition is presented, the said [~~board of~~] county [~~commissioners~~] legislative body shall hear the petition, and may adjourn such hearing from time to time, not exceeding four weeks in all. On the hearing of any petition filed under the provisions of this part, all parties through or upon whose land any of the proposed work may be constructed, or whose land may be damaged or benefited thereby, may appear and contest the necessity or utility of the proposed work, or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto. It shall be the duty of the commissioners to hear and determine whether or not said petition contains the signatures of a majority of the owners of title or evidence of title to the lands within said proposed district who own or control not less than one-third in area of the lands to be reclaimed or benefited, or which are susceptible of drainage; or, in the alternative, that said petition contains the signatures of the owners of title or evidence of title of a major portion in area of the lands proposed to be reclaimed or benefited, or which are susceptible of drainage, and the affidavit of any three or more of the signers of said petition that they have examined said petition and are acquainted with the locality of said district and that said petition is signed by a majority of such owners who represent at least a majority of the acreage of the lands proposed to be reclaimed or benefited, or that said petition is signed by the owners of title or evidence of title of a major portion in area of the lands proposed to be reclaimed or benefited, may be taken by the county [~~commissioners~~] legislative

body as prima facie evidence of the facts stated therein; or the oath or affirmation before the said county [~~commissioners~~] legislative body, or the affidavit of any person, properly taken and certified by any person or court authorized to take acknowledgments of deeds to real estate in this state, giving the age of such party, and his or her ownership of lands to be named in such oath, affirmation, or affidavit, by proper description, shall be sufficient evidence to the county [~~commissioners~~] legislative body of such facts; provided, that all deeds made for the purpose of establishing or defeating the prayers of said petition, not made in good faith and for a valuable consideration, shall be taken and held to be in fraud of the provisions of this part, and the holders thereof shall not be considered as owners thereof. If the commissioners, after hearing any and all competent evidence that may be offered before it for and against the said petition, shall find the same has not been signed as hereinbefore required, said petition shall be dismissed at the cost of the petitioners; but if the commissioners shall find that the petition has been signed as hereinbefore provided, the commissioners shall so find, and such finding shall be conclusive upon the landowners of such district that they have assented to and accepted the provisions of this part; and the [~~board of~~] county [~~commissioners~~] legislative body may make such changes in the proposed boundaries as they may find to be proper, and shall establish and define such boundaries; provided, that said [~~board~~] body shall not modify said boundaries so as to except from the operation of this part any territory within the boundaries of the district proposed by said petitioners which is susceptible of drainage by the system of works applicable to the other lands in such proposed district; provided, that any person whose lands will not, in the opinion of said [~~board~~] body, be benefited by drainage by said system, may have such lands excluded from such district upon application to said [~~board~~] body, except as provided in Section 17A-2-516; and provided, further, that any person whose lands are susceptible of drainage by the same system may, in the discretion of the [~~board of~~] county [~~commissioners~~] legislative body, upon application of the owner to said [~~board~~] body have such lands included in said districts. If it shall further appear to the commissioners that the proposed drain or drains, ditch or ditches, or other works, is or are necessary or will be useful for the drainage of the lands proposed to be drained thereby for agricultural or sanitary purposes, or conducive to the public health or welfare, the commissioners shall so find, and appoint three competent persons, who shall be known as a board of supervisors, according to the procedures and requirements of Title 17A, Chapter 1, Part 3. In case the lands to be drained shall be situated in different counties, not more than two of the members of the board of supervisors shall be chosen from any one of such counties; provided that the petition presented to the county [~~commissioners~~] legislative body, as herein authorized, may, in addition to the other matters required, designate three persons to be appointed as members of said board of supervisors, and the persons so designated in said petition shall, by the [~~board of~~] county [~~commissioners~~] legislative body, be appointed to be the members of such board of supervisors. It shall be the duty of the board of supervisors to lay out and construct such proposed work, and to levy a tax upon the lands in said drainage district, subject to the approval of the [~~board of~~] county [~~commissioners~~] legislative body, as hereinafter provided. If said [~~board of~~] county [~~commissioners~~] legislative body shall find that the establishment and creation of such drainage district will be a benefit as hereinbefore set forth, said board shall, within ten days, proclaim such district created, and such proclamation shall be published for at least ten days thereafter by posting in three public places within said county or counties at least one of which places shall be within said drainage district, or by publishing the said proclamation in some newspaper of general circulation published in the county and if the district embraces lands in more than one county, then in a newspaper of general circulation published in each such county, or if there be no such paper published in any such county or counties, then in some newspaper having a general circulation in such county or counties, and the said proclamation shall be substantially in the following form:

Office of the [~~board of~~] county [~~commissioners~~] legislative body, county of ____, State of Utah, A. D. 19__.

In the matter of the petition for the organization of ____ drainage district, of ____ county, State of Utah.

The petition having been heard in the manner required by law and the commissioners having duly examined said petition, and having heard evidence concerning the same, and considered all objections to the same, it is ordered by the county [~~commissioners~~] legislative body that the petition be, and the same is hereby granted; and the county [~~commissioners~~] legislative body further find that the work proposed in said petition to be done will be useful for agricultural or sanitary purposes to the owners of land within said proposed district; and the county [~~commissioners~~] legislative body also find that the persons who have signed said petition are of lawful age and are a majority of the adult landowners, representing one-third in area (or are landowners who own a major portion, as the case may be) of the land to be affected by such proposed work. The county [~~commissioners~~] legislative body further find that the said drainage district is duly established as provided by law. The following named persons are to be known as the board of supervisors:

____ of ____
____ of ____
____ of ____
Attest:
____ Clerk.
_____ County Commissioners.

And upon entering the order of proclamation of record said district is hereby declared by law to be organized as a drainage district by the name mentioned in the petition, and with the boundaries fixed by the order of said [~~board of commissioners~~] county legislative body, and said district is hereby declared to be a body corporate and politic by the name mentioned in said order of [~~county commissioners~~] the county legislative body, with the right to sue and be

sued, and to have perpetual succession, and may adopt and use a corporate seal; and the board of supervisors appointed as aforesaid and their successors in office shall, from the entry of such order of proclamation, constitute the corporate authorities of such drainage district, and shall exercise the functions conferred upon them by law and shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are appointed and have qualified.

Section 220. Section Amended.

Section 17A-2-507, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-507. Appeal — Duty of the county legislative body.

An appeal from such order may be made to the district court in the county in which such district is situated. If any such appeal be made the district court shall advance the cause to be heard, and the same shall be heard and disposed of at the earliest date. Where there are two or more appeals involving the same matters, the court may, in its discretion, order the said cases consolidated for the purposes of said appeal, when it shall appear that justice will be advanced thereby. The procedure in said appeals shall conform to the civil code as nearly as may be, provided, however, no action shall be commenced or maintained, or defense made, affecting the validity of the organization unless the same shall have been commenced or made within six months after the making and entering of said order; and provided further, that no such action shall be commenced or maintained, or defense made, after proceedings for confirmation as provided in Sections 17A-2-517 to 17A-2-521, shall have been commenced. Said [~~board of~~] county [~~commissioners~~] legislative body shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands is situated, and must also immediately forward a copy thereof to the county clerk of each county in which any portion of such district may lie, and the [~~board of~~] county [~~commissioners~~] legislative body of any county included in any portion of such district shall not allow another district to be formed including any of the lands of such district, without the consent of the board of supervisors thereof, and from and after the date of such filing the organization of the district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are appointed and have qualified.

Section 221. Section Amended.

Section 17A-2-508, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-508. Bonds of supervisors.

After said district has been established by proclamation, and after the members of said board of supervisors have been duly appointed, and before entering upon the duties of their office, each of the members of such board of supervisors shall take and subscribe to the constitutional oath of office, which oath shall be filed with the county clerk. Each supervisor shall execute an official bond to the district in such sum as may be fixed and with sureties approved by the [~~board of~~] county [~~commissioners~~] legislative body. Bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers.

Section 222. Section Amended.

Section 17A-2-516, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-516. Board to report findings — Changes to be made.

The board of supervisors of said drainage district upon and after their examination of said district, as hereinbefore provided, shall make a report of its findings to the [~~board of~~] county [~~commissioners~~] legislative body. If the board of supervisors shall find and report that, although said district has been formally proclaimed, the cost and expenses of construction and maintenance and damages accruing are more than equal to the benefits which may inure to the lands in general of said district by reason of the proposed work, it shall so report, and the proceedings shall be dismissed at the cost of the petitioners. If the board of supervisors shall find that the benefits will exceed the cost and expense of construction and maintenance and damages it shall so report. If certain lands in the opinion of the board of supervisors will not be benefited and should be excluded, the board of supervisors may recommend to the [~~board of~~] county [~~commissioners~~] legislative body in such report such exclusion, and the said [~~board of~~] county [~~commissioners~~] legislative body shall exclude such lands if feasible; or if additional lands will be benefited, the board of supervisors may recommend to the [~~board of~~] county [~~commissioners~~] legislative body in such report the inclusion of such additional lands, and such additional lands shall be included by the [~~board of~~] county [~~commissioners~~] legislative body; and the boundaries of said district shall be so fixed; provided, however that such lands may be included at any time upon report of the board of supervisors or when the owners thereof petition for inclusion, or signify in writing their consent thereto; and provided, further, that where no such petition for inclusion or such consent in writing shall have been filed as to any such lands, the [~~board of~~] county [~~commissioners~~] legislative body shall serve notice upon the owners thereof in the manner provided for notice of hearing upon the original petition and shall fix a time and place of hearing thereon, and at such hearing said board shall hear the objections thereto, and if said board shall then find such lands will be benefited, notwithstanding any such objections, such lands shall be included and the boundaries of the district so extended, if by such inclusion there would be, as shown by the records and files of said district, either the necessary majority of the owners of title or evi-

dence of title of lands within said district who own not less than one-third in area of the land to be reclaimed in favor of the organization of said district with such boundaries, or by the owners of title or evidence of title of lands within said district who own a major portion in area of the lands to be reclaimed in favor of the organization of such district the [board of] county [commissioners] legislative body shall, by order, confirm such report, and shall thereupon publish a notice setting forth the boundaries of said district as finally fixed, said notice to be published in the same manner as the proclamation required by this part, and shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county recorder of each county in which any portion of such lands is situated and must also immediately forward a copy thereof to the county clerk of each county in which a portion of such district may lie. The board of supervisors shall thereupon proceed with the construction of the proposed drainage system.

Section 223. Section Amended.

Section 17A-2-521, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-521. Powers of court — Substantial rights affected — Decrees.

Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this part prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of this part, from and including the petition for the organization of the district and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof, and all proceedings, if any, for the authorization of contract with the United States, and the terms of said contract. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings; and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The costs of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. The board of supervisors shall cause a copy of such decree duly certified to be immediately filed for record in the office of the county recorder of each county in which any portion of said district is situated, and shall also forward immediately a copy thereof to the county clerk of each county in which any portion of said district may lie. The [board of] county [commissioners] legislative body of any county in which any portion of said district may lie shall not allow another drainage district to be formed including any of the lands of said district without the consent of the board of supervisors thereof.

Section 224. Section Amended.

Section 17A-2-529, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-529. Procedure for annexation — Petition — Appeals by persons aggrieved — Recordation and filing of order.

Whenever a two-thirds majority of the landowners, and owners of title to at least two-thirds of the total acreage of lands lying contiguous to the corporate limits of any existing drainage district shall desire to annex such lands to such drainage district they shall cause an accurate plat or map of such lands to be filed with the [board of] county [commissioners] legislative body, together with a petition, in writing, signed by a two-thirds majority of the owners of such lands and the owners of title to at least two-thirds of the total acreage of such contiguous lands described in such map. At their next regular meeting after receipt of such petition the [board of] county [commissioners] legislative body shall fix a time and place for the hearing of such petition, and shall give notice thereof by serving a copy of such notice, map and petition upon the board of supervisors of the drainage district at least 15 days prior to the time set for such hearing and by publication of such notice at least once each week for two consecutive weeks in a newspaper having general circulation in the county or counties in which such drainage district is situated. The first publication shall not be less than 15 days nor more than 30 days prior to the date set for such hearing. Said notice shall state generally the nature of the petition, the purpose of the hearing, and the time and place when the county [commissioners] legislative body shall hear said petition and that any landowner within the drainage district may appear and oppose the granting of such petition. When such petition is presented to be heard the said county [commissioners] legislative body shall hear said petition and may adjourn such hearing from time to time not exceeding four weeks in all. On the hearing of said petition the petitioners, or any party interested therein, may appear in support of such petition and the board of supervisors, or any landowner within the drainage district may appear and oppose the granting of said petition, and the petitioners and contestants may offer any competent evidence in regard thereto. It shall be the duty of the [board of] county [commissioners] legislative body to hear and determine whether or not said petition contains the signatures of a two-thirds majority of the owners of title or evidence of title to the lands sought to be annexed, and the owners of title or evidence of title of at least two-thirds of the total acreage thus sought to be annexed, and to hear all competent evidence offered for or against the granting of said petition. If the [board of] county [commissioners] legislative body after hearing any and all competent evidence that may be offered before it for and against said petition shall find the same has not been signed as hereinbefore required, or that it would be inequitable to the landowners within the drainage district to permit such annexation, such petition shall be dismissed at the cost of the petitioners; but if the commissioners shall find that the petition has been signed as hereinbefore

provided and that the annexation of such lands will not be inequitable to the landowners within the drainage district, the commissioners shall so find. After hearing all of the evidence offered for or against said petition, the county [~~commissioners~~] legislative body shall determine whether or not such lands shall be annexed to the drainage district and shall so order. Such findings and order shall be conclusive upon the owners of such contiguous lands that they have assented to the inclusion of their lands within the boundaries of the drainage district and that they have accepted all the provisions of this part. The [~~board of~~] county [~~commissioners~~] legislative body in making an order annexing any such lands to the drainage district, may make such changes in the proposed new boundaries of the drainage district caused by the annexation of such new lands as the commissioners shall deem proper and establish and define such new boundaries, provided, that said board shall not modify such new boundaries so as to exclude therefrom any land included in the new boundaries which is susceptible to drainage by the system of drainage works applicable to the other lands annexed to the district pursuant to the petition. Any person aggrieved by such order may at any time within 30 days after the entry thereof appeal the same to the district court of the county in which such district is situated. The procedure in such appeals shall conform to the Civil Code as nearly as may be. The [~~board of~~] county [~~commissioners~~] legislative body shall cause a copy of such order annexing such lands duly certified to be filed for record in the office of the county recorder of each county in which any portion of such annexed lands are situated, and must immediately file a copy thereof with the county clerk of each county in which any portion of said district may lie. Upon the recording and filing of such order the lands annexed to the drainage district shall be a part thereof.

Section 225. Section Amended.

Section 17A-2-530, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

17A-2-530. Viewing of annexed land by board of supervisors — Assessment for taxation — Board of equalization — Hearing — Notice — Lien for taxes.

The board of supervisors shall, as soon as may be after the recording of the order annexing such lands, view each tract of land so annexed to the district and shall carefully consider all the damages and benefits that each particular tract of land shall receive from the annexation to the drainage district and from the construction, and maintenance of such drainage system, and assess each tract of land in accordance with the benefits to be received by it, making proper allowance for damage, if there be any. After such assessment is made, the secretary of the board of supervisors, shall transmit the same to the [~~board of~~] county [~~commissioners~~] legislative body and the [~~board of~~] county [~~commissioners~~] legislative body shall at its next regular meeting fix a time and place where it shall sit as a board of equalization and equalize and determine the benefits and taxes to be assessed against such land, and shall cause a notice of the hearing thereon to be published at least once each week for two consecutive weeks in a newspaper having general circulation in the county or counties where such drainage district is situated. The first publication of such notice shall not be less than 15 days or more than 30 days prior to the date of such hearing, and when the residence or post-office address of any owner of the lands so annexed is known the clerk of the [~~board of~~] county [~~commissioners~~] legislative body shall cause a copy of such notice and a copy of the proposed benefits to be sent by United States mail to such landowner at least 15 days prior to the time fixed for such hearing. The notice shall state generally the purpose of such hearing and the time and place where the [~~board of~~] county [~~commissioners~~] legislative body shall meet as a board of equalization to hear and determine any complaint against such assessments. The [~~board of~~] county [~~commissioners~~] legislative body at the time and place stated in said notice shall sit as a board of equalization and it shall make and determine the benefits to be assessed against each tract of land so annexed. Thereupon such assessment of benefits, shall be added to and made a part of the benefit assessment roll of the drainage district and thereafter all such lands, easements or interests in land shall be assessed in accordance with the assessment roll and such assessment roll of benefits and taxes shall be the basis of a lien upon the parcels of land or interest in land as thus equalized for all district purposes and indebtedness.

Section 226. Section Amended.

Section 17A-2-535, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-535. Validation of organization proceedings — Notice of proposed corrections, amendments or changes in assessment of benefits — Hearing by county legislative body of report of board of supervisors — Board of equalization — Increase of drainage benefits and taxes — Lien.

Whenever it shall appear to the board of supervisors that any proceedings for the organization of a drainage district have not been strictly in compliance with law, or if any lands within the district have been erroneously assessed for benefits or taxes, or inequitably assessed for benefits or taxes, or that any assessment of damages or benefits under this part has been made in error as to description, ownership, or acreage intended to be assessed, or if it shall appear to such board of supervisors that the assessment of benefits has been inequitably distributed among the various parcels of land, or unjustly equalized as between the various parcels of land within the district, or that any tract of land, easement or interest in land, public, or private road, railroad or railroad right-of-way, has been included in, or omitted from, any assessment roll of benefits or taxes by reason of clerical error or otherwise, or that proper notice or notices as required by law has not or have not been given, such noncompliance, error, omission or want of notice shall not invalidate such organization, neither shall any such

assessments of benefits or taxes be lost to the district in case of any omission, nor shall the board of supervisors and [~~board of~~] the county [~~commissioners~~] legislative body be held to have lost jurisdiction to correct such error or omission, or to readjust such assessments of benefits or to redistribute such assessment of benefits upon the various parcels of land and interest in lands within such district, and to justly equalize the same as between various parcels of land and interest in lands within the district, but the board of supervisors of such district may report any such conditions and recommend such corrections and changes as such board of supervisors may deem necessary to remedy the same; and upon receiving such report and recommendation the said [~~board of~~] county [~~commissioners~~] legislative body may make such corrections, amendments or changes in the assessment rolls of benefits and taxes, or correct any error, omission, mistake, inequality or want of sufficient notice, as may be just; provided, that when any correction, amendment or change is sought to be made, notice of such proposed correction, amendment or change in the assessment of benefits and taxes shall be given to all persons affected thereby, in the following manner:

The board of supervisors of the drainage district shall file with the clerk of the [~~board of~~] county [~~commissioners~~] legislative body of the county wherein the drainage district is located, a verified report containing the proposed corrections, amendments, and/or changes in the assessments of benefits and taxes with their recommendation with respect thereto, to the [~~board of~~] county [~~commissioners~~] legislative body. The [~~board of~~] county [~~commissioners~~] legislative body shall, at its first meeting thereafter, fix a time and place for a hearing on said report and shall cause a notice of the hearing thereon to be published three times if in a daily newspaper, twice if in a semiweekly newspaper and once if in a weekly newspaper, not less than 15 days before said hearing, and when the residence or post-office address of any landowner, whose assessment of benefits or taxes is to be corrected, amended or changed is known the clerk of the [~~board of~~] county [~~commissioners~~] legislative body shall cause a copy of the notice to be sent by United States mail to such landowner, not less than 15 days before the time fixed for the hearing on the report. The notice shall state generally the purpose of the hearing and the time and place where the [~~board of~~] county [~~commissioners~~] legislative body shall meet as a board of equalization to hear and determine any complaint made against such report, corrections, amendments and changes in the assessment roll of benefits and taxes.

The [~~board of~~] county [~~commissioners~~] legislative body at the time and place fixed in the notice shall sit as a board of equalization and it shall make and finally determine such corrections, amendments and changes in the roll of assessment of benefits and taxes, as it shall determine after such hearing, and thereafter all such lands, easements or interest in lands shall be assessed in accordance with the assessment roll as thus corrected, amended, or changed; and such changed assessment roll of benefits and taxes shall be the basis of lien upon the parcels of land or interest in land, as corrected, amended or changed, for all district indebtedness. Whenever it shall be made to appear to the board of supervisors of the drainage district that any owner or operator of any land within the drainage district has so changed the use of such land so as to increase the benefits received by such land by reason of the construction, maintenance, and operation of the drainage system, the board of supervisors of the drainage district shall view each tract of such land and shall carefully consider the increased benefits such tract of land is receiving from the construction, maintenance and operation of the drainage system and shall assess such tract of land in accordance with the increased benefits received by it. After such assessment is made, the secretary of the board of supervisors shall transmit the same to the [~~board of~~] county [~~commissioners~~] legislative body and the [~~board of~~] county [~~commissioners~~] legislative body shall within 15 days after receipt thereof, cause not less than 15 days notice to be sent by mail to each landowner in the district whose benefits have thus been increased, showing the amount of the benefits as thus increased on the land owned by the landowner within the district; and stating therein the time and place where the [~~board of~~] county [~~commissioners~~] legislative body shall meet as a board of equalization to hear and determine complaints made against such increased assessments. At such hearing any landowner upon whose lands the benefits are thus increased may appear and oppose such increase or any part thereof. The [~~board of~~] county [~~commissioners~~] legislative body shall sit as a board of equalization of the increased drainage benefits and taxes, and shall equalize and determine the assessment of benefits and taxes to be made and levied upon such tract of land within the district. Such increased assessment of benefits shall be the basis of a lien upon such lands within the district for all district indebtedness and taxes.

Section 227. Section Amended.

Section 17A-2-543, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-543. Contractual powers — Bond issues — Elections — Limitations — Uses.

Whenever the board of supervisors deem it expedient it shall have power, for the purpose of constructing drains, drainage canals and other required improvements necessary to drain lands in said district or conserve the public health or welfare, to make a contract or contracts with the United States providing for the repayment of the principal and such other sums due thereunder at such times as may be agreed upon, or to issue bonds of the district to run not less than five years nor more than 40 years, and to bear interest, payable semiannually, at a rate not exceeding 8% per annum to be called "drainage district bonds," which said bonds shall not be sold for less than 90% of their par value, and the proceeds of which shall be used for no other purpose than paying the cost of constructing such drains, drainage canals, or other like work deemed necessary to drain lands within said district, or conserve the public health or welfare. Before such contract or contracts shall be made or bonds shall be issued, the board of supervisors shall request the

[~~board of~~] county [~~commissioners~~] legislative body to, and the [~~board of~~] county [~~commissioners~~] legislative body shall at once order a special election on the question of the issuance of bonds. The persons authorized to vote in, the giving of notice, the forms of ballots, and the manner of holding the election, and canvassing the results of the election, shall be as provided in the Utah Municipal Bond Act. The expenses of such election shall be paid out of the funds belonging to said drainage district. The terms and times of payment of the bonds so issued shall be fixed by the board of supervisors. Said bonds shall be issued for the benefit of the district authorizing said issue and shall bear the name and number of said district. The board of supervisors shall keep a record of the bonds issued and sold or otherwise disposed of, and such record will also show the lands embraced in said district. In no case shall the amount of bonds exceed the benefits assessed. Each bond issued shall show expressly upon its face that it is to be paid by a tax assessed, levied, and collected on the lands within the drainage district. Said board of supervisors shall, by resolution, provide for the issuance and disposal of such bonds and for the payment of the interest thereon, the creation of a sinking fund for the ultimate redemption thereof, and for the date and manner of the redemption of said bonds. Said board of supervisors may sell or dispose of said bonds either at public or private sale. Before making any such sale, either private or public, the board of supervisors shall give due notice of their intention to sell or dispose of said bonds, by publishing notice of sale at least once a week for four consecutive weeks in some newspaper having general circulation in the state of Utah and in the county where said district is situated, and by publishing in any other publication they may deem advisable. The notice shall state that sealed proposals will be received by the board of supervisors at their office, for the purchase of the bonds, until the day and hour fixed by the board of supervisors. At the time appointed the board of supervisors shall open the proposals, and award the purchase of the bonds to the highest responsible bidder, or may reject all bids. In case no bid is made and accepted as above provided, the board of supervisors is hereby authorized to use said bonds for the construction of any ditches, drain or drains, drainage canal or drainage canals, or any other required improvement deemed necessary to drain lands or for the public health or welfare.

Section 228. Section Amended.

Section 17A-2-545, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-545. Bond issue — Statement attached.

Each bond issue as provided for by Section 17A-2-543, shall be signed by the president and secretary of the said board of supervisors, and be attested by the county clerk, and said clerk shall also make a certified statement thereon, affixing his seal of office thereto, of the total amount of the assessment of benefits pledged for the payment of said bonds and other bonds, if any, issued; the date, number, denomination, and time due of all bonds issued; when the assessment of benefits was confirmed by the county [~~commissioners~~] legislative body, and the number of acres of land in the district against which said assessments were made.

Section 229. Section Amended.

Section 17A-2-548, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

17A-2-548. Duties of supervisors — Equalizations.

(1) The board of supervisors shall, as soon as may be, view each tract of land within the district, and shall carefully consider all of the damages and benefits that each particular tract of land will receive from the construction and maintenance of such drainage system, and assess each tract of land in accordance with the benefits to be received by it, making proper allowance for damage, if there be any.

(2) After such assessment is made up, the secretary of the board of supervisors shall transmit the same to the [~~board of~~] county [~~commissioners~~] legislative body and the [~~board of~~] county [~~commissioners~~] legislative body shall within 15 days after receipt thereof, cause not less than 15 days' notice to be sent by mail to each landowner in the district of the amount of benefits assessed upon the land owned by him within the district; and stating therein the time and place where the [~~board of~~] county [~~commissioners~~] legislative body shall meet as a board of equalization to hear and determine complaints made against such assessments.

(3) The [~~board of~~] county [~~commissioners~~] legislative body shall sit as a board of equalization of drainage district benefits and taxes, and shall equalize and finally determine the assessments of benefits and taxes to be made and levied upon each tract of land within the district. Such assessments of benefits shall be the basis of liens upon the lands within the district for all district indebtedness.

Section 230. Section Amended.

Section 17A-2-551, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-551. Attendance of officials.

The [~~board of~~] county [~~commissioners~~] legislative body, when sitting as a board of equalization of drainage district benefits, may require the presence of the board of supervisors and the engineer of the drainage district. If the drainage district be in more than one county, the supervisor or supervisors resident within the county may be required to attend.

Section 231. Section Amended.

Section 17A-2-555, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-555. Statement of indebtedness to be procured — Fees — Filing — Discharge of lien.

Any person or persons, bank or banks, corporation or corporations or other organization or any

mortgagee or other lien holder desiring to pay the unpaid equalized drainage district benefit assessments and/or taxes against any tract, lot or parcel of land in any drainage district may apply to the secretary of the board of supervisors of the drainage district for a written statement of the unpaid amount of the same together with accrued interest thereon and it shall be the duty of the secretary of such drainage district to execute and deliver to such applicant, on payment of a fee of $1 such a statement duly certified to under his hand and the seal of the district, and the applicant shall then present and file the same with the county treasurer of the county in which such tract, lot or parcel of land is located, and when so filed and when payment in full of the unpaid amount of equalized drainage district benefit assessments and taxes is paid, either in lawful money of the United States, or drainage district bonds, notes, warrants, or matured interest coupons as herein provided, the county treasurer shall issue and deliver to such applicant a receipt in duplicate for the amount of such payment, stating therein the amount paid and whether paid in lawful money of the United States or in bonds, notes, warrants or matured interest coupons of the district, and upon presentation and filing of one copy of such a receipt with the treasurer of the drainage district, showing payment in full of the unpaid equalized benefit assessments and/or taxes against any such tract, lot or parcel of land, it shall be the duty of such drainage district to issue and deliver to the person or persons, bank or banks, corporation or corporations or other organizations or to such mortgagee or lien holder making such payment a written release and discharge releasing such tract, lot or parcel of land from all other and further liability for the payment of any of the then existing bonded indebtedness of the district or any bonds thereafter given to refund the same, or any notes or warrants theretofore or that may thereafter be issued for the payment of any interest on such bonds or such refunded bonds, and releasing and discharging said land from any and all other liability for the payment of the same or any part thereof, and releasing and discharging such tract, lot or parcel of land from the payment of any of the unpaid equalized drainage district assessment of benefits and taxes and from the lien of the benefit assessment roll as equalized and finally determined by the [~~board of~~] county [~~commissioners~~] legislative body of the county in which such tract, lot or parcel of land is located; and such tract, lot or parcel of land shall not thereafter be assessed by such drainage district except for the purposes of maintenance and supervision, provided, all assessments or taxes other than those levied for payment of bond, interest or principal shall be payable only in lawful money of the United States, or in warrants of the district issued within the same calendar year in which the warrants are tendered.

Section 232. Section Amended.

Section 17A-2-560, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-560. Land redeemed when lien discharged — Lien priority — Foreclosure.

Where it appears that the lien of all bond issues outstanding in any drainage district in the state of Utah, has been discharged and released of record with relation to any parcel or parcels of land within any drainage district as shown by the equalized benefit assessment roll of said district by the payment in full of such equalized drainage district benefit assessment, together with matured interest thereon, lands and improvements sold to a drainage district for delinquent drainage district taxes or assessments may be redeemed by any person interested in the property, either as owner or lien holder, at any time while the district holds the tax sale certificate of such sale and prior to the execution of auditor's tax deed, by the payment of such taxes or assessments for the delinquency for which the property is sold, together with all unpaid drainage district taxes or assessments subsequently levied against such lands and improvements and all interest, costs and penalties, unless in the judgment of the board of supervisors of the drainage district and the [~~board of~~] county [~~commissioners~~] legislative body of the county wherein the land is situated, the interest of the drainage district will be best subserved by accepting a lesser sum in which case such lesser sum, to be fixed by [~~such board of~~] the county [~~commissioners~~] legislative body, shall be accepted.

Any party in interest as owner or lien holder redeeming property as provided herein shall have a lien thereon in the amount so paid, with interest after such payment, which lien shall have the same priority as the tax lien of the district and may be foreclosed by an action in the district court in the same manner as provided by law for the foreclosure of a mortgage.

Section 233. Section Amended.

Section 17A-2-602, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-602. Proposal of district by petition — Petition — Form, contents and requisites of petition.

A fire protection district may be proposed by a petition of 25% or more of the holders of title of real property, or documentary evidence of title, within the boundaries of such proposed district whose names appear as such upon the last county assessment roll; provided, however, should such petition be signed by all of the holders of title or documentary evidence of title within the boundaries of such proposed district as hereinabove set forth a hearing on such petition and election shall be dispensed with and the [board of] county [~~commissioners~~] legislative body shall enter its order incorporating such fire protection district as provided in Section 17A-2-608. Such petition shall describe the territory included and shall set forth the exterior boundaries of the proposed district, shall state the name of the district and shall be accompanied by a map thereof and shall request that the district so described be formed into a fire protection district under the provisions of this part. The petition shall be

presented to the [~~board of~~] county [~~commissioners~~] legislative body of the county in which said land lies, and filed with the clerk of said board. The petition may be one paper or several papers. No person having signed such petition shall be allowed to withdraw his name therefrom after presentation to the [~~board of~~] county [~~commissioners~~] legislative body.

Section 234. Section Amended.

Section 17A-2-603, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-603. Hearing for establishment of district.

When such petition is presented to the [~~board of~~] county [commissioners] legislative body and filed in the office of the clerk of such board, the board shall set a time and place for hearing upon such petition, which time shall be not less than four nor more than six weeks from the date of the filing. A notice of the time of such hearing shall be published by said board once each week for three successive weeks, previous to the time of such hearing, in a newspaper published within such county, or if there is no newspaper so published, then by posting such notice in at least three public places in such district for a period of 15 days. Said notice shall state that a fire protection district is proposed to be organized giving the name thereof, the county in which located, a description of the proposed area and boundaries of the proposed district, and that any taxpayer within the proposed district may appear on the date fixed for such hearing and offer objection to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property therein or therefrom.

Section 235. Section Amended.

Section 17A-2-604, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-604. Procedure at hearing upon petition.

At the time and place fixed for the hearing on said petition or at any adjournment or adjournments thereof, which shall not extend the time for determining said petition for more than 30 days in all from the original date of hearing, the [~~board of~~] county [~~commissioners~~] legislative body shall hear said petition and all competent and relevant evidence, oral or written, in support of or in objection thereto. The board may in its discretion change or alter the boundaries of such proposed district to conform to the needs of the district and exclude therefrom any land that will not be benefited by the formation of such a district, or may extend the boundaries of such proposed district to include any area adjacent to the borders of said district. The [~~board of~~] county [~~commissioners~~] legislative body shall, after a full hearing, determine whether such a fire protection district should be formed and the boundaries thereof, and such determination shall be entered upon the minutes of said board.

Section 236. Section Amended.

Section 17A-2-605, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-605. Organization of proposed district — Adoption of ordinance — Election — Qualification of voters.

After the [~~board of~~] county [~~commissioners~~] legislative body has made its order finally fixing and determining the boundaries of the proposed district, the district can be created by either (1) the [~~board of~~] county [~~commissioners~~] legislative body adopting an ordinance creating the said district, which ordinance shall give the name thereof, the county in which it is located and a description of the proposed area and boundaries of the district. The said district shall become legally existent, provided no appeal is taken as set forth in Section 17A-2-607, 30 days from the date of first publication of the ordinance creating the said fire district or (2) the board shall give notice of an election to be held within the proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this part. Such notice shall give the name of the proposed fire protection district, describe the boundaries thereof, name the precinct or precincts therein with a description of the boundaries of each, together with a designation of the polling places. The notice shall be published, previous to the time of such election, in the same manner as provided in Section 17A-2-603 above. Such notice shall require the electors to cast ballots which shall contain the words " ____ fire protection district, yes," or "____ fire protection district, no" or words equivalent thereto. Qualified electors, under the general laws of the state, living within such district shall be entitled to vote on the question of whether the district shall or shall not be created.

Section 237. Section Amended.

Section 17A-2-606, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-606. Conduct of election — Challenges — Judges of election.

Such election shall conform as nearly as practicable with the general election laws of the state, except that the provision of the election laws as to the form and distribution of ballots shall not apply. In case of a challenge, there shall be added to the usual elector's oath the following words: "and I am a resident within the boundaries of the proposed fire protection district." [~~Said board of~~] The county [~~commissioners~~] legislative body shall appoint three judges for each such election precinct who shall perform the same duties as near as may be as judges of election under the general laws of the state.

Section 238. Section Amended.

Section 17A-2-607, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-607. Force and effect of order of the county legislative body — Legal existence of district — Status of district.

If no appeal is taken to a district court within 30 days from the determination of the [~~board of~~] county [~~commissioners~~] legislative body declaring a fire protection district organized, the creation of the district shall be complete and its legal existence cannot thereafter be questioned by any person by reason of any defect in the proceedings had for the organization thereof. A fire protection district thus organized is and shall be held and construed to be a public corporation within the provisions of the laws of the state of Utah with all the usual powers that may now or hereafter be specifically conferred by law upon such corporation.

Section 239. Section Amended.

Section 17A-2-608, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-608. Canvass of votes — Order of the county legislative body.

Within 14 days after said election, the [~~said board of~~] county [~~commissioners~~] legislative body shall meet and canvass the votes cast at such election. If upon such canvass, it appears that a majority of all votes cast in the district are in favor of the formation of said district, the board shall, by an order entered in its minutes, declare the "____ fire protection district," describing its boundaries, duly organized. The board shall then cause copies of such order, duly certified by the clerk of said board, to be immediately filed for record in the office of the lieutenant governor and in the office of the county recorder and assessor of said county. If, upon the canvass, it appears that a majority of the votes cast in the district within said county are not in favor of the formation of said district, the board shall enter an order to such effect and the proceedings to create the proposed district shall be null and void.

Section 240. Section Amended.

Section 17A-2-610, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-610. Organization of commissioners — Meetings — Surety bonds.

The fire commissioners shall organize as a board and shall elect a chairman from their number and shall appoint a secretary and a treasurer. In the event the county [~~commissioners~~] legislative body become the fire protection district commissioners as provided for in Section 17A-2-609, meetings as fire protection commissioners shall be held separate and apart from meetings as the county [~~commissioners~~] legislative body. The board of fire commissioners, at its discretion, may provide that until further order of the board, the county clerk shall be ex officio secretary of the board and may similarly provide that the county treasurer shall be ex officio treasurer of the board. If the board appoints its own secretary and treasurer, it may combine the two offices. The [~~board of commissioners~~] county legislative body shall require all officers and employees who shall be charged with the handling of funds of the district to furnish good and sufficient surety bonds, or the board in its discretion may provide for a blanket surety bond covering all such officers and employees. All such bonds shall be at the expense of the district.

Section 241. Section Amended.

Section 17A-2-614, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-614. Annexation of contiguous territory — Procedure — Petition — Special election.

Any territory contiguous with a fire protection district may be annexed to such district by petition of 25% or more of the holders of title to real property or evidence of title within the territory proposed to be annexed. Such petition shall be filed with the fire commissioners of the fire protection district and if the said fire commissioners shall concur with said petition they shall then file such petition with the [~~board of~~] county [~~commissioners~~] legislative body. The proceedings by the [~~board of~~] county [~~commissioners~~] legislative body shall be the same as for the organization of a district under this part. Provided, however, that the special election shall be held only within the boundaries of the territory proposed to be annexed to said fire protection district.

Section 242. Section Amended.

Section 17A-2-615, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-615. Association to encourage uniformity and coordination of programs — Contracts between two or more fire protection districts.

Any fire protection district organized under this part shall, in addition to the powers stated in Section 17A-2-611, have authority:

(1) To contract with any fire protection district, or with any town, city or municipal corporation or governmental agency or private person or persons to consolidate or cooperate for mutual fire fighting protection and prevention purposes; or, for mutual fire fighting, protection and prevention purposes only, may annex or become annexed to any city or town or governmental agency already provided with fire fighting and protection equipment and fire protection service upon terms which may be mutually agreed upon. Any city, town, municipal corporation or governmental agency may contract with a fire protection district established and maintained under the provisions of this part for the purpose of affording such district fire fighting and protection equipment and service or fire prevention facilities, and in so contracting the district, city, town, municipal corporation or other governmental agency shall be deemed for all purposes to act within its governmental capacity. Any fire protection district established and maintained under the provisions of this part, or any city, town, municipal corporation or other governmental agency is hereby authorized to contract with any person, firm or corporation for the purpose of affording fire fighting, protection or fire prevention facilities to such person, firm or corporation and such contractual relation shall be deemed

for all purposes to be within the governmental power of such fire protection district, city, town, municipal corporation, or other governmental agency;

(2) Fire protection districts situated in different counties may contract to operate jointly in carrying out the objects of their creation. Contracts for joint operation may provide for joint ownership of property and equipment, and may authorize a joint board of fire commissioners of the contracting districts to manage the affairs of the joint operations; to employ and discharge the necessary agents and employees and fix their respective wages and salaries; to provide and designate a suitable place within said districts or at some place in which any of the contracting districts is situated as near as possible to said districts, as a regular meeting place for the joint board; to incur the necessary expenses and direct the payment therefor from the funds of the contracting districts in such proportions as the joint boards shall determine; and to do all things as may in the judgment of the joint board, be required to carry out the joint operations of the contracting districts.

The joint board shall consist of the members of the boards of the contracting districts and a majority of the membership of each district board shall constitute a quorum for the transaction of the business of the joint board. The members of the boards of fire commissioners of the contracting districts shall organize a joint board annually in January after the second Monday thereof, elect a chairman and appoint a secretary for the ensuing year. Any member of the board of any contracting district may act as secretary of the joint board or the joint board may appoint such other person as the joint board may determine. The joint board shall prepare the annual budget for the joint operation of the contracting districts and shall determine the share of revenues for the joint operation to be raised by each district and the share of the expense of joint operation to be paid by each district in the ensuing year, and the secretary of the joint board shall certify and deliver within the time required by Section 17A-2-617 hereof, a copy of such annual budget to the county clerk of each county involved and to each of the contracting districts, showing the part of the budget to be raised by each contracting district, each contracting district shall then include that part of the budget to be raised by such district within the budget prepared and submitted to the [~~board of~~] county [~~commissioners~~] legislative body in accordance with Section 17A-2-617.

Contracts for joint operation of fire districts, as herein authorized, shall run from year to year and as of January 1st may be terminated by written notice of the board of fire commissioners or any contracting district to the other contracting district or districts on or before July 1st and the contract for joint operations shall terminate on January 1st following: Provided, that all obligations of the joint operations must be paid or definitely arranged for before contract termination and no notice of termination shall relieve any contracting district of its unpaid obligation incurred under the contract for joint operation;

(3) To encourage uniformity and coordination of fire protection district operation programs, the fire commissioners of two or more fire protection districts may form an association thereof for the purpose of securing data and information of value in fighting and in preventing fires; hold and attend meetings thereof; and promote more economical and efficient operation of the associated fire protection districts. The directors of fire protection districts so associated shall adopt articles of association, select a chairman and secretary and such other officers as they may determine, and may employ and discharge such agents and employees as the officers deem convenient to carry out the purposes of the association.

(4) Two or more fire protection districts may contract with each other and such a district may contract with a city or county or the state supervisor of forestry or any association approved by him for the joint leasing, ownership, maintenance and operation of all necessary and proper apparatus, facilities, machinery, and equipment for the elimination of fire hazards and for the protection of life and property against fire within the contracting districts, and of real property, improvements and fixtures thereon suitable and convenient for the housing, repairing and caring for, such apparatus, facilities, machinery and equipment, and may contribute their agreed proportion of the cost and expense thereof;

Such contracts shall be executed by the commissioners of the contracting districts and, when the contract is between such districts, the terms and conditions thereof shall be carried out by the boards of commissioners acting jointly.

Section 243. Section Amended.

Section 17A-2-617, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-617. Annual budget — Levy, extension and collection of taxes.

Before June 15 of each year the commissioners of each fire protection district shall prepare and adopt a budget for the next ensuing calendar year, and certify such budget to the county clerk specifying the amount of such budget to be raised by taxes. It shall be the duty of the [~~board of~~] county [~~commissioners~~] legislative body to review such budget, to determine the tax levy rate for such district, and in levying general county taxes, to levy a tax at such rate for district purposes on all taxable property in the district. Such taxes shall be extended and collected in the manner provided by law for the collection of general county taxes and the proceeds thereof shall as collected be turned over to the treasurer of the district. All laws applicable to the imposition, collection and enforcement of general county taxes, including those pertaining to the allowance of collection fees, to the imposition of penalties for delinquencies and to the sale of property for nonpayment of taxes, shall be applicable to the taxes so levied for the district. The official in charge of the tax and assessment rolls of the county shall keep the rolls in such a manner as to show separately the property

on the rolls which lies within the boundaries of each district created under the provisions of this part.

Section 244. Section Amended.

Section 17A-2-618, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-618. Bonds — Duty of commissioners — Levy of taxes for payment of bonds.

The commissioners of each district which has issued bonds under the provisions of this part shall certify annually to the county [~~governing~~] legislative body the amount of the bonded indebtedness unpaid, the amount of principal and interest to be paid during the current year, and the county [~~governing~~] legislative body shall levy annually, until principal and interest have been fully paid, taxes on all taxable property in the district, fully sufficient to assure the prompt payment of principal and interest as each falls due. The taxes to be levied by the county [~~governing~~] legislative body for any district, other than those levied for the payment of principal and of interest on the bonds of the district, may not in any year exceed .0008 per dollar of taxable value of taxable property in the district.

Section 245. Section Amended.

Section 17A-2-702, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-702. Petition for water conservation district — Duty of the county legislative body and state engineer.

For the purpose of establishing a water conservation district as provided by this part, a petition shall be filed with the [~~board of~~] county [~~commissioners~~] legislative body of the county which embraces the largest acreage of the proposed district; said petition shall state that it is the purpose of the petitions to organize a water conservation district under the provisions of this part, and shall state the proposed means of water supply, the name proposed for such district and shall be accompanied by an ownership plat as shown by the county records of the lands to be included in the proposed district; the petition shall pray the board to request that a water survey and allotment of water for the lands within the proposed district be made, that the land to be included in the proposed district be determined, listed with water allotment and platted, and that the question of final organization of the same be submitted to the vote of landowners within the proposed district; the petition shall be signed by the governor, or if proposed by landowners, by 50 or a majority of such landowners or holders of title or evidence of title to land within the proposed district. If the petition is presented by landowners it must be accompanied by a good and sufficient bond to be approved by [~~said board of~~] the county [~~commissioners~~] legislative body in double the amount of the probable cost of organizing such district inclusive of the cost of water survey and conditioned for the payment of all such costs incurred in said proceeding including the cost of water survey in case said organization shall not be effected; no bond need accompany the petition by the governor. The cost of the water survey, and all other costs incurred upon petition filed by the governor, shall, if organization of the district be not effected, be borne [~~one-half~~] 1/2 by the county or counties in which the proposed district is situated, in proportion to the acreage, and [~~one-half~~] 1/2 by the state of Utah. In case organization of the district is effected all organizing costs and expenses, including cost of the water survey, shall be repaid by said district. Upon the filing of such petition with the [~~board of~~] county [~~commissioners~~] legislative body they shall send a certified copy of same to the state engineer of the state of Utah, with a request that the water survey and allotment be made. Thereupon it shall be the duty of the state engineer to cause to be made a water survey of all lands within the district for the purpose of determining and allotting the maximum amounts of water which could be beneficially used on such land; each 40-acre tract or smaller tracts in separate ownership within each such legal subdivision shall be separately surveyed and the allotment made therefor. On completion of said survey and allotment, the state engineer shall file with the [~~board of~~] county [~~commissioners~~] legislative body with which the petition for the said district is filed, his return of survey and report of allotment. Upon receipt of the report and return from the state engineer, the [~~board of~~] county [~~commissioners~~] legislative body shall cause to be published, notice that petition for formation of an irrigation district has been filed, water survey and allotment made, and a date set for the hearing of applications for exclusion and inclusion of lands and revision of allotments. Such notice shall be published once a week for three consecutive weeks, the last publication of which shall be at least one week prior to the date set for hearing, in some newspaper of general circulation published in the county, or if the district embraces lands in more than one county, then in a newspaper of general circulation published in each such county, or if there be no such paper published in any such county or counties, then in some newspaper having general circulation in such county or counties.

Section 246. Section Amended.

Section 17A-2-703, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-703. Land and water allotments — Revision and alteration — Proceedings to list lands — Writ of mandamus — Hearing and determination on writ — Calling election — Conduct of election.

When a petition has been filed, water survey and allotment made, and notice of hearing published as required by this part, the commissioners shall upon the date set, proceed to determine and list the lands, which need not be contiguous, by acreage and ownership in each 40-acre legal subdivision to be included in said proposed district, from the petition, and from such applications for the exclusion of lands therefrom and the inclusion of lands therein, as may be made in accordance with the intent of this part and may revise the allotment of water made by the state engineer; provided that no increase shall be made in any such allotment without the approval of

the state engineer; they may adjourn such examination from time to time not exceeding two months in all, and shall by final order duly entered determine and list the acreage and ownership in each 40 acre legal subdivision together with the allotment of water made; provided, that said board shall not so alter the included lands, shown by the plat accompanying the petition, as to change the objects of said petition, or so as to exempt from the operation of this part any lands, requiring water, shown on the plat as included within the petition, and susceptible of irrigation by the same system of waterworks applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the board be benefited by such proposed system be included in such district; nor shall any lands of the state of Utah not held under contract of sale and for which the state board of land commissioners has not petitioned inclusion, be included in such district; provided also that lands not included in said proposed district as shown on the ownership plat accompanying the petition, may upon application of the owner or owners he included in such district upon such hearing, and such included lands shall be listed with such allotment or water as the board, using the allotment made by the state engineer for similar lands as a basis, may make after the conclusion of such hearing; provided further that in the hearing of any such petition the [~~board of~~] county [~~commissioners~~] legislative body shall disregard any informality therein, and in case they deny the same or dismiss it for any reason on account of the provisions of this part not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records and in case these reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this part, which writ shall be heard within 20 days from the date of its issuance, and which 20 days shall be excluded from the two months after return of survey by the state engineer given the commissioners herein to act upon said petition. When the lands included in the proposed district shall have been determined and listed as aforesaid, the county [~~commissioners~~] legislative body shall forthwith make an order determining and listing said lands as aforesaid together with the allotments of water made, and designating the name of such proposed district, and shall by further order duly entered upon the record call an election of landowners of said district to be held for the purpose of determining whether such district shall be organized under the provisions of this part, and by such order shall submit the names of one or more persons from each of the three divisions of said district as hereinafter provided to be voted for as directors therein, and for the purpose of said election shall divide said district into three divisions as nearly equal in voting strength as may be practicable, define the boundaries thereof, designate polling places, and provided that a landowner of each of said divisions shall be elected a member of the board of directors of said district by the landowners of the whole district. Each of said divisions shall constitute an election precinct and three judges shall be appointed for each polling place therein, one of whom shall act as clerk of said election, provided, that the [~~board of~~] county [~~commissioners~~] legislative body may divide each of such divisions or election precincts into one or more voting precincts, designate polling places, and appoint judges of the election therefor.

Section 247. Section Amended.

Section 17A-2-704, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-704. Notice of election — Directors.

The [~~board of~~] county [~~commissioners~~] legislative body shall thereupon cause a notice embodying said orders in substance signed by the chairman of the [~~board of~~] county [~~commissioners~~] legislative body, and the clerk of said board, to be issued, given and published, giving public notice of said election, the time and place thereof, and the matters submitted to the vote of the landowners; said notice and substance of such order shall be so published as provided in Section 17A-2-702, and if any portion of such proposed district lies within any other county, or counties, then such order and notice shall be published in a newspaper of general circulation within each of said counties. At all elections held under the provisions of this part, all persons shall be entitled to vote who are landowners of agricultural lands, to which water has been allotted with the district as defined by this part; provided, that corporations owning lands within the district shall be considered persons within the meaning of this section. Landowners shall be entitled to vote only in the division of such district, wherein their lands, to which water has been allotted, or a major portion thereof are located; and any individual entitled to vote as aforesaid shall also be eligible to election as a director in and for the division in such district, in which the major portion of his lands are located. The ballots to be used and cast at such election for the formation of such district, shall be substantially as follows: "Water conservation district, _____ Yes, _____(Name)_____acre-feet," or "Water conservation district, _____ No _____ (Name) _____ acre-feet," or words equivalent thereto, and shall also contain the names of the persons to be voted for as members of the board of directors of said district; each landowner may vote for three directors, one for each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted or name voted upon and opposite thereto at any election held under this part. Provided, that at the election for the organization of the district each elector as provided herein shall be entitled to cast one vote for each acre-foot of water or fraction thereof, allotted to the land owned by such elector, as shown by the order of the [~~board of commissioners~~] county legislative body, and shall sign the ballot and indicate along with his or her name the number of acre-feet allotted to the lands owned by the elector casting the ballot.

Section 248. Section Amended.

Section 17A-2-705, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-705. Canvass of returns — Organization of district.

The [~~said board of~~] county [~~commissioners~~] legislative body shall meet on the first Monday next succeeding such election and proceed to canvass the returns thereof; and if, upon such canvass, it appears that a majority of the votes cast at said election are "Water conservation district ..... yes," the board shall by an order entered on their minutes, declare such territory duly organized as a water conservation district, under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for such several offices to be duly elected to such office. The said board shall within a reasonable time thereafter, cause a copy of such order, including a list and plat of the lands of said district, with water allotment, to be filed for record in the office of the county clerk of the county in which the petition is filed and certified copy with the county recorder of each county in which any portion of such lands are situated, and no [~~board of~~] county [~~commissioners~~] legislative body of any county including any portion of such district, shall after the date of organization of such district, allow another district to be formed including any of the land of such district, without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. No filing or recording fees shall be charged for filing or recording any instruments required to be filed or recorded under this section.

Section 249. Section Amended.

Section 17A-2-714, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-714. Conveyances — Actions at law — Judicial notice — Presumptions as to organization.

The said board is hereby authorized and empowered to take conveyances or assurances for all property acquired by it under the provisions of this part in the name of such irrigation district, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this part or to enforce, maintain, protect, or preserve any or all rights, privileges and immunities created by this part or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state, now or hereafter organized, from and after the filing in the office of the county clerk of the order of the [~~board of~~] county [~~commissioners~~] legislative body mentioned in Section 17A-2-705 and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and which has exercised or shall exercise the rights and powers of such a district, and shall have had or shall have in office a board of directors exercising the duties of their office, the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this part, and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this part or otherwise.

Section 250. Section Amended.

Section 17A-2-718, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-718. Directors to determine amounts required for current years — Establishment of sinking funds and reserve funds — Certification of amounts.

It shall be the duty of the board of directors on or before July 1st of each year, to determine the amount of money required for the current year, to pay interest on and all maturing installments of principal of any bonds, and warrants, and all payments due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in Section 17A-2-711, and all operation and maintenance or rental payments to be made by the district to the United States under the provisions of any such contract between the United States and the district, and all water payments and all operation and maintenance or rental payments to be made by the district to other entities under the provisions of any contract between the district and other entities, and to meet the cost of any construction or reconstruction proposed to be covered by annual assessments, and all maintenance, operating and current expenses, including the payment of assessments upon stock of irrigation, canal, or reservoir companies owned by the district, and the amount necessary to meet the obligations of local improvement districts, and to establish, keep and maintain sinking funds sufficient to assure the prompt payment of principal of and interest on the bonds as principal and interest fall due, and reserve funds at the level required by any contract between the district and the United States, and other entities; and to establish, keep and maintain adequate reserve funds for depreciation, repairs, extensions and im-

provements to the works necessary to assure adequate and efficient service, as determined by the board, and to certify to the county [~~commissioners~~] legislative body of the county in which the office of said district is located, said amounts together with such additional amount as may be necessary to meet any deficiencies theretofore incurred, and if so provided in case of contract with the United States a further amount to cover any deficit in payments due the United States thereunder which may have resulted from delinquent assessments for any preceding year.

Section 251. Section Amended.

Section 17A-2-719, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-719. Duty of county assessors — Basis of valuation — Uniformity — Returns — Apportionment in case of contracts with United States.

It shall be the duty of the county assessor of any county embracing the whole or a part of any irrigation district to assess and enter upon his record as assessor in its appropriate column the assessment of all real estate, to which water has been allotted, exclusive of improvements, situate, lying and being within any irrigation district in whole or in part in such county. The assessor shall assess the lands on the basis of the value per acre-foot of water allotted to the lands within the district; provided, that the board of directors of any such irrigation district may divide the district into units and fix a different value per acre-foot of water, or other units of measurement, to cover the service, turnout, construction, distribution charges, or other charges, if any, in the respective units, and in such case, the assessor shall assess the lands within each such unit upon the same basis of value per acre-foot of water, or other units of measurement, to cover the service, turnout, construction, distribution charges, or other charges, if any, within such unit; and the assessor shall enter on his assessment roll the amount of special benefits assessed against each tract of land within any local improvement district situate in the irrigation district as the same is shown on the equalized benefit assessment roll of said improvement district. Immediately after said assessment shall have been extended as provided by law, the assessor shall make returns of the total amount of such assessment to the county [~~commissioners~~] legislative body of the county in which the office of said district is located.

In case of contract with the United States, however, under the federal laws, the assessment of real estate within the district may be otherwise apportioned in the following manner:

(1) It may be provided by contract with the United States that assessments shall conform to the requirements of the federal reclamation laws now enacted or which may hereafter be enacted.

(2) It may be provided by contract with the United States that water shall be furnished to the district, or to part of the irrigable lands thereof, upon a temporary rental basis, whereupon lands of the district for which rental charges for any given year are not required to be paid to the United States by the district shall not be taxed for such purposes.

(3) District lands shall not be taxed for purposes of payment to the United States in any year when, and to the extent, on account of exceptional difficulties of reclamation, the district shall be exempted by contract with the United States from said payment to the United States for such lands.

(4) The lands of any irrigation district may be by contract with the United States, divided into units and placed upon a basis of repayment to the United States in successive units, which shall not necessarily be composed of contiguous lands, and in such event the lands of units not yet, in any year, placed upon the repayment basis shall not during such year be subject to taxation for payment of building costs.

(5) In case lands, which shall have been irrigated by means of ditches, canals and reservoirs constructed prior to the organization of any district shall be included within such district under the terms of Section 17A-2-701, equitable credit shall be given in the making of assessments for any water and ditch rights appurtenant to such lands, such adjustment shall be made by the board of directors of such irrigation district, which adjustment shall be equitably made so that the cost of the additional rights, property, or benefits acquired by the district under contract from the United States will be fairly and equitably apportioned between the lands having rights in such old ditches, reservoirs or other works, and the lands of the district having no such rights, and due and equitable allowance made to the lands to which any such rights may be appurtenant; provided, that before making any such adjustment or allowance, the board of directors shall publish notice for a period of at least three weeks in a newspaper published in the county in which the greater portion of the irrigable lands of the district are located or if there be no such newspaper published in such county, then in some newspaper of general circulation in that county, which notice shall state that a meeting of the board will be held for the purpose of making such adjustment and allowance, and that all parties interested therein who desire to be heard on the matter will be given an opportunity to appear and present evidence, and such notice shall state the date, the day and hour that such meeting will be held and the place of meeting, and at the date and place provided in the notice the board shall proceed to hear such evidence, if any be presented, and to make such adjustment or allowance in the manner herein prescribed. After such adjustment and allowance by the board of directors, the board shall proceed in the manner prescribed in Sections 17A-2-749, 17A-2-750, 17A-2-751, 17A-2-752, and 17A-2-753 to have such adjustment and allowance duly confirmed by decree of court in similar manner to that provided in said sections with reference to confirmation of the bond issue, and the court shall proceed in like manner as provided in said Sections 17A-2-749, 17A-2-750, 17A-2-751, 17A-2-752, and 17A-2-753 to examine into the regularity of said proceedings of the board and the equi-

ty of the adjustment or allowance made by the board, and should the court find said proceedings regular and said allowance or adjustment equitable, then the court shall file its findings and decree confirming the said allowance and adjustment, but if the court shall find that such allowance and adjustment is not equitable, then the court shall itself make an allowance and adjustment which shall be just and equitable as between the various classes of lands in the district, and shall file a decree, confirming such apportionment in like manner and with like effect as the findings and decree provided for in said Section 73-7-53, provided, that in no case shall any land be taxed for irrigation purposes under this part, which from any natural cause cannot be irrigated, or is incapable of cultivation.

Section 252. Section Amended.

Section 17A-2-720, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-720. Fixing tax levy — Covering delinquencies — All taxes special.

It shall be the duty of the county [~~commissioners~~] legislative body of the county in which is located the office of any irrigation district, immediately upon receipt of the returns of the total assessment of said district, and upon the receipt of the certificate of the board of directors certifying the total amount of money required to be raised as herein provided, to fix the rate of levy necessary to provide said amount of money, including the amount required to pay the interest and principal of the bonds of said district as the same shall become due and all payments due or to become due to the United States on contract accompanying which bonds of the district have not been deposited with the United States as in Section 17A-2-711; and to fix the rate necessary to provide the amount of money required for any local improvement district; also to fix the rate necessary to provide the amount of money required for any other purposes as in this part provided, and which are to be raised by the levy of assessments upon the real property of said district and to certify said respective rates to the county [~~commissioners~~] legislative body of each county embracing any portion of said district. In fixing the rates of levy the basis shall be the total assessment returned for the district, except that in the case of districts under contract with the United States, all amounts assessed against land held by the county on district tax sales shall be excluded. The rates of levy as above determined shall be increased 15% to cover delinquencies; except that in fixing the rate necessary to meet all payments due or to become due under any contract with the United States such further and additional increases above said 15% shall be made if so provided in said contract as are sufficient to cover any deficit that may have resulted from delinquent assessments for any preceding year. For the purposes of said district it shall be the duty of the county [~~commissioners~~] legislative body of each county in which any irrigation district is located, in whole or in part, at the time of making levy for county purposes, to make a levy at the rates above specified, upon all real estate in said district within their respective counties. It shall furthermore be the duty of the county [~~commissioners~~] legislative body of each county embracing any portion of said district when sitting as a board of equalization for general county taxes to equalize district taxes. All taxes levied under this part are special taxes.

Section 253. Section Amended.

Section 17A-2-725, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-725. Tolls, charges, assessments.

For the purpose of defraying the expenses of the organization of the district, and the construction, care, operation, management, repair and improvements of all canals, ditches, reservoirs and works, including salaries of officers and employees, or for the payment of charges to the United States for any of said purposes, or for rental of water, the board may either fix rates of tolls and charges and collect the same from all persons using said canal and water for irrigation, or other purposes, or in the case of such charges to be paid to the United States the same shall be collected from lands for which water service can be made, pursuant to contract with the United States, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessments, provided that if contract be made with the United States the charges for operation and maintenance or rental, as the case may be, may be fixed in accordance with the federal laws, notice and rules, and the contract with the United States; provided, further, that in case the money raised by sale of bonds issued be insufficient, or in case bonds be unavailable for the completion of the plans by causing to be levied assessments for the completion in the same manner in which levy of assessments is made for the other purposes provided for in this part. All tolls and charges other than regular assessments levied by the [~~board of~~] county [~~commissioners~~] legislative body of the counties in which any portion of the district is situate shall be collected by the secretary of the district and shall be by him deposited to the credit of the district designating the funds to which such moneys shall be credited.

Section 254. Section Amended.

Section 17A-2-748, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-748. Water district's failure to function — Dissolution — Increase of assessment — Lien and tax sale.

If after its organization a water conservation district shall fail to function as provided by this part for a period of three years after the notice issued by the county [~~commissioners~~] legislative body and a majority of the owners of acre-feet of water allotted to such district shall evidence a desire to dissolve the district by the filing of a petition for that purpose with the board of directors, it shall be the duty of the board of directors to file a petition with the district court requesting the dissolution of the district. Upon the filing of such petition the court shall give

such notice regarding the hearing thereof as it shall deem necessary and shall proceed to hear all objections against such dissolution. If no bonds have been issued or other obligations incurred which may not be paid by a pro rata assessment against the landowners within said district, or if no contract has been entered into with the United States or other persons which cannot be abrogated or the value of which cannot be assessed as liquidated damages, the court shall order a dissolution of the district upon the payment by each person therein of his pro rata share of the obligations of the district, provided that if it shall appear to the court that there are lands within the district the value of which will not satisfy such pro rata share, then assessment against the remaining lands shall be increased in an amount sufficient to repay the total obligations of the district. If any landowner shall fail to pay the amounts so assessed against him, such amount shall be a prior lien against his land and the same shall be sold by court order as upon a tax sale as provided in Section 17A-2-722, and the proceeds of the sale shall be applied toward the payment of the amount assessed against him. In such proceeding for dissolution the court shall have power to adjust the obligations of the district, allotment of benefits, and other matters affecting the property of the landowners.

Section 255. Section Amended.

Section 17A-2-760, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-760. Assessment of damages and benefits — Board of equalization.

The board of directors shall, as soon as may be after the establishment of a local improvement district, view each tract of land within the district, and shall carefully consider the benefits and damages that each particular tract of land will receive from the construction and maintenance of such local improvement and assess each tract of land in accordance with the benefits received by it, making proper allowance for damages if there be any. After such assessment is made up the secretary of the board of directors shall transmit the same to the [~~board of~~] county [~~commissioners~~] legislative body and the [~~board of~~] county [~~commissioners~~] legislative body shall cause notice to be sent by mail to each landowner in the local improvement district of the amount of benefits assessed against the land owned by him within the local improvement district, and shall state therein the time and place when the [~~board of~~] county [~~commissioners~~] legislative body shall meet as a board of equalization to hear and determine complaints made against such assessment. The [~~board of~~] county [~~commissioners~~] legislative body shall sit as a board of equalization of local improvement district benefits and shall equalize and finally determine the assessment to be made and levied upon each tract of land within the local improvement district, in the manner provided for by law for equalizing state and county taxes, and shall thereupon certify the same to the county assessor of each county within which any part of said local improvement district is located, who shall enter the same in the tax rolls.

Section 256. Section Amended.

Section 17A-2-809, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-809. Election districts.

Such election shall be called by ordinance by the governing bodies of the municipalities enacting the original ordinance including the initiating city. Such ordinance shall contain: (1) The names of all cities, the governing bodies of which shall have approved the original ordinance as provided in Section 17A-2-806, in which cities such election shall be called to be held, (2) the day upon which such election shall be held, which day shall be the same day in all municipalities, (3) the time for opening and closing polls, and (4) the manner of voting for or against the proposition. (5) Such ordinance shall also designate the voting districts and polling places and shall appoint for each polling place, from each election district from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of election districts may be made by reference to any order or orders of the [~~board of~~] county [~~commissioners~~] legislative body of the county or respective [~~boards of~~] county [~~commissioners~~] legislative body of the counties in which the proposed metropolitan water district, or any part thereof, shall be situated, or by reference to any provisions, orders or ordinances of the legislative body of any municipality proposed to be included in the incorporation of such metropolitan water district, or by detailed description of such election districts. Election districts established by the [~~board of~~] county [~~commissioners~~] legislative body of the various counties may be consolidated for special elections held hereunder.

Section 257. Section Amended.

Section 17A-2-904, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-904. Petition — Hearing — Notice.

(1) With the petition there shall be published, and, if posted, there shall be posted, a notice stating the time of the meeting of the [~~board of~~] county [~~commissioners~~] legislative body when the petition will be considered, and that all interested persons may appear and be heard.

(2) At that time the board shall hear the petition and all protests and objections to the same, and may adjourn such hearing from time to time, not exceeding two months in all.

(3) No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, shall vitiate any proceedings thereon, provided the petition has a sufficient number of qualified signatures attached thereto.

(4) On the final hearing the board may make changes in the proposed boundaries as it deems advisable, and shall define and establish such boundaries.

(5) If the board deems it proper to include any territory not included within the original proposed boundaries, it shall cause notice of its intention to be mailed to each owner of land within the additional territory whose name appears as such on the last completed assessment roll of the county. The notice shall be addressed to the owner at the address given on the assessment roll, or, if no address is given, then to the last known address, or, if it is not known, then to the owner at the county seat of the county in which the land lies. This notice shall describe the territory proposed to be included, and fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the board and be heard.

(6) Boundaries lying within a municipality shall not be altered under Subsection (5) unless the governing body of the municipality shall, by resolution, assent to the alterations.

Section 258. Section Amended.

Section 17A-2-909, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-909. Taxation — Limit of levy.

(1) The board of trustees of each mosquito abatement district shall furnish to the county [~~governing~~] legislative body and to the county auditor of the county in which the district is situated, in writing, an estimate of the amount of money necessary for all purposes required under this part during the next ensuing fiscal year. The estimate shall be furnished at least 15 days before the first day of the month in which the county [~~governing~~] legislative body is required by law to levy the taxes required for county purposes.

(2) The county [~~governing~~] legislative body shall, at the time and in the manner of levying other county or city and county taxes, but without additional compensation for assessing and collecting, levy upon all of the taxable property within the district and cause to be collected a tax, to be known as the "____ mosquito abatement district tax." The maximum rate of the tax may not exceed that which is sufficient to raise the amount estimated to be necessary by the board of trustees, and may not exceed .0004 per dollar of taxable value of taxable property in the district.

Section 259. Section Amended.

Section 17A-2-910, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-910. Taxation — Additional levy — Election.

(1) When it appears to the board of trustees that the funds required during the next ensuing fiscal year will exceed the maximum amount which the county [~~commissioners are~~] legislative body authorized to levy for the annual district tax, the board of trustees may call an election and submit to the electors of the district the question of whether a tax shall be voted for raising the necessary additional funds.

(2) Notice of the election therefor shall be published for at least four weeks prior to the election in a newspaper published in the district.

(3) No particular form of ballot shall be required, and no informalities in conducting the election shall invalidate the same, if the election is otherwise fairly conducted.

(4) At the election the ballots shall contain the words, "Shall the district vote a tax to raise the additional sum of $____?"

(5) The board of trustees shall canvass the votes cast at the election, and, if a majority of the votes cast are in favor of the imposition of the tax, the board of trustees shall report the same to the [~~board of~~] county [~~commissioners~~] legislative body, stating the additional amount of money required to be raised.

(6) The [~~board of~~] county [~~commissioners~~] legislative body shall at the time of levying general county taxes levy an additional tax upon all of the taxable property in the district voting such additional tax.

Section 260. Section Amended.

Section 17A-2-912, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-912. Annexation of area into district — Conditions — Procedures — Petition — Resolution — Protests.

(1) Any [~~board of~~] county [~~commissioners~~] legislative body, upon its own motion, may by resolution declare that the public health, convenience, and necessity requires the annexation of an area into a mosquito abatement district if either:

(a) there is presented to the [~~board of~~] county [~~commissioners~~] legislative body a petition setting forth the area and boundaries proposed to be annexed to the district, signed by:

(i) the legislative body of any city or town included or partially included within the area[~~, or~~];

(ii) [~~by~~] 25% or more of the owners of real property included within the proposed area[~~,~~]; or

(iii) 10% of the registered voters of the area; or

(b) the annexing district is already providing district services for the proposed area, then it is the duty of the [~~board of~~] county [~~commissioners~~] legislative body to adopt the resolution.

(2) After the resolution has been adopted, the board shall give notice of its intention to annex the area to a specified mosquito abatement district. The notice shall define the area and the boundaries to be annexed and shall describe the services to be provided. The notice shall be published in a newspaper of general circulation for three successive weeks, and shall designate a time and place not more than 40 days nor less than 21 days after the first publication, where all interested parties may be heard in support or in opposition to the annexation. If a written protest signed by more than 25% in number of the real property owners according to the last assessment roll within the area proposed for annexation

or by more than 30% of the registered voters in the area is filed with the county clerk within 30 days after the conclusion of the hearing, then the annexation shall not be completed. Upon completion, however, the county clerk shall notify the board of trustees of the district, together with any other notifications to the lieutenant governor and State Tax Commission required by law.

Section 261. Section Amended.

Section 17A-2-1038, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1038. Board of directors — Selection — Appointment — Qualifications — Quorum — Compensation — Terms.

All powers, privileges, and duties vested in or imposed upon any district incorporated hereunder shall be exercised and performed by and through a board of directors which shall have authority to delegate the exercise of any and all executive, administrative, and ministerial powers to any of the offices created under this part.

Members of the board of directors shall be selected as follows:

(1) If the district serves a population of less than 200,000 people residing within the district boundaries, the board of directors shall consist of directors appointed by each municipality, county, or unincorporated area within any county on the basis of one director for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the next following calendar year. The number of service miles comprising a unit shall be determined jointly by the governing bodies of the municipalities or counties comprising the district. Directors shall thereafter be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties annex to or withdraw from the district as the case may be upon the same basis. Municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the next following calendar year is less than a full unit, as above defined, may combine with any other similarly situated municipality or unincorporated area to form a whole unit and shall thereupon be entitled to appoint one director for each whole unit formed.

(2) If the district serves a population of more than 200,000 people residing within the district boundaries, the board of directors shall consist of one director appointed by each county within the district or one director appointed by each municipality or combination of municipalities annexed to the district after January 1, 1984, and located outside a county not incorporated into the district having a population of at least 26,000 within the district based upon its membership in the district, plus one additional director for each 120,000 population residing within the county or municipality or combination of municipalities and within the district. Directors representing counties should be designated and appointed by the chief executive officer of the county with the consent and approval of the [~~governing body of the~~] county [~~and~~] legislative body or the county council legislative body of government if such council has been organized. Directors representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or municipalities with the consent of the governing body of the municipality or municipalities. Population shall be determined by the official United States Census, or, with the consent of the district, any other census agreed upon by the governing body of the municipalities or counties comprising the district.

Each director shall be a bona fide resident of the municipality, county, or unincorporated area or areas which he is to represent for at least six months before date of appointment, and must continue in such residency to remain qualified to act as a director. Directors shall be designated and appointed by the chief executive officer of their respective municipality or county with the consent and approval of the governing body thereof (or by each chief executive officer and governing body which they represent in the case of directors appointed from a combination of municipalities, counties, or unincorporated areas as above provided). Each director shall be entitled to cast one vote on all questions, orders, resolutions, and ordinances coming before the board. A majority of all members of the board shall constitute a quorum for the transaction of business, but if less than a majority is present, a majority of those present may adjourn the meeting from time to time without further notice. The affirmative vote of a majority of all directors present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, shall be sufficient to carry any order, resolution, ordinance, or proposition coming before the board. An attendance fee of $25 per board or committee meeting attended, but not to exceed $75 in any calendar month to any member plus reasonable mileage and expenses necessarily incurred to attend said meetings shall be paid to members of the board.

Members of the board so constituted shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings hereunder and, immediately upon convening, the board shall elect from its membership a president, vice-president, and secretary, who shall serve for a period of two years or until their successors shall be elected and qualified.

No director shall hold any elected public office with the United States, the state of Utah or any political subdivision of either, or any employment (except as an independent contractor) with a county or municipality within the district at the time of his appointment nor during his tenure in office. The appointment of directors shall be made without regard to partisan political affiliation from among citizens of the highest integrity, attainment, competence, and standing in the community.

The terms of office of the members of the board shall be three years, except the initial directors. At the first meeting of the directors the directors shall

designate by the drawing of lots one-third of their number to serve for one year terms, one-third for two year terms, and one-third for three year terms. No director shall be appointed for more than two successive full terms. Vacancies, however occurring, shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official shall fail to fill any vacancy within 60 days following the creation thereof, and then such vacancy shall be filled by the board of directors of the authority.

Each director before entering upon the duties of his office shall take an oath of office which shall be filed with the lieutenant governor and a copy thereof with the secretary of the district. Whenever a vacancy occurs on the board, it shall be filled by the governing body of the entity represented by the director through whom the vacancy occurs.

Section 262. Section Amended.

Section 17A-2-1044, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1044. Annual tax levy — Election.

Before June 22, the board of directors of the district shall, by resolution, determine the amount of money necessary to be raised by taxation during the fiscal year beginning January 1 next preceding to pay the district's operating needs and obligations for the fiscal year, and to recommend to the governing body of each county within the district the rate of taxation for the areas within the district. Upon receipt of the resolution by the board of directors of the district, the governing body of each county may levy a tax not to exceed .0004 per dollar of taxable value of taxable property within the district. This tax may not be imposed unless the county [~~governing~~] legislative body has provided by resolution for the submittal of the proposed tax to a general election within the county in which all electors situated both within and without the incorporated areas of the county may participate and a majority of the electors voting on the proposal have approved it. The county [~~governing~~] legislative body shall cause 15 days notice of the election to be given in the manner provided by law for giving notice of general elections. The election shall be held, its results canvassed, and the returns made under the provisions of the general election laws. If a majority of the electors voting on the proposal to impose the additional tax have approved the proposal, the additional tax shall become effective on the date fixed by the governing body.

Section 263. Section Amended.

Section 17A-2-1102, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

17A-2-1102. Definitions.

The definitions and general provisions contained in this section govern the construction of this part, unless the context otherwise requires.

(1) "Agency" means a redevelopment agency created by the legislative body.

(2) "Blighted area" is characterized by the existence of buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:

(a) defective design and character of physical construction;

(b) faulty interior arrangement and exterior spacing;

(c) high density of population and overcrowding;

(d) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities;

(e) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses;

(f) economic dislocation, deterioration, or disuse, resulting from faulty planning;

(g) subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;

(h) laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(i) existence of inadequate streets, open spaces, and utilities; and

(j) existence of lots or other areas which are subject to being submerged by water.

(3) "Community" means a city of the first or second class as defined in Section 10-2-301.

(4) "Federal government" means the United States or any of its agencies or instrumentalities.

(5) "Legislative body" means the city commission, county [~~commission~~] legislative body, or other legislative body of the community or county.

(6) "Obligee" includes any bondholder, his trustee, any lessor demising to the agency property used in connection with a project area or any assignee of all or part of his interest, and the federal government when it is a party to any contract with the agency.

(7) "Planning commission" means a planning commission established pursuant to law or charter.

(8) "Public body" means the state, or any city, county, district, authority, or any other subdivision or public body of the state.

(9) "Redevelopment project" means any undertaking of an agency pursuant to this part.

(10) "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provision of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities

incidental or appurtenant to them. Redevelopment includes:

(a) the alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area;

(b) provision for open space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public and private recreation areas and other public grounds;

(c) the replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist:

(i) the areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes; or

(ii) the areas require replanning and land assembly for reclamation or development in the interest of the general welfare because of widely scattered ownership, tax delinquency, or other reasons.

Redevelopment does not exclude the continuance of existing buildings or uses whose demolition and rebuilding or change of use are not deemed essential to the redevelopment and rehabilitation of the area.

(11) "State" includes any state agency or instrumentality.

Section 264. Section Amended.

Section 17A-2-1202, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1202. Definitions.

As used in this part:

(1) "Community" means a city, county, town, or any combination of these.

(2) "Agency" means the legislative body of a community when designated by the legislative body itself to act as a redevelopment agency.

(3) "Public body" means the state, or any city, county, district, authority, or any other subdivision or public body of the state, their agencies, instrumentalities, or political subdivisions.

(4) "Federal government" means the United States or any of its agencies or instrumentalities.

(5) "Legislative body" means the city council, city commission, county [commission] legislative body, or other legislative body of the community.

(6) "Planning commission" means a city or county planning commission established pursuant to law or charter.

(7) "Redevelopment project" means any undertaking of an agency pursuant to this part.

(8) "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provision of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them. Redevelopment includes:

(a) the alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area;

(b) provision for open space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds;

(c) the replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist:

(i) the areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes; or

(ii) the areas require replanning and land assembly for reclamation or development in the interest of the general welfare. Redevelopment shall include and encourage the continuance of existing buildings or uses whose demolition and rebuilding or change of use are not deemed essential to the development, redevelopment or rehabilitation of the area.

(9) A "blighted area" is an area used or intended to be used for residential, commercial, industrial, or other purposes or any combination of such uses which is characterized by two or more of the following factors:

(a) defective design and character of physical construction;

(b) faulty interior arrangement and exterior spacing;

(c) high density of population and overcrowding;

(d) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities;

(e) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses;

(f) economic dislocation, deterioration, or disuse, resulting from faulty planning;

(g) subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;

(h) laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(i) existence of inadequate streets, open spaces, and utilities; and

(j) existence of lots or other areas which are subject to being submerged by water.

(10) "Project area" means an area of a community which is a blighted area within a designated rede-

velopment survey area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the redevelopment agency pursuant to this part.

(11) "Redevelopment survey area" means an area of a community designated by resolution of the legislative body or the governing body of the agency for study by the agency to determine if a redevelopment project or projects within the area are feasible.

(12) "Redevelopment plan" means a plan developed by the agency and adopted by ordinance of the governing body of a community to guide and control redevelopment undertakings in a specific redevelopment project area.

(13) "Bond" means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency.

Section 265. Section Amended.

Section 17A-2-1314, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1314. Rights, powers, and authority of service district.

(1) In addition to all other rights, powers, and authority granted by law or by other provisions of this part, a service district has the following rights, powers and authority:

(a) The right to sue and be sued.

(b) The power to exercise all powers of eminent domain possessed by the county or municipality which established the service district.

(c) The power to enter into contracts considered desirable by the governing authority of the service district to carry out the functions of the service district, including, without limitation, the power to enter into contracts with the government of the United States or any of its agencies, the State of Utah, counties, municipalities, school districts, and other public corporations, districts, or political subdivisions including institutions of higher education. These contracts may include, without limitation, provisions concerning the use, operation, and maintenance of any facilities of the service district and the collection of fees or charges with respect to commodities, services, or facilities provided by the service district.

(d) The power to acquire or construct facilities, to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, finance, and otherwise deal in and with real and personal property, or any interest in them, wherever situated, either within or outside of the service district, including water and water rights, and including the power to acquire other than by condemnation property or interests in property owned or held by institutions of higher education.

(e) The power to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of or contract with respect to the use, operation, and maintenance of, all or any part of its property and assets, including water and water rights.

(f) The power to accept governmental grants, loans, or funds and to comply with the conditions of them.

(g) The right to utilize any officers, employees, property, equipment, offices, or facilities of the county or municipality which established the service district, and for which the governing authority of the service district shall reimburse the county or municipality from service district funds, a reasonable amount for the services so rendered or for the property, equipment, offices, or facilities so used.

(h) The right to employ officers, employees, and agents for the service district, including engineers, accountants, attorneys, and financial consultants, and to fix their compensation.

(i) The right to adopt an official seal for the service district.

(2) The [~~governing authority of a~~] county legislative body shall by ordinance establish those classes of contracts of a service district which shall be subject to the requirements of Section 17-15-3, or of any law hereafter enacted for the same purpose.

(3) The governing authority of a municipality shall by ordinance establish those classes of contracts of a service district which shall be subject to the requirements of Section 10-7-20, or of any law hereafter enacted for the same purpose.

Section 266. Section Amended.

Section 17A-2-1326, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

17A-2-1326. Administrative control board — Powers.

(1) (a) The governing authority of a [~~county or~~] municipality or the county legislative body that has established a service district may, by resolution adopted at the time of the establishment or at any time afterwards, create an administrative control board for the service district.

(b) (i) The administrative control board shall consist of at least three and no more than seven persons, each of whom is a qualified elector of the service district.

(ii) If a county establishes a service district that includes all or part of one or more municipalities or one or more improvement districts organized under Title 17A, Chapter 2, Part 3, to provide the same service as the service district, the municipality or improvement district may appoint one member to represent it on any administrative control board created.

(iii) That member may, but need not, be a qualified elector of the service district.

(c) (i) If a service district is providing commodities, services, or facilities to an institution of higher education, that institution may appoint the number of members necessary to assure that it has at least one-third of the total of the board members to represent it on the board.

(ii) Those members may, but need not, be qualified electors of the service district.

(d) The number of members of the administrative control board shall be increased by the number of improvement district, municipal, or institution of higher education members appointed.

(2) Members of the administrative control board other than improvement district, municipal, or institution of higher education members shall be either appointed or elected as provided in Title 17A, Chapter 1, Part 3.

(3) (a) If a service district was established to provide either water or sewerage service or both, the governing authority may by resolution adopted at or after the time of establishment, or if the service district was established before March 29, 1983, or within 90 days after that date, create an administrative control board according to Subsection (1).

(b) A resolution creating a service district for water or sewerage purposes adopted under Section 17A-2-1305 after March 29, 1983, shall identify all existing water and sewerage districts within the area of the proposed service district.

(4) (a) One-half of the members initially elected or appointed shall serve two year terms and one-half shall serve four year terms.

(b) The initial terms shall be determined by lot.

(5) (a) The governing authority of the [~~county or~~] municipality or the county legislative body that established the service district may, by resolution, delegate any of its powers to the administrative control board, including the power to act as the governing authority of the service district and to exercise all or any of the powers provided for in Sections 17A-2-1314, 17A-2-1316, 17A-2-1320, and 17A-2-1321.

(b) Notwithstanding anything to the contrary in this part, the governing authority of the [~~county or~~] municipality or the county legislative body may not delegate the power to:

(i) levy a tax on the taxable property of the service district;

(ii) issue bonds payable from taxes;

(iii) call or hold an election for the authorization of the tax or bonds;

(iv) levy assessments for improvements in an improvement district created under Title 17A, Chapter 3, Part 3, or Title 17A, Chapter 3, Part 2;

(v) issue interim warrants or bonds payable from those assessments; or

(vi) appoint a board of equalization under Section 17A-3-217 or Section 17A-3-317.

(c) The administrative control board may not hold an election, levy a tax or assessment, or issue bonds or interim warrants unless the county or municipal legislative body that created the district has approved.

(d) The county or municipal legislative body that created the district may revoke in whole or in part any power or authority delegated to an administrative control board or other officers or employees.

(6) (a) Administrative control board members shall be paid at a per diem rate to be set by resolution of the governing authority.

(b) The administrative control board shall be assigned or authorized to employ staff commensurate with the duties and functions assigned to it by the governing authority.

Section 267. Section Amended.

Section 17A-2-1404.5, Utah Code Annotated 1953, as enacted by Chapter 135, Laws of Utah 1991, is amended to read:

17A-2-1404.5 (Repealed 7/1/93). Petition — Counting nonrespondents.

(1) (a) Any circulators of any petition involving a water conservancy district may use the procedures established by this section only if authorized to do so by a resolution of the county legislative body.

(b) The county legislative body may authorize petition circulators to use the procedure provided in this section by following the procedures set forth in this Subsection (1).

(c) Any circulators of petitions may file a request with the county legislative body to authorize the use of the procedures provided in this section.

(d) Upon receipt of the request, the county legislative body shall:

(i) set a time, date, and place for a public hearing to discuss implementing the procedure; and

(ii) publish notice of the time, date, and place for the public hearing in a newspaper of general circulation in the county at least one week before the public hearing.

(e) At the hearing, the county legislative body shall:

(i) accept written and oral comments from persons wishing to comment on the request; and

(ii) allow all interested persons to be heard.

(f) After hearing and reviewing testimony, the county [~~governing~~] legislative body may pass a resolution authorizing petitioners to use the procedure established by this section.

(2) The circulators of the petition to establish a water conservancy district may mail a copy of the petition, return receipt requested, to all owners of property within the county who do not reside within the county.

(3) (a) The circulators of the petition to establish a water conservancy district who mail the petition under this section shall mail with the petition a notice containing at least the information required in Subsection (b) to all owners of property with an assessed valuation of less than $10,000 who are not residents of the county.

(b) The notice shall state: "You will be considered to have signed the petition and will be counted as a property owner consenting to the establishment of the district if you:

(i) fail to mail or return the signed copy of the petition to a specified address within 20 calendar days from the date the notice is to be mailed; or

(ii) fail to return a formal protest to the establishment of the district within 20 calendar days from the date contained on this petition."

(4) If owners of property with an assessed valuation of less than $10,000 who are not residents of the county fail to return the signed copy of the petition, or fail to mail an objection to the establishment of the district, they are considered to have signed the petition and shall be counted for the purposes of establishing the percentage of property owners required by this section.

(5) When the circulators of the petition file the petition with the court, they shall also file an affidavit that contains:

(a) copies of the return receipts as evidence that the owners of property with an assessed valuation of less than $10,000 who are not residents of the county received a copy of the petition and the notice;

(b) a sworn statement identifying those owners of property with an assessed valuation of less than $10,000 who did not return the signed copy of the petition or mail an objection to the establishment of the district; and

(c) a sworn statement identifying those owners of property with an assessed valuation of less than $10,000 who returned any objection to the establishment of the district.

(6) In determining whether or not to establish a water conservancy district under this chapter, the district court shall:

(a) count, as signers of the petition and as part of the percentage of property owners necessary to establish a district under this chapter, all owners of property with an assessed valuation of less than $10,000 who are not residents of the county who received the notice required by this section and either:

(i) failed to return the signed copy of the petition; or

(ii) failed to object to the establishment of the district; and

(b) count, as signers of any protest petition filed under Section 17A-2-1407 and as part of the percentage of property owners necessary to protest the creation of a district under this chapter, all owners of property with an assessed valuation of less than $10,000 who are not residents of the county who received the notice required by this section and objected to the establishment of the district.

Section 268. Section Amended.

Section 17A-2-1406, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1406. Hearing — Jurisdiction of district court — Court not to be disqualified.

Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation, shall by order fix a place and time, not less than 60 days nor more than 90 days after the petition is filed, for hearing thereon, and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the [~~board of~~] county [~~commissioners~~] legislative body of each of the several counties having territory within the proposed district.

The district court in and for the county in which the petition for the organization of a water conservancy district has been filed, shall thereafter for all purposes of this part, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of said water conservancy district, and of land and other property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this part by reason of ownership of property within any water conservancy district or proposed water conservancy district, or by reason of ownership of any property that may be benefited, taxed or assessed therein.

Section 269. Section Amended.

Section 17A-2-1409, Utah Code Annotated 1953, as renumbered and amended by Chapter 186 and last amended by Chapter 176, Laws of Utah 1990, is amended to read:

17A-2-1409. Board of directors — Selection of members — Number — Qualifications — Terms — Vacancies — Surety bonds — Meetings — Reports.

(1) Within 45 days after entry of the decree incorporating the district, the board of directors shall be selected as follows:

(a) Districts which consist of a single county shall have directors appointed by the county [~~governing~~] legislative body.

(b) Districts consisting of more than a single county shall have directors appointed by the governor with the advice and consent of the Senate from nominees submitted as follows:

(i) In a division composed solely of incorporated cities, each city within the division shall submit two nominees per director.

(ii) In all other divisions, the county [~~governing~~] legislative body of the county in which the division is located shall submit three nominees per director.

(iii) If a director represents a division located in more than one county, the county governing bodies of those counties shall collectively compile the list of three nominees.

(c) In districts where substantial water is allocated for irrigated agriculture, one director appointed in that district must be a person who owns irrigation rights and uses those rights as part of his livelihood.

(2)(a) The terms of office shall be fixed as follows:

(i) approximately one-fourth of the directors first appointed, after organization of the district, shall serve for one year;

(ii) approximately one-fourth of the directors first appointed shall serve for two years;

(iii) approximately one-fourth of the directors first appointed shall serve for three years; and

(iv) the remainder of the directors shall serve for four years. All succeeding terms of office shall be four years.

(b) The court shall establish the number, representation, and votes of directors for each district in the decree creating the district. The board of directors of the district shall consist of not more than 11 persons who are residents of the district. If the district consists of five or more counties, the board of directors shall consist of not more than 21 persons who are residents of the district.

(c) The secretary of the board shall give written notice of vacancies in any office of director and of the expiration date of terms of office of directors to the county [~~governing~~] legislative body in single county districts and to the nominating entities and the governor in all other districts at least 90 days before the expiration date, and such notice shall be published in a newspaper having general circulation.

(d) Upon receipt of the notice of the expiration of a director's term or notice of a vacancy in the office of director, the city or the county [~~governing~~] legislative body shall nominate candidates to fill the unexpired term of office pursuant to Subsection (1). If the entity charged with nominating candidates for appointment by the governor has not submitted the list of nominees within 90 days after service of the notice, the governor shall make the appointment from qualified candidates without consultation with the city or the county [governing] legislative body. If the governor fails to appoint, the incumbent shall continue to serve until his successor is appointed and qualified. Appointment by the governor vests in the appointee, upon qualification, the authority to discharge the duties of director, subject only to the advise and consent of the Senate.

(e) Each director shall hold office during the term for which he is appointed and until his successor is duly appointed and has qualified.

(3) Each director shall furnish a corporate surety bond at the expense of the district, in amount and form fixed and approved by the court, conditioned for the faithful performance of his duties as a director.

(4)(a) An annual meeting of the board of directors shall be held on a date to be fixed by the court in the order incorporating the district. The board shall also hold special meetings at least quarterly.

(b) A report of the business transacted during the preceding year by the district, including a financial report prepared by certified public accountants, shall be filed with:

(i) the clerk of the district court;

(ii) the governing bodies of counties with lands within the district; and

(iii) cities charged with nominating directors.

(c) No more than 14 days and no less than five days prior to the annual meeting, the district shall have published at least once in a newspaper having general circulation within the district:

(i) a notice of the annual meeting; and

(ii) the names of the directors.

(d) The district shall have published a summary of its financial report in a newspaper having general circulation within the district. The summary shall be published no later than 30 days after the date the audit report required under Title 51, Chapter 2, is required to be filed with the state auditor.

(e) Subsections (c) and (d) do not apply to districts with annual revenues of less than $1,000,000.

Section 27C. Section Amended.

Section 17A-2-1420, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1420. Organization of subdistricts — Authority — Bonds — Board of directors — Powers — Validation of proceedings — Separability clause.

(1) Subdistricts may be organized upon the petition of owners of real property, within or partly within and partly without the district, which petition shall be in substantially the same form and shall fulfill the same requirements concerning the subdistricts as the petition outlined in Section 17A-2-1404 is required to fulfill concerning the organization of the main district. The petition shall also contain a statement of the initial quantity of water which the subdistrict proposes to acquire from the district for perpetual use, and the court shall, prior to the entry of its decree organizing a subdistrict, require that the petitioners attach to the petition written evidence of the consent of the board of directors of the district to furnish each subdistrict the perpetual use of water for the purpose specified. Petitions for the organization of subdistricts shall be filed with the clerk of the court and shall be accompanied by a bond as provided for in Section 17A-2-1405. The procedure for the organization of subdistricts shall be the same as for the organization of districts, except that the provisions of Section 17A-2-1404 respecting the minimum taxable value of land and improvements within districts does not apply to subdistricts. A subdistrict shall be a separate entity within the district, may contract with the district for the furnishing of water and for other purposes, and in addition to any other authority granted under this part, may issue its bonds pursuant to and in conformity with the provisions of this part for the following purposes: (a) ac-

quiring or constructing all or part of an irrigation water system to be operated by the subdistrict for the purpose of providing irrigation water for agricultural and residential land within the boundaries of the subdistrict, including as a part of the subdistrict, the purchase or acquisition of stock in canal companies, water companies, and water users' associations and the acquisition or purchase of water rights and sources of water supply; and (b) constructing water pipelines and storage works, purchase of water and water rights, operation of waterworks systems for the purpose of providing municipal water within the boundaries of the subdistrict and for this purpose the subdistrict board has the same powers, rights, and privileges granted to a district board referred to in Sections 17A-2-1413, 17A-2-1421, 17A-2-1422, and 17A-2-1424, to carry out its separate purposes under the provisions of this part. The subdistrict board may contract with the district for the furnishing of water for the purposes as stated in the initial petition as well as other purposes. Within 30 days after entering the decree incorporating a subdistrict, the county [~~governing~~] legislative body of the county shall appoint a board of directors of the subdistrict not exceeding seven persons who are owners of real property in the subdistrict and who are not directors of the district. Vacancies in subdistricts shall be filled by the county [~~governing~~] legislative body of the county. The board of directors of a subdistrict has all of the powers, rights, and privileges granted to a district board, including specifically, but not limited to, the right of the subdistrict board to levy and collect taxes and assessments referred to in Sections 17A-2-1423 through 17A-2-1430, to carry out its separate purposes, including the payment of principal and interest on bonds payable in whole or in part from the proceeds of assessments and taxes levied under this part issued by the subdistrict under this part. These taxes and assessments may be levied and collected by a subdistrict, notwithstanding the fact that taxes and assessments are being levied and collected by the district in which the subdistrict may lie, to carry out the district purposes; but the taxes levied and collected pursuant to Section 17A-2-1423 may not exceed .0002 per dollar of taxable value of taxable property within the subdistrict to pay the expenses of its organization and administration and may not exceed .0002 per dollar of taxable value of taxable property for all purposes.

(2) Each subdistrict created under this section may exercise all powers granted to subdistricts under this part, it being expressly found and determined that all taxable property lying in each subdistrict will be benefited by the acquisition or construction of the improvements acquired or constructed by the district to an amount not less than the aggregate of the taxes and assessments levied against the property to pay for the cost of acquisition or construction. Wherever proceedings are adopted under authority of this part purporting to create any subdistrict, all proceedings in connection with the creation of each subdistrict are validated, ratified, and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions; and each subdistrict is declared to be a validly created and existing subdistrict under authority of law.

(3) If any provision of this part, or the application of any provision to any person or circumstance, is held invalid, the remainder of this part is not affected.

Section 271. Section Amended.

Section 17A-2-1423, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1423. Levy and collection of taxes under class A — Rate of levy.

(1) To levy and collect taxes under class A as provided in this part, the board shall annually:

(a) determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district; and

(b) fix a rate of levy which when levied upon every dollar of taxable value of property within the district, and with other revenues, will raise the amount required by the district to supply funds for:

(i) expenses of organization;

(ii) surveys and plans;

(iii) the cost of construction; and

(iv) operating and maintaining the works of the district.

(2) The rate of levy shall not exceed .0001 per dollar of taxable value of taxable property within the district, prior to the commencement of construction of the works, and thereafter shall not exceed .0002 per dollar of taxable value of taxable property within the district except:

(a) in districts to be served by water apportioned by the Colorado River Compact to the Lower Basin, the levy after commencement of construction of the works may be increased to a maximum of .001 per dollar of taxable value of taxable property within the district;

(b) in districts to be served under a contract, a water appropriation, a water allotment, or otherwise by water apportioned by the Colorado River Compact to the Upper Basin, the levy after commencement of construction of the works may be increased to a maximum of .0004 per dollar of taxable value of taxable property within the district; and

(c) in the event of accruing defaults or deficiencies an additional levy may be made in any district as provided in Section 17A-2-1427.

(3) The board shall, before June 22 of each year, certify to the [~~board of~~] county [~~commissioners~~] legislative body of each county within the district or having a portion of its territory within the district, the rate fixed with directions that at the time and in the manner required by law for levying of taxes for county purposes, the [~~board of~~] county [~~commissioners~~] legislative body shall levy the tax upon the taxable value of all property within the district, in addition to any other taxes as may be levied by the [~~board~~

of] county [commissioners] legislative body at the rate so fixed and determined.

Section 272. Section Amended.

Section 17A-2-1424, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1424. Board may sell or lease water to municipalities upon petition — Levy and collection of special assessments under class B.

To levy and collect special assessments under class B as herein provided, the board shall make an allotment of water to each petitioning municipality in the district in the manner as hereinafter provided, in such quantity as will in the judgment of the board, when added to the then present supply of water of such municipality, make an adequate supply for such municipality, and shall fix and determine the rate or rates per acre-foot, or other units of measurement, the service, turnout, construction, distribution system charges, or other charges, if any, and terms at and upon which water shall be sold, leased or otherwise disposed of, for use by such municipalities; provided, however, that such rates and charges shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event of any city, city and county, or town shall desire to purchase, lease or otherwise obtain the beneficial use of waters of the district for domestic or irrigation purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain inter alia, the following:

(1) Name of municipality.

(2) Quantity of water to be purchased or otherwise acquired.

(3) Price per acre-foot or other unit of measurement, and the amount of any service, turnout, connection, distribution system charge or other charges to be paid.

(4) Whether payments are to be made in cash or annual installments.

(5) Agreement by the municipality to make payments for the beneficial use of such water together with annual maintenance and operating charges and to be bound by the provisions of this part and the rules and regulations of the board.

Neither the quantity of water to be acquired, nor the rates or charges as specified in such petition, need be the same in each year to be covered by the petition. Any such petition and order may provide for water for such municipality for such term of years as may be fixed therein and the procedure herein provided for the determination of the amount of taxes necessary to be levied each year shall be operative in each year over such term of years without the filing of a new petition or the entering of a new order.

The secretary of the board shall cause notice of the filing of such petition to be given and published once each week for two successive weeks, in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board, at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted, and such persons may advance reasons and arguments to show that the municipality and its inhabitants will not be benefited by the proposed petition and order to the amount of such taxes. The board at the time and place mentioned in said notice or at such time or times at which the hearing of said petition may adjourn, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that said petition be granted, and if it finds that said municipality and its inhabitants will be benefited thereby to an amount not less than the taxes which will be imposed, it shall enter an order granting the said petition and from and after such order the said municipality shall be deemed to have purchased, leased or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by taxation from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for the next succeeding year, as provided in the order granting said petition, and prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the other funds of such municipality. In fixing the rate of taxes to be levied in each year the board shall give due consideration to probable delinquencies in tax payments and shall fix such rate as will assure the prompt collection of taxes sufficient to make up the amount needed for such year despite the fact that a part of the taxes so levied may be delinquent when due. Upon receipt by the [board of] county [commissioners] legislative body of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it shall be the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by [such board of] the county [commissioners] legislative body at the rate so fixed and determined.

The hearing on the petition for which provision is hereinabove required and the finding as to benefits

which will be made by the board shall take into consideration a tax to be levied on all real and personal property in the petitioning municipality and the class B assessments which will be levied pursuant to the provisions of this section shall be in the nature of ad valorem taxes to be levied on all real and personal property in the municipality with the exception of property exempt from taxation under the provisions of the Constitution and statutes of Utah or Section 17A-2-1431.

Section 273. Section Amended.

Section 17A-2-1430, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1430. Tax sales.

If the taxes and assessments levied are not paid as herein provided, then the real property shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of the state of Utah for selling property for payment of general taxes. If there are no bids at said tax sale for the property so offered under class A and class B, said property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town and city taxes. And if there are no bids for the property so offered under class C and class D, said property shall be struck off to the district and the tax certificate shall be issued in the name of the district and the board shall have the same power with reference to sale of said tax certificate, as now vested in the county [~~commissioners~~] legislative body and county treasurers when property is struck off to the counties.

Section 274. Section Amended.

Section 17A-2-1437, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1437. Change of boundaries — Petitions for inclusion within district — Hearing — Petition protesting inclusion — Hearing — Appeal — Annexation — Hearing — Objections — Order of inclusion — Findings and decrees — Appeal.

(1) The boundaries of any district organized under this part may be changed as provided by this section, but the change of boundaries of the district shall not impair or affect:

(a) its organization;

(b) its rights in or to property;

(c) any of its other rights or privileges; or

(d) any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had the change of boundaries not been made.

(2)(a) The owners of lands which are either contiguous or noncontiguous to the district and to each other may file a written petition with the board requesting that their lands be included in the district. The petition shall contain:

(i) a description of the tracts or body of land sought to be included; and

(ii) the signatures, acknowledged in the same form as conveyances of real estate, of the owners of the lands.

A petition filed in this form will be considered to give assent of the petitioners to the inclusion within the district of the lands described in the petition.

(b) The board shall, within 90 days after the filing of the petition, set and convene a hearing to consider the petition and all objections.

(c) The secretary of the board shall cause notice of the filing of the petition to be given and published in the county in which the lands are situated. This notice shall state:

(i) the names of petitioners;

(ii) a description of lands mentioned;

(iii) the request of the petitioners; and

(iv) that all persons interested must appear at the office of the board at the time named in the notice and state in writing why the petition should not be granted.

(d) The board shall at the appropriate time, proceed to hear the petition and review the written objections to the petition. The failure of any person to show cause, in writing, shall be considered to be his assent to the inclusion of these lands within the district.

(e) If the petition is granted, the board shall make an order to that effect and file the petition with the clerk of the court and upon order of the court the lands shall be included in the district.

(3)(a) In addition to the method provided in Subsection (2), additional areas may be included in a district by petition as described in this subsection. A written petition may be filed to include:

(i) irrigated lands;

(ii) nonirrigated lands;

(iii) land in towns and cities;

(iv) other lands; or

(v) any combination of lands under this subsection. These lands may be contiguous or noncontiguous to the district and to each other.

(b) The petition must:

(i) be filed in the district court of the county in which the petition for organization of the original district was filed;

(ii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 20% or 500, whichever is the lesser, of the owners of irrigated lands in the area, but outside the corporate limits of a city or town;

(iii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer

than 5% or 100, whichever is the lesser, of the owners of nonirrigated lands and lands within the incorporated limits of a city or town, which are within the area specified in the petition;

(iv) list a description of each tract of land owned by the signer opposite the name of the signer, with an indication that each tract, together with its improvements, has a taxable value of not less than $300; and

(v) set forth:

(A) a general description of the territory in the area sought to be included in the district;

(B) the name of the district in which it is sought to be included;

(C) the terms and conditions upon which inclusion is sought;

(D) a statement that the property sought to be included will be benefited by the accomplishment of the purposes for which the original district was formed; and

(E) a request for inclusion of the area in the district.

(c) No petition with the requisite signatures shall be declared null and void because of alleged defects, but the court may permit the petition to be amended to conform to the facts by correcting any errors. However, similar petitions or duplicate copies of the petition for the inclusion of the same area may be filed and shall together be regarded as one petition. All petitions filed prior to the hearing on the first petition shall be considered by the court the same as though filed with the first petition. In determining whether the requisite number of landowners has signed the petition, the names as they appear upon the tax roll shall be prima facie evidence of their ownership.

(d) At the time of filing the petition or at any time before, and prior to the time of hearing on the petition, a bond shall be filed, with security approved by the court sufficient to pay all expenses connected with the proceedings in the case. If at any time during the proceeding the court determines that the first bond is insufficient, the court may require that an additional bond be obtained within ten days following the court's request. If the petitioner fails to obtain a bond, the petition shall be dismissed.

(e) Immediately after the filing of the petition, the district court of the county where the petition is filed shall fix a place and time between 60 and 90 days after the petition is filed for a hearing. The clerk of the court shall then publish notice of the pendency of the petition and of the time and place of hearing. The clerk of the court shall also mail a copy of the notice by registered mail to:

(i) the board of directors of the district;

(ii) the [~~board of~~] county [commissioners] legislative body of each of the counties with land within the area proposed to be included in the district; and

(iii) the governing body of each of the cities or towns having territory within the area proposed to be included within the district.

(f) After the filing of a petition for inclusion of an additional area and at least 30 days prior to the time fixed by the court for the hearing on the petition, a petition protesting the inclusion of the lands within the district may be filed in the clerk's office of the court where the proceeding for inclusion is pending. The protest petition must contain the signatures, acknowledged in the same form as conveyances of real estate, of at least:

(i) 35% of the owners of irrigated lands in the area sought to be included, but not within the incorporated limits of a city or town;

(ii) 20% of the owners of nonirrigated lands and lands within the incorporated limits of a city or town within the area proposed to be included within the district; and

(iii) a description of each tract of land opposite the name of the signer, with an indication that each tract, together with its improvements, has an assessed value of at least $300.

(g) A landowner may protest if he:

(i) did not sign the petition for inclusion; and

(ii) owns land, including improvements thereon, which had a taxable value of at least $300 as shown by the last preceding assessment.

(h) If a petitioner signs the petition both as owner of irrigated and nonirrigated land, his name counts only as an owner of irrigated lands.

(i) On the day set for the hearing on the original petition, if it appears to the court that the protesting petition does not meet the requirements of Subsection (f), the court shall dismiss the protesting petition and proceed with the original hearing as provided in this section. If the court finds from the evidence that the protesting petition does qualify, the court shall dismiss the original petition for inclusion. The finding of the court upon the question of valuation, the genuineness of the signatures, and all matters of law and fact incident to this determination shall be final and conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court.

(j) (i) Any owner of real property in the proposed area who did not individually sign a petition for the inclusion, but who desires to object to the inclusion, may, on or before ten days prior to the date set for the cause to be heard, file an objection to the inclusion. This objection shall be heard by the court as an advanced case without unnecessary delay.

(ii) An owner of irrigated lands may file a petition asking to have his irrigated lands excluded from the inclusion pursuant to the requirements of Subsection (3)(j)(i). This petition shall be heard by the district court on the date set for the hearing of the petition for inclusion of the area and the district court shall exclude these irrigated lands from the area proposed for inclusion within the district.

(k) If it appears at the hearing that a petition for the inclusion has been signed and presented as provided in Subsections (a) and (b), that the allegations of the petition are true and that no protesting petition has been filed, or if filed has been dismissed as provided in Subsection (3)(i), the court shall:

(i) adjudicate all questions of jurisdiction;

(ii) find that the property described in the petition will, if included, be benefited by the accomplishment of the purposes for which the original district was formed;

(iii) declare the area included in the district;

(iv) declare whether the area is annexed to an existing division, or constitutes a separate division; and

(v) declare whether the area can be properly represented by existing directors or whether the number of directors shall be increased to provide for representation of the area annexed. However, prior to the entry of its decree including such area within the district, the court shall obtain the verified consent of the board of directors of the district to the inclusion of such area.

(l) If the court finds that the petition for inclusion has not been signed and presented pursuant to this section or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition in such proportion as it considers just and equitable. An appeal to the Supreme Court shall lie from an order dismissing the proceeding. Nothing in this part shall be construed to prevent the filing of a subsequent petition or petitions for similar purposes, and the right to renew such proceeding is expressly granted.

(4) (a) If lands are annexed into a public corporation which corporation is already part of the district described in this part and these annexed lands are not located within the district's boundaries, the board may make a finding that these lands are not part of the district, and that these lands are or may be benefited from the service provided by the district. Upon making this finding, the board shall set a time and place for a public hearing to hear objections as to why these lands should not be annexed and included within the district. The secretary of the board shall cause notice of the time and place of the hearing to consider the inclusion of the lands within the district to be given and published in the county in which the lands are situated. The notice shall:

(i) state a general description of the lands;

(ii) state that the lands are being considered for inclusion within the district; and

(iii) give notice to all interested persons to appear at the time and place named in the notice and show cause, in writing, as to why the lands should not be included within the district. The secretary shall mail a copy of the notice by registered mail to the governing body of the public corporation and to the landowners.

(b) The board shall at the time and place named in the notice or at any time at which the hearing may be adjourned, proceed to hear all objections to the inclusion of the lands within the district. The failure of any interested person to appear or show cause, in writing, shall be taken as an assent on his part to the inclusion of the lands within the district. If, after hearing all objections to the inclusion of the land within the district, the board determines that the lands will be benefited by inclusion within the district, the board shall make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(c) A finding by the board that the lands will not be benefited by inclusion within the district shall not preclude the board at any subsequent date from finding that changed conditions or circumstances now benefit the lands. After making this finding the board may renew the proceedings for inclusion of these lands in whole or in part and find that the lands will be benefited by inclusion in the district and make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(d) If the board finds that any portion of land to be annexed into the district is presently receiving water from another public water system, the board shall exclude that portion of land from the land to be annexed into the district.

(5) Upon the entry of the decree, the clerk of the court shall transmit to the Division of Corporations and Commercial Code and the county recorder in each of the counties having lands in the area, copies of the findings and decrees of the court. The findings and decrees shall be filed with the Division of Corporations and Commercial Code pursuant to the general laws concerning corporations. Copies shall also be filed in the office of the county recorder in each county in which the district is located where they will become permanent records. The recorder in each county shall receive the fee designated by the county [~~governing~~] legislative body for filing and preservation. The Office of the Lieutenant Governor shall receive fees as may be provided by law for like services in similar cases.

(6) If an order is entered establishing the inclusion of the area into the district, such order shall be final unless within 30 days an appeal is taken to the Supreme Court. The entry of a final order shall conclusively establish the inclusion of the area against all persons, except that the state may attack the order in an action in the nature of a writ of quo warranto, commenced by the attorney general within three months after the decree declaring the area included. The inclusion of the area shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized.

(7) Any area included in a district pursuant to this part shall be subject to taxes and assessments levied for the payment of indebtedness of the district which was outstanding at the time of the entry of the order for inclusion, and for the payment of indebtedness thereafter incurred as if the area were a part of the district as originally established.

(8) The boundaries of any subdistrict may be changed in the manner provided in this part for the change of the boundaries of districts.

Section 275. Section Amended.

Section 17A-3-203, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

17A-3-203. Definitions.

As used in this part:

(1) "Assessment" means a special tax levied against property within a special improvement district to pay all or a portion of the costs of making improvements in the district. All references to "assessment" or "assessments" in Subsection 17A-3-221 (3) and in Sections 17A-3-225, 17A-3-226, 17A-3-230, 17A-3-231, and 17A-3-236 shall be deemed to include any reduced payment obligations.

(2) "Bonds" or "special improvement bonds" mean bonds issued under this part payable from assessments and out of the special improvement guaranty fund, or reserve fund, as applicable, established as provided in this part. All references to "bonds" or "special improvement bonds" in the following provisions are deemed to include any special improvement refunding bond:

(a) Subsection 17A-3-204 (3);

(b) Sections 17A-3-221, 17A-3-222, 17A-3-225, 17A-3-226, 17A-3-230, and 17A-3-231;

(c) Section 17A-3-234, except the reference therein to "bond fund"; and

(d) Sections 17A-3-235, 17A-3-237, and 17A-3-240.

(3) "Part 3, Chapter 2 district" means a water and sewer improvement district created under Part 3, Chapter 2.

(4) "Connection fee" means a fee charged by the governing body to connect onto the sewer, water, drainage, gas, or electrical system and used for purposes of financing special improvements in a special improvement district or paying for the privilege of using existing improvements of the governing entity and includes a fee charged by the governing entity to pay for the costs of connecting onto the sewer, water, drainage, gas, or electrical system even though the improvements are installed on the assessed owner's property.

(5) "Contract price" means the amount payable to one or more contractors for the designing, engineering, inspection, and making of improvements in a special improvement district. The costs of improvements, other than designing and engineering costs, shall be incurred under contracts duly let to the lowest responsible bidder or bidders as required by this part, including amounts payable for extra or additional work when authorized by the governing body or in accordance with the terms of the contract less appropriate credit for work deleted from the contract when authorized by the governing body or in accordance with the contract.

(6) "County" means any county in the state of Utah.

(7) "Governing body" means the [~~board of~~] county [~~commissioners~~] legislative body of a county of this state or the board of trustees of a Part 3, Chapter 2 district.

(8) "Governing entity" means a county or Part 3, Chapter 2 district.

(9) "Improvement district," "special improvement district," or "district" means a district created for the purpose of making improvements under this part.

(10) "Incidental refunding costs" means any costs of issuing special improvement refunding bonds and of calling, retiring, or paying prior bonds, including, without limitation, legal fees, accounting fees, charges of fiscal agents, escrow agents and trustees, underwriting discount, printing costs, giving of notices, any premium necessary in the calling or retiring of the prior bonds, and any other costs necessary or desirable in connection with the issuance of special improvement refunding bonds, as determined by the governing body, and any interest on the prior bonds which may be required to be paid in connection with the issuance of the special improvement refunding bonds.

(11) "Optional improvements" mean improvements in a special improvement district which may be conveniently installed at the same time as other improvements in the district and which the governing body may provide to be installed at the option and at the sole cost of the property owner on whose property or for whose particular benefit the improvements are made, including, but not limited to, private driveways, irrigation ditches, and water turnouts.

(12) "Overhead costs" mean the actual costs incurred by a governing entity in connection with a special improvement district for appraisals, legal fees, financial advisory charges, escrow and trustee fees, publishing and mailing notices, levying assessments, and all other incidental costs relating to the district and the issuance of its bonds or warrants.

(13) "Prior bonds" means the outstanding special improvement bonds which are refunded by an issue of special improvement refunding bonds.

(14) "Prior ordinance" means the ordinance levying the assessments from which the prior bonds and the interest thereon are payable.

(15) "Project engineer" means the county surveyor, county engineer, or a private consulting engineer engaged by the governing entity to perform the necessary engineering services of the project and supervise the construction or installation of the project improvements.

(16) "Property" means real property, including water rights, or any interest in real property.

(17) "Property price" means the purchase or condemnation price of property acquired in order to

make improvements in a special improvement district.

(18) "Reduced payment obligations" means the reduced amounts of the assessments levied, or the interest thereon established, in the prior ordinance, or both, as set forth in the amending ordinance, described in Section 17A-3-227.

(19) "Special improvement refunding bonds" means any obligations issued to refund any special improvement bonds and payable from assessments and interest thereon from which the prior bonds are payable, or from any reduced payment obligations and out of the Special Improvement Guaranty Fund as provided in this part.

(20) "Unincorporated area of the county" means the area within the county which is not within the boundaries of a municipal corporation.

Section 276. Section Amended.

Section 17A-3-204, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-204. Powers of the county legislative body.

(1) The governing body of any county may make or cause to be made any one or combination of the following improvements at any place within the unincorporated area of the county, or it may on its own initiative by ordinance or resolution, create special improvement districts within the unincorporated area of the county with the power to make or cause to be made any of the following improvements:

(a) to establish grades and lay out, establish, open, extend, or widen any street, sidewalk, alley, or off-street parking facility;

(b) to construct, install, improve, repair, light, grade, pave, repave, curb, gutter, sewer, drain, landscape, or otherwise beautify any street, sidewalk, alley, or off-street parking facility;

(c) to construct, install, reconstruct, extend, maintain, or repair streets, bridges, sidewalks, alleys, crosswalks, driveways, culverts, retaining walls, sewers, storm sewers, drains, flood barriers, or water channels, and to construct, install, reconstruct, extend, maintain, or repair lines, facilities or equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously-established, county-owned electrical distribution system, to a district within the boundaries of the county;

(d) to plant or cause to be planted, set out, cultivate, and maintain lawns, shade trees, or other landscaping;

(e) to cover, fence, safeguard, or enclose reservoirs, canals, ditches, and watercourses and to construct, reconstruct, extend, maintain, and repair waterworks, reservoirs, canals, ditches, pipes, mains, hydrants, and other water facilities for the purpose of supplying water for domestic and irrigation purposes or either of them, or regulating, controlling, or distributing the same and regulating and controlling water and watercourses leading into the county;

(f) to acquire, construct, reconstruct, extend, maintain, or repair parking lots or other facilities for the parking of vehicles off streets;

(g) to acquire, construct, reconstruct, extend, maintain, or repair any of the improvements authorized in this section for use in connection with an industrial or research park, except that this part may not be used to pay the cost of buildings or structures used for industry or research;

(h) to acquire, construct, reconstruct, extend, maintain, or repair parks, recreational facilities, and libraries;

(i) to remove any nonconforming existing improvements in the areas to be improved;

(j) to construct, reconstruct, extend, maintain, or repair optional improvements;

(k) to acquire, dispose of, or exchange any property necessary or advisable in order to make any of the improvements;

(l) to make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of direct or indirect benefit to a particular area within the county; or

(m) to construct and install all such structures, equipment, and other items and to do all such other work as may be necessary or appropriate to complete any of the improvements in a proper manner.

(2) The governing body of any Part 3, Chapter 2 district may make or cause to be made any one or combination of the following improvements within the boundaries of the Part 3, Chapter 2 district, or may on its own initiative by ordinance or resolution create special improvement districts within the boundaries of the Part 3, Chapter 2 district which may make or cause to be made any of the following improvements, in whole or in part, or any combination of them:

(a) systems for the supply, treatment, and distribution of water;

(b) systems for the collection, treatment, and disposition of sewage;

(c) systems for the collection, retention, and disposition of storm and flood waters; and

(d) systems for the generation and distribution of electricity.

(3) For the purpose of making and paying for all or a part of the cost of any of the improvements, including optional improvements, the governing body may levy assessments on the property within the district which is directly or indirectly benefited by making the improvements and issue interim warrants and special improvement bonds as provided in this part.

Section 277. Section Amended.

Section 17A-3-902, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-902. Definitions.

As used in this part:

(1) "Public body" means any city, county, or school district existing under the laws of the state of Utah.

(2) "Governing body" means the council, commission, [~~board of~~] county [~~commissioners~~] legislative body, or board of education of a public body in which the legislative powers of the public body are vested.

(3) "Building authority" or "authority" means a non-profit corporation organized under this part by a public body as the municipal building authority for that public body solely for the purpose of acquiring, improving, or extending one or more projects and financing the costs of them on behalf of the public body.

(4) "Acquire" means to obtain or gain property of every kind or nature which a public body is authorized or permitted by law to own, possess, or hold or which has or may come into its possession or ownership by any lawful means, including, but not limited to, purchase, lease, rental, sale, contract, exchange, devise, bequest, gift, condemnation, donation, construction, or operation of law.

(5) "Project" means any improvements, facilities, or properties and appurtenances to them which a public body is authorized or permitted by law to acquire, including, but not limited to, public buildings or other structures of every nature or any joint or partial interest in same, which improvements, facilities, properties, and appurtenances need not be situated within the boundaries of the public body.

(6) "Costs of a project" include:

(a) the cost of a site or sites;

(b) the cost of equipment and furnishings;

(c) the cost of planning and designing a project, including architectural, planning, engineering, legal, and fiscal advisors' fees;

(d) interest estimated to accrue on bonds during the period of the construction of the project and for 12 months afterwards;

(e) the cost of issuing bonds to finance the project, including, but not limited to, printing costs, costs of preparing documents, filing and recording fees, costs of legal and other professional services, and costs of underwriting the bonds (including underwriting fees or bond discount); and

(f) such amounts as the governing authority shall find to be necessary to establish one or more reserve funds and to provide necessary working capital for the project.

(7) "Site" means the real property on which a particular improvement, facility, or property acquired under this part is located.

(8) "Bonds" means any bonds, notes, or other evidences of indebtedness of a building authority issued under this part.

(9) "Mortgage" means any mortgage, trust deed, indenture, pledge, agreement, assignment, security agreement, financing statement, or other instrument pursuant to which property may be encumbered as security for obligations.

(10) "Lessee" means a public body that has entered into a leasing contract with a building authority with respect to a project.

(11) "Leasing contract" means a contract entered into by a public body to lease a project from a building authority for use by the public body under this part.

(12) "Capital actually invested" means, with respect to a particular project, the principal amount of all outstanding bonds issued to finance the costs of the project, plus interest, premiums, if any, and fees and expenses which must be paid to retire the outstanding bonds, less all amounts in reserves which may be applied to the payment of the outstanding bonds and of these expenses; all costs of transferring title to the project to the lessee; and all costs of dissolving the building authority, including, but not limited to, all organizational and incorporation expenses, filing fees, carrying charges, legal fees, architects' fees, contractors' fees, financial advisory fees, and all other reasonable costs and expenses incidental thereto.

Section 278. Section Amended.

Section 17A-3-1101, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-1101. Establishing districts.

The [~~board of~~] county [~~commissioners~~] legislative bodies of the several counties, or any of them, may cause pure sugar beet seed districts to be established, to define the boundaries of said districts and by ordinance to make such rules and regulations, not repugnant to law, necessary to insure the growing of pure sugar beet seed within said districts, and to provide penalties for the violation thereof.

Section 279. Section Amended.

Section 17A-3-1201, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-1201. Districts for road improvements.

The county [~~commissioners~~] legislative body may divide the county into special road districts for the purpose of permanently constructing the roadway space on any state road or any county road by graveling, macadamizing or paving the same.

Section 280. Section Amended.

Section 17A-3-1203, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-1203. Notice of proposed tax — Objections.

In all cases before the levy of any tax as provided in this part the county [~~commissioners~~] legislative body shall give notice of intention to levy such tax, naming the purpose for which the tax is to be levied, dividing the improvements proposed, the bound-

aries of the district to be affected or benefited, the estimated cost of such improvements and designating a time when the county [commissioners] legislative body will consider the proposed levy, which notice shall be published at least 20 days in a newspaper published within the county or having general circulation therein; provided, that in counties where there is no such newspaper the county [commissioners] legislative body shall have at least five such notices posted in conspicuous places within the boundaries of the special road district. If at or before the time so fixed written objection to such improvement, signed by owners of property upon which [two-thirds] 2/3 of the proposed tax is to be levied for such improvement, is not filed with the county clerk, the county [commissioners] legislative body shall be deemed to have acquired jurisdiction to proceed to levy and [collect such] authorize the collection of the tax.

Section 281. Section Amended.

Section 17A-3-1204, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-1204. Hearings.

Whenever the county [commissioners] legislative body shall levy any tax under the provisions of this part, after completion of the lists of the property in such district so taxed, they shall mail notice of said tax to each person liable therefor, stating the time and place of a meeting of the board, during usual business hours and for not less than three consecutive days, when it will sit as a board of equalization and review, and that any person feeling aggrieved shall have a hearing; and the [board of] county [commissioners] legislative body shall have authority to make correction of any such tax deemed unequal or unjust.

Section 282. Section Amended.

Section 17A-3-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-3-1206. Manner of collecting — Delinquencies.

The [board of] county [commissioners] legislative body shall by ordinance prescribe the time and manner of collecting the special road tax as provided in this part, together with rules and regulations governing delinquencies.

Section 283. Section Amended.

Section 19-3-301, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-3-301. Restrictions on high level nuclear waste placement in state.

The state shall not approve the placement in Utah of high level nuclear waste unless the governor, after consultation with the county [commission] executive and county legislative body of the affected county and with concurrence of the Legislature, specifically approves such placement.

Section 284. Section Amended.

Section 19-6-205, Utah Code Annotated 1953, as renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-6-205. Siting plan — Procedure for adoption — Review — Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2)(a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

(i) the hazardous wastes generated in the state;

(ii) those likely to be generated in the future;

(iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;

(iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;

(v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and

(vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) (i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.

(ii) The board shall not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations

to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its [board of] county [commissioners] executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.

(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.

(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.

(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4) (a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.

(b) The final siting plan shall be widely distributed to members of the public.

(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5) (a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8) (a) If necessary, the board may amend the siting plan to provide additional sites or delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

Section 285. Section Amended.

Section 20-16-6, Utah Code Annotated 1953, is amended to read:

20-16-6. Ballot — Form — Manner of marking and voting — Watchers.

The election shall be by ballot, separate from any ballot to be used at the same election, which shall be prepared as follows: It shall first state the substance of the proposed amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width, headed respectively in plain type "For Ratification of Proposed Change in Constitution of the United States," "Against Ratification of proposed change in Constitution of the United States" and a third column without heading or names. In the column headed "For Ratification of proposed change in Constitution of the United States," shall be placed the names of the nominees nominated as in favor of ratification. In the column headed "Against Ratification of proposed change in Constitution of the United States" shall be placed the names of the nominees nominated as against ratification. In the column without heading shall be printed spaces permitting the writing in of other names desired by the voter. The voter shall indicate his choice by making one or more cross-marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross-mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single cross-mark, vote for the entire group of nominees whose names are com-

prised in any column. The ballot shall be in substantially the following form:

OFFICIAL BALLOT

for delegates to convention to ratify or reject proposed amendment to the Constitution of the United States.

The Congress has proposed an amendment to the Constitution of the United States which provides, (insert here the substance of the proposed amendment).

The Congress has also proposed that the said amendment shall be ratified by conventions in the States.

INSTRUCTIONS TO VOTERS

Do not vote for more than 21.

To vote for all candidates in favor of ratification, or for all candidates against ratification, make a cross-mark in the CIRCLE at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross-mark in the SQUARE at the right of the name.

To vote for a person other than candidates listed on the ballot, write in name in blank column.

For ratification of proposed change in Constitution of the United States.
(Name of Candidate) .....

Against ratification of proposed change in Constitution of the United States.
(Name of Candidate) .....
(____) .....

If the election of delegates to such a convention be held at the same time as a general election, the ballots used for the purpose of voting for such delegates shall be of a color to distinguish them from the general ballot but the numbering on the stubs of both ballots shall be the same. In such cases there shall be handed to each voter by an election judge, at the same time that the general ballot is handed to him, one and only one ballot for use in voting for such delegates and the number on its stub shall be the same as the number on the stub of the general ballot used by such voter and when marked by the voter, both of such ballots shall be deposited in the ballot box in the manner prescribed by law. If any voter declines to use the special ballot herein provided for, such unused ballot shall thereupon be immediately marked "void" by the election judges and shall be safely kept and returned by them to the county clerk.

Upon recommendation of one or more of the candidates listed upon the official ballot under the heading "For Ratification of proposed change in Constitution of the United States" the county [~~commissioners~~] legislative body shall designate a person so recommended to act as watcher to represent such group at each polling place within the county. Upon like recommendation of one or more candidates listed on the official ballot as being "against ratification of proposed change in Constitution of the United States" the county [~~commissioners~~] legislative body shall designate a person so recommended to act as watcher to represent such group of candidates at each polling place.

Section 286. Section Amended.

Section 20-18-1, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1969, is amended to read:

20-18-1. Adoption of voting machines.

The [~~board of~~] county [~~commissioners~~] legislative body of any county, the governing body of any city or town, the board of education of any school district, or any other board having charge and control of elections in each of the counties, cities, towns, or districts of the state may by resolution or order adopt and rent or purchase, and use at elections, any kind of voting machine that meets the requirements of this act, and upon such adoption, such voting machine may be used at any or all elections held in such county, municipality or district, or in any part thereof, for voting, registering and counting votes cast at such elections. Voting machines of different kinds may be adopted for different districts in the same municipality.

Section 287. Section Amended.

Section 21-2-3, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1987, is amended to read:

21-2-3. Fees of county recorder.

(1) The county recorder shall receive the following fees:

(a) for receiving, entering, and filing any instrument, paper, or notice, not otherwise provided for, other than bonds of public officers, $7;

(b) for recording any instrument, paper, or notice, including those provided for under Title 70A, the Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, $7 for the first page, if the page is not larger than 8$TH1/2 inches x 14 inches in size, and $1 for each additional page, and if any instrument, paper, or notice contains more than one description, 50 cents for each additional description;

(c) in any instrument in which a right-of-way is described, which is connected with or is appurtenant to any tract of land described in the instrument, 50 cents, but if the instrument contains a description of more than one right-of-way, 50 cents for each additional right-of-way, and if any instrument contains more than two names for either first or second party, or plaintiffs or defendants, for each additional name, 50 cents;

(d) for recording, indexing, and abstracting mining location notices, and recording, indexing, and abstracting affidavits of labor affecting mining claims, $7 for the first page if that page is not larger than 8-1/2 inches by 14 inches in size, and $1 for each additional page; and

(e) for a location notice, affidavit, or proof of labor which contains names of more than two signers, 50 cents for each additional name, and for an affidavit

or proof of labor which contains more than one mining claim, 50 cents for each additional mining claim.

(2)(a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) for copies of any record or paper, a reasonable fee determined and set by the [board of] county [commissioners] legislative body;

(b) for each certificate under seal, $2;

(c) for recording any plat of a subdivision into lots and blocks, 50 cents for each lot, and $20 for each sheet;

(d) for recording any other plat or map, $20 for each sheet and 50 cents for each lot or unit designation;

(e) for taking and certifying acknowledgments, including seal, $5 for one name and $2 for each additional name;

(f) for recording any license issued by the Division of Occupational and Professional Licensing, $7;

(g) for filing of federal tax lien, $7, and for the discharge of the lien, $7;

(h) for copies of microfilm, a charge per lineal foot as fixed by the county governing body, not to exceed the cost of reproduction of the film plus 10%; and

(i) for all services not enumerated in this section, a reasonable compensation.

Section 288. Section Amended.

Section 21-2-7, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1961, is amended to read:

21-2-7. Fees of county surveyor.

The county surveyor shall receive fees for his services and the services of his assistants in making any survey. The [board of] county [commissioners] legislative body shall from time to time determine the amount of said fees which shall be equal to the reasonable and accepted current rates for private persons of comparable training in the area.

Section 289. Section Amended.

Section 21-3-4, Utah Code Annotated 1953, is amended to read:

21-3-4. Constables' fees in criminal cases — Procedure.

Accounts against the county filed by constables for services in criminal cases shall be certified as correct by the county attorney, and shall be presented to the auditor. The [board of] county [commissioners] executive may reject such bills in all causes or proceedings in which the county attorney has not in writing authorized the issuance of the warrant of arrest.

Section 290. Section Amended.

Section 21-5-11, Utah Code Annotated 1953, as last amended by Chapters 19 and 59, Laws of Utah 1990, is amended to read:

21-5-11. Justice court judge — Certificate of attendance — Records and reporting.

(1) Every justice court judge shall give to each person who has served before him as a juror or as a witness in a criminal cause when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate, in which must be stated:

(a) the name of the juror or witness;

(b) the title of the proceeding;

(c) the number of days in attendance;

(d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and

(e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified by him as being correct, it shall be presented to the county or city auditor and when allowed by the [board of] county [commissioners] executive or town council, the auditor shall draw his warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued by him. The record shall show all of the facts stated in each certificate. On the first Monday of each month he shall file with the treasurer a detailed statement of all certificates issued.

Section 291. Section Amended.

Section 21-7-14, Utah Code Annotated 1953, is amended to read:

21-7-14. Office declared vacant.

The [board of] county [commissioners] legislative body, upon receiving a certified copy of the record of conviction of any county, precinct, or district officer for receiving illegal fees[;] must declare his office vacant.

Section 292. Section Amended.

Section 23-21-1.5, Utah Code Annotated 1953, as enacted by Chapter 266, Laws of Utah 1992, is amended to read:

23-21-1.5. Governor's approval required for acquisition of real property held in private ownership — Notification to county executive.

(1) The Division of Wildlife Resources may not acquire title to real property held in private ownership without first obtaining the approval of the governor.

(2) The governor shall:

(a) submit a notification of the proposed acquisition to the county [commission] executive of the county in which the property is located; and

(b) invite the county [commission] executive to submit any comments on the proposed acquisition.

(3) After considering comments on the proposed acquisition, the governor may approve the acquisition in whole or in part or disapprove the acquisition.

Section 293. Section Amended.

Section 23-21-2, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1971, is amended to read:

23-21-2. Payments in lieu of property taxes on property purchased by division.

Prior to the purchase of any real property held in private ownership, the Division of Wildlife Resources shall first submit the proposition to the county [commission] legislative body in a regular open public meeting in the county where the property is located and shall by contractual agreement with the county [commission] legislative body, approved by the executive director of the Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to the county. The division shall, by contractual agreement with the county [commission] legislative body in which any property previously acquired from private ownership and now owned by the division is located, agree to pay annually an amount of money in lieu of wildlife resource fine money, previously paid to the county. Payments provided for in this section will not exceed what the regularly assessed real property taxes would be if the land had remained in private ownership; and these payments shall not include any amount for buildings, installations, fixtures, improvements or personal property located upon the land or for those acquired, constructed or placed by the division after it acquires the land.

Section 294. Section Amended.

Section 23-21-6, Utah Code Annotated 1953, as enacted by Chapter 46, Laws of Utah 1971, is amended to read:

23-21-6. Acquisition of lands by United States for migratory bird refuges.

(1) The consent of the state of Utah is given to acquisition by the United States of such areas of land or water in the state, as the United States may deem necessary, by and with the consent of the county [commission] legislative body of the county where the land or water are located and after approval of application, subject to the laws of the state of Utah for water rights, for the establishment and maintenance of migratory waterfowl refuges in accordance with and for the purpose of the Act of Congress approved February 18, 1929, entitled "Migratory Bird Conservation Act" as amended and the Act of Congress approved March 16, 1935, entitled "Migratory Bird Hunting Stamp Act," as amended; and the same may be used by the United States as refuge for migratory birds, reserving, however, to the state of Utah jurisdiction, both civil and criminal, of persons upon the areas so acquired except so far as the punishment of offenses against the United States are concerned.

(2) Nothing in this section shall be construed to impose under the state or any agency of it any obligation to convey to the United States any interest in land or water owned or controlled by the state, except upon appropriate terms and for adequate consideration. The reservation to the state of coal and other minerals in lands sold by it within areas so established and easements retained by the state to prospect for, mine, and remove the same are declared to be subject to rules and regulations prescribed from time to time by the Secretary of the Interior for the occupation, use, operation, protection, and administration of these areas as refuges for migratory birds.

Section 295. Section Amended.

Section 26-4-5, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1981, is amended to read:

26-4-5. County medical examiners.

The county [commissioners] executive, with the advice and consent of the county legislative body, may appoint medical examiners for their respective counties.

Section 296. Section Amended.

Section 27-12-22, Utah Code Annotated 1953, as last amended by Chapter 137, Laws of Utah 1991, is amended to read:

27-12-22. County roads — Class B roads — Construction and maintenance by counties — Levy.

(1) County roads comprise all public roads and streets within the state:

(a) not designated as state highways that are situated outside of incorporated cities and towns;

(b) that have been designated as county roads; and

(c) those public roads located within a national forest and constructed or maintained by the county under agreement with the appropriate federal agency.

(2) County roads are class B roads.

(3) County roads are under the jurisdiction and control of the county governing bodies of the respective counties and shall be constructed and maintained by or under the authority of the county governing bodies of the respective counties from funds made available for that purpose.

(4) The county governing bodies have authority to expend or by contract cause to be expended the funds allocated to each county from the Transportation Fund under rules made by the commission.

(5) When in the opinion of the county [governing] legislative body the funds available for county road purposes from sources other than the levy made against tangible property are adequate to properly construct and maintain the class B roads, the county may cease making a levy for county road purposes or, at its option, may use any portion of the class B road funds provided by this chapter for the construction and maintenance of class A state roads by cooperative agreement with the department.

Section 297. Section Amended.

Section 27-12-23, Utah Code Annotated 1953, as last amended by Chapter 137, Laws of Utah 1991, is amended to read:

27-12-23. City streets — Class C roads — Construction and maintenance — Use of levy.

(1) City streets comprise:

(a) highways within the corporate limits of the cities and towns of the state which are not designated as class A state roads or as class B roads; and

(b) those highways located within a national forest and constructed or maintained by the city under agreement with the appropriate federal agency.

(2) City streets are under the jurisdiction and control of the governing officials of the respective cities and towns.

(3) City streets are class C roads.

(4) The department shall cooperate with the governing officials of cities and towns in the construction and maintenance of the class C roads within each city or town, and the officials of each city or town shall expend or cause to be expended upon the class C roads the amount allocated to each city or town from the Transportation Fund under rules made by the commission.

(5) Any town or city in the third class may:

(a) contract with the county [~~governing body~~] or the department for the construction and maintenance of class C roads within its corporate limits; or

(b) with the consent of the county [governing body], transfer its class C roads to the class B road system and the funds allocated from the Transportation Fund to the town or city transferring its class C roads shall be used by the county [governing] legislative body upon the roads transferred under rules made by the commission.

(6) When in the opinion of the governing officials of any town or city in the third class the funds available for road purposes from sources other than the levy made against tangible property are adequate to properly construct and maintain the class C roads within any city or town, the governing officials of the city or town may use any portion of the class C road funds allocated to the town or city for the construction of sidewalks, curbs, and gutters on class A state roads within the municipal limits by cooperative agreement with the department.

Section 298. Section Amended.

Section 27-12-24, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1963, is amended to read:

27-12-24. Actions to determine priority of use of public roads.

All actions involving determination of a priority of public use of all highways, roads, streets, paths and ways not otherwise designated as a federal highway, state highway, county road, city street, or special highway shall be by the county attorney under and by the direction of the county [~~commissioners~~] legislative body in which the so designated way resides. This action may be instigated by the written request of ten taxpayers of said county to the county [~~commissioners~~] legislative body in the county in which the undesignated way is situated. The county [~~commissioners~~] legislative body shall request the county attorney to instigate action within a reasonable length of time.

Section 299. Section Amended.

Section 27-12-25, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1963, is amended to read:

27-12-25. Control of highways, roads, paths and ways not otherwise designated.

All highways, roads, paths and ways not designated as a federal, state, city or special highway, road, path, or way shall remain under the direction of the county [~~commissioners~~] executive in the county where they are located.

Section 300. Section Amended.

Section 27-12-26, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1963, is amended to read:

27-12-26. County commissioners to keep plats of roads and highways.

It shall be the duty of the [~~board of~~] county [~~commissioners~~] executive of each county to determine all county roads existing in its county, outside of cities and towns, and to prepare and keep current plats and specific descriptions of the same and of such other highways as [~~such board~~] he may from time to time locate upon public lands, which shall be kept on file in the office of the county clerk or recorder.

Section 301. Section Amended.

Section 27-12-92, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1963, is amended to read:

27-12-92. United States patents — Patentee and county to assert claims to roads crossing land.

Whenever any person shall acquire title from the United States to any land in this state over which there shall at the time extend any public highway that shall not theretofore have been duly platted, and that shall not have been continuously used as such for a period of ten years theretofore, he shall within three months after receipt of his patent assert his claim for damages in writing to the [~~board of~~] county [~~commissioners~~] executive of the county in which the land is situated; and said board shall have an additional period of three months in which to begin proceedings to condemn the land according to law. Such highway shall continue open as a public highway during said periods; but in case no action is begun by the [~~board of~~] county [~~commissioners~~] executive within the period above stated, such highway shall be deemed to be abandoned by the public. In case of a failure by such person so acquiring title to puhlic lands to assert his claim for dam-

age as aforesaid for three months from the time he shall have received a patent to such lands, he shall thereafter be barred from asserting or recovering any damages by reason of such public highway, and the same shall remain open.

Section 302. Section Amended.

Section 27-12-102.1, Utah Code Annotated 1953, as enacted by Chapter 52, Laws of Utah 1965, is amended to read:

27-12-102.1. Vacation, narrowing or change of name of county road — Petition by property owner.

On petition by a person owning property within the county praying that a county road abutting such property be vacated, narrowed, or the name thereof changed, the [~~board of~~] county [~~commissioners~~] legislative body of such county, upon hearing and upon being satisfied that there is good cause for such change of name, vacation or narrowing, that it will not be detrimental to the general interest, and that it should be made, may declare by ordinance such county road vacated, narrowed or the name thereof changed. The county [~~commission~~] legislative body may include in one ordinance the change of name, or the vacation, or the narrowing of more than one county road.

Section 303. Section Amended.

Section 27-12-102.2, Utah Code Annotated 1953, as enacted by Chapter 52, Laws of Utah 1965, is amended to read:

27-12-102.2. Vacation, narrowing or change of name of county road — Action by commissioners without petition.

When there are two or more county roads of the same name in the county, the [~~board of~~] county [~~commissioners~~] legislative body by ordinance and without petition thereof, may change the name of any such county road, so as to leave only one to be designated by the original name. When in the opinion of the [~~board of~~] county [~~commissioners~~] legislative body of the county there is good cause for vacating, or narrowing a county road, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance, and without petition therefor, vacate or narrow such county road or any part thereof.

Section 304. Section Amended.

Section 27-12-102.3, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

27-12-102.3. Vacation — Notice — Exception.

Notice of the intention of the [~~board of~~] county [~~commissioners~~] legislative body to vacate any county road, or part thereof, shall in all cases be given as provided in Section 27-12-102.4, except when there is filed with the [~~board of~~] county [~~commissioners~~] legislative body written consent to such vacation by the owners of the property abutting the part of the county road proposed to be vacated, in which case such notice shall not be required.

Section 305. Section Amended.

Section 27-12-102.4, Utah Code Annotated 1953, as enacted by Chapter 52, Laws of Utah 1965, is amended to read:

27-12-102.4. Vacation — Publication and posting or mailing of notice.

No county road shall be so vacated, unless notice of the pendency of the petition and prayer thereof, and the date of the hearing thereon, if such petition is filed, or of the intention of the [~~board of~~] county [~~commissioners~~] legislative body of the county to vacate, and the date of the hearing on such question if no petition is filed, be given by publishing in a newspaper published or of general circulation in such county once a week for four consecutive weeks preceding action on such petition or intention, or, where no newspaper is published in the county by posting the notice in three public places therein for four consecutive weeks preceding such petition, and by mailing such notice to all owners of record of land abutting the county road proposed to be vacated addressed to the mailing addresses appearing on the rolls of the county assessor of the county wherein said land is located. Action thereon shall take place within three months after the completion of notice.

Section 306. Section Amended.

Section 27-12-102.5, Utah Code Annotated 1953, as enacted by Chapter 52, Laws of Utah 1965, is amended to read:

27-12-102.5. Vacation or narrowing of county road — Effect of action of commissioners.

The action of the [~~board of~~] county [~~commissioners~~] legislative body vacating or narrowing a county road which has been dedicated to public use by the proprietor, shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance, as a revocation of the acceptance thereof, and the relinquishment of the county's fees therein by the [~~board of~~] county [~~commissioners~~] legislative body, but the right of way and easements therein, if any, of the property owner and the franchise rights of any public utility shall not be impaired thereby.

Section 307. Section Amended.

Section 27-12-108.1, Utah Code Annotated 1953, as last amended by Chapter 232, Laws of Utah 1991, is amended to read:

27-12-108.1. Class B and C roads — Improvement projects — Contracts — Retainage escrow.

(1) The county [~~commissioners~~] executive of the counties with respect to class B roads and the governing officials of the cities and towns with respect to class C roads shall cause to be made plans, specifications, and estimates preparatory to the construction of any improvement project, as defined in Section 27-12-108.2, on a class B or C road; the estimated cost of which for any one project exceeds the bid limit for labor, equipment, and materials. All projects in excess of the bid limit shall be performed under contract to be let to the lowest responsible bidder. Whenever the estimated cost of the im-

provement project exceeds the bid limit for labor, equipment, and materials, the same shall not be so divided as to permit the construction in several parts, except by contract. The advertisement on bids for such work shall be published in a newspaper of general circulation in the county in which such work is to be performed at least once a week for three consecutive weeks, or if there is no such newspaper, then after posting such notice for at least 20 days in at least five public places in the county. Sealed bids shall be received by the [commissioners] county executive or governing officials, as the case may be, and opened at the time and place designated in the advertisement, and the contract awarded; provided, that the county [commissioners] executive or governing officials, as the case may be, shall have the right to reject any and all bids; provided further, that the person, firm or corporation to whom any such contract is awarded shall be subject to all the provisions of Title 63, Chapter 56, Utah Procurement Code.

(2) If any payment on a contract with a private contractor for construction or improvement of class B and C roads is retained or withheld, it shall be placed in an interest-bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the governing officials of the county, city, or town. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

Section 308. Section Amended.

Section 27-12-108.3, Utah Code Annotated 1953, as enacted by Chapter 30, Laws of Utah 1982, is amended to read:

27-12-108.3. Class B and class C roads — Use of appropriations — Supervision and standards of construction.

(1) At least 30% of the money appropriated for use on class B and class C roads in all cities and counties having a population of over 2,500 as defined in section 27-12-129 shall be used for construction of roads as defined in section 27-12-108.2.

(2) All construction plans, specifications, and estimates required by section 27-12-108.1 and all construction work shall be prepared and performed under the direct supervision of a registered professional engineer who shall certify to the county [commissioners] legislative body or the governing officials of the city that all road construction projects conform to design and construction standards as currently adopted by the American Association of State Highway and Transportation officials.

Section 309. Section Amended.

Section 27-12-132, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1963, is amended to read:

27-12-132. Gifts, bequests and donations part of state highway fund — Expenditure.

Gifts, bequests and donations by individuals, corporations or societies to the state for road building purposes shall become part of the state highway fund, and shall be expended for state highway purposes. Such gifts, bequests, or donations made to any county shall be expended under the direction of the county [commissioners] legislative body.

Section 310. Section Amended.

Section 27-12-136, Utah Code Annotated 1953, as last amended by Chapter 137, Laws of Utah 1991, is amended to read:

27-12-136. Advertising — Permit required — Penalty for violation.

(1) It is unlawful for any person to place any form of advertising upon any part of the public domain, or within 300 feet of a public highway, except within the corporate limits of a city or town, and except upon land in private ownership situated along the highway, without first receiving a permit from the department, if a state highway, or from the county [governing body] executive, if a county road.

(2) Any person who violates any provision of this section is guilty of a class B misdemeanor.

Section 311. Section Amended.

Section 27-12-138.5, Utah Code Annotated 1953, as enacted by Chapter 17, Laws of Utah 1976, is amended to read:

27-12-138.5. Gates on B system county highways.

(1) The county [commission] executive of any county may provide for the erection and maintenance of gates on the B system county highways in order to avoid the necessity of building highway fences.

(2) The person for whose immediate benefit the gates are erected or maintained shall in all cases bear the expense of such erections and maintenance.

(3) Nothing contained in Section 27-12-138 shall be construed to prohibit any person from placing any unlocked, nonrestrictive gate across any B system county highway, or maintaining the same, with the approval of the county [commissioners] executive of that county.

(4) No gates shall be allowed on any B system county highways except those gates allowed by the county [commission] executive in accordance with the provisions of this section. If the expense of the erection and maintenance of such allowed gates is not paid or if any lock or other device is placed upon such gates so as to make them restrictive, the county [commission] executive of that county shall notify the responsible party that their approval is terminated and the gate shall thereafter be deemed to be an obstruction pursuant to Section 27-12-138.

(5) No placement of gates with the consent of the county [commission] executive across B system county highways nor the maintenance thereof for the statutory period of time shall constitute nor establish an abandonment by the county or an easement on behalf of the person establishing such gate.

(6) Any person committing any of the following acts shall be guilty of a class B misdemeanor and, in

addition, shall be liable for any and all damages suffered by any party as a result of such acts:

(a) Leave open any gate, erected or maintained pursuant to this section;

(b) Unnecessarily drive over the ground adjoining the highway on which such a gate is erected;

(c) Place any lock or other restrictive device on such a gate; or

(d) Violate any rules or regulations of any county [~~commission~~] legislative body relating to such gates within the county.

(7) The provisions of this section relating to maintenance and removal of gates over B system county highways shall be deemed to apply retrospectively to all such gates in existence on the effective date of this act.

Section 312. Section Amended.

Section 27-14-5, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1975, First Special Session, is amended to read:

27-14-5. Funding priorities by county and city officials — Factors.

(1) The county [~~commissioners~~] legislative body of the counties and the governing officials of participating cities may establish funding priorities relating to construction of curbs, gutters, sidewalks or other pedestrian safety construction, with funds permitted to be expended by this act, based on factors including, but not limited to:

(a) Existing useable rights-of-way;

(b) Auto-pedestrian accident experience;

(c) Average daily automobile traffic;

(d) Average daily pedestrian traffic;

(e) Average daily school age pedestrian traffic; and

(f) Speed of automobile traffic.

(2) All construction performed pursuant to this act shall be barrier free to wheelchairs at crosswalks and intersections.

Section 313. Section Amended.

Section 27-14-7, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1975, First Special Session, is amended to read:

27-14-7. Rules and regulations — Transportation department — Co-operation with the county legislative body.

The state department of transportation shall issue rules and regulations providing for uniform accounting of the funds permitted to be expended for curbs, gutters, sidewalks and pedestrian safety devices, as provided in this act, and cooperate with the county [~~commissioners~~] executives and county legislative bodies and the governing officials of participating cities in order to put into effect the purpose of the laws pertaining to pedestrian safety construction.

Section 314. Section Amended.

Section 30-1-32, Utah Code Annotated 1953, as enacted by Chapter 64, Laws of Utah 1971, is amended to read:

30-1-32. Master plan for counseling.

It shall be the function and duty of the premarital counseling board, after holding public hearings, to make, adopt, and certify to the [~~board of~~] county [~~commissioners~~] legislative body a master plan for premarital counseling of marriage license applicants within the purposes and objectives of this act. The master plan shall include, but not be limited to, counseling procedures which will make applicants aware of problem areas in their proposed marriage and suggest ways of meeting problems and which will induce reconsideration or postponement where the applicants are not sufficiently matured or are not financially capable of meeting the responsibilities of marriage or are marrying for reasons not conducive to a sound lasting marriage. The plan shall include standards for evaluating premarital counseling received by the applicants, prior to their application for a marriage license, which would justify issuance of certificate without further counseling being given or required. The board may, from time to time, amend or extend the plan. The premarital counseling board may appoint a staff and employees as may be necessary for its work and may contract with social service agencies or other consultants within the county or counties for services it requires, providing, its expenditures shall not exceed the sums appropriated by the [~~board or boards of~~] county [~~commissioners~~] legislative body plus sums placed at its disposal through gift or otherwise.

Section 315. Section Amended.

Section 30-3-13.1, Utah Code Annotated 1953, as enacted by Chapter 72, Laws of Utah 1969, is amended to read:

30-3-13.1. Establishment of family court division of district court.

A family court division of the district court may be established with the consent of the county [~~commission~~] legislative body in a county in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts require use of the procedures provided for in this act in order to give full and proper consideration to such cases and to effectuate the purposes of this act. The determination shall be made annually by the judge of the district court in counties having only one judge, and by a majority of the judges of the district court in counties having more than one judge.

Section 316. Section Amended.

Section 30-3-15.4, Utah Code Annotated 1953, as enacted by Chapter 72, Laws of Utah 1969, is amended to read:

30-3-15.4. Salaries and expenses.

Salaries of persons appointed under the foregoing sections shall be fixed by the [~~board of commission-~~

ers] county legislative body of the county in which they serve. Office space, furnishings, equipment, and supplies for family court commissioners and conciliation staff shall be provided by the [board of] county [commissioners]. The expenses and salaries of family court commissioners and conciliation staff shall be paid from county funds under Section 17-16-7.

Section 317. Section Amended.

Section 34-29-3, Utah Code Annotated 1953, as enacted by Chapter 85, Laws of Utah 1969, is amended to read:

34-29-3. License — Application.

Any person applying for a license under the provisions of this chapter shall make application to the board of city commissioners, city council or board of town trustees, or [board of] the county [commissioners] executive for the same and shall deposit with the city, town or county treasurer in advance the annual fee for such license, to be evidenced by the receipt of the city, town or county treasurer endorsed on the application. If the board of city commissioners, city council, board of town trustees, or [board of] the county [commissioners] executive refuses to order the issuance of such license to the party applying for the same, the sum so deposited with the city, town or county treasurer shall be refunded to the applicant for license without any further action of the governing body.

Section 318. Section Amended.

Section 34-29-4, Utah Code Annotated 1953, as enacted by Chapter 85, Laws of Utah 1969, is amended to read:

34-29-4. License — Bond — Transfer.

Any person licensed under the provisions of this chapter shall pay an annual license fee in such amount as may be determined by the board of city commissioners, city council, board of town trustees, or [board of] the county [commissioners] legislative body, and before such license shall be issued shall deposit with the city, town or county treasurer a bond in the penal sum of $1,000, with two or more sureties to be approved by the officers designated by ordinance. The bond shall be made payable to the city, town or county where such business is to be carried on and shall be conditioned that the person applying for the license will comply with this chapter and will pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit of any person, or by any other violation of this chapter, in carrying on the business for which a license is granted. If at any time in the opinion of the officers designated by ordinance to approve such bond, the sureties or any of them shall become irresponsible, the person holding such license shall, upon notice from the city, town or county treasurer, give a new bond, to be approved as hereinafter provided. Failure to give a new bond within ten days after such notice shall operate as a revocation of such license, and the license certificate shall be immediately returned to the city, town or county treasurer, who shall destroy the same. Licenses granted under this chapter may be transferred by order of the board of city commissioners, city council, board of town trustees, or [board of] the county [commissioners] executive, but before such transfer shall be authorized, the applicant for the same shall deposit with the city, town or county treasurer the sum of $5.00, which shall be endorsed upon the application, and the person to whom such license is transferred shall also deposit such a bond as is required by the applicant for an original license as hereinbefore prescribed, to be approved in the same manner.

Section 319. Section Amended.

Section 34-29-5, Utah Code Annotated 1953, as enacted by Chapter 85, Laws of Utah 1969, is amended to read:

34-29-5. License — Posting.

Upon the granting of a license by the board of city commissioners, city council, board of town trustees, or [board of] the county [commissioners] executive under this chapter, the city, town, or county treasurer shall within one week after payment of the license fee issue to the applicant entitled to the same a certificate setting forth the fact that such license has been granted. It shall be the duty of all persons who may obtain such license to keep the same publicly exposed to view in a conspicuous place in their offices or places of business.

Section 320. Section Amended.

Section 40-6-16, Utah Code Annotated 1953, as last amended by Chapter 62, Laws of Utah 1988, is amended to read:

40-6-16. Duties of division.

In addition to the duties assigned by the board, the division shall:

(1) develop and implement an inspection program that will include but not be limited to production data, pre-drilling checks, and site security reviews;

(2) publish a monthly production report;

(3) publish a monthly gas processing plant report;

(4) review and evaluate, prior to a hearing, evidence submitted with the petition to be presented to the board;

(5) require adequate assurance of approved water rights in accordance with rules and orders enacted under Section 40-6-5; and

(6) notify the county [commission] executive of the county in which the drilling will take place in writing of the issuance of a drilling permit.

Section 321. Section Amended.

Section 47-2-4, Utah Code Annotated 1953, is amended to read:

47-2-4. Elimination by the county legislative body — Notice of intention.

The [boards of] county [commissioners] executive may provide for the elimination of abandoned horses in the respective counties in the following manner:

They shall cause notice to be published at least once a week for three successive weeks in some newspaper of general circulation published in the county, and such notice shall also be posted in at least five public places outside of the county seat on public highways in such county, and in three public places at the county seat, one of which shall be at the front door of the courthouse. The notices posted outside of the county seat shall be posted not less than two miles apart, and all posted notices shall be posted at least [~~thirty~~] 30 days before the date which the county [commissioners] executive shall fix for the beginning of the elimination of abandoned horses from the range in such county as hereinafter provided. If no newspaper is published in the county, publication in a newspaper shall not be required.

Such notice shall be substantially in the following form:

Notice is hereby given that in accordance with the provisions of law the [~~board of~~] county [commissioners] executive of ____ County, Utah, will proceed to eliminate abandoned horses from the open range in said county, and that beginning on the ____ day of ____, 19__, a drive will be held, and all abandoned horses running upon the open range will, under the direction and supervision of the county [commissioners] executive, be eliminated. All owners of horses running upon the open range are hereby given notice to file with the [~~board of~~] county [commissioners] executive a description of such horses, and the brands or marks thereon.

Dated this ____ day of ____, 19__.

By order of the [~~board of~~] county [commissioners] executive of ____ County, Utah.

_____
County Clerk.

Section 322. Section Amended.

Section 47-2-5, Utah Code Annotated 1953, is amended to read:

47-2-5. Elimination by the county legislative body — Method — Sale.

[~~The~~] A policy for the manner and method of eliminating abandoned horses from the open range shall be in the discretion of the [~~board of~~] county [commissioners] legislative body, and it shall be its duty to so eliminate abandoned horses, using the means most effective and economical under the circumstances. The [board] county executive may[~~, in its discretion,~~] sell all captured horses.

Section 323. Section Amended.

Section 47-2-6, Utah Code Annotated 1953, is amended to read:

47-2-6. Owners may reclaim — Damages — Taxes.

Any person owning any horses which are running at large in any county in which the [~~board of~~] county [commissioners] executive has given notice of intention to make a drive, as provided in this chapter, may within [thirty] 30 days after the posting or the first publication of the notice mentioned in Section 47-2-4 file with the [~~board of~~] county [commissioners] executive a description of such horses claimed by him, giving the marks and brands, if any, which appear thereon, and, if the [~~board of~~] county [commissioners] executive shall take into its possession any horses so claimed, it shall by registered letter addressed to the owner or claimant of such horses notify him that the same may be claimed within ten days from the mailing of such notice; and such owner or claimant shall be permitted upon application to the board to take possession of such horses upon payment of the expense of caring for the same from the date of capture. If any horses are killed by order of the county [commissioners] executive under the provisions of this chapter, a description of which has been reported by the owner thereof to the board, and ownership of such animals can be satisfactorily established, such owner shall receive as damage therefor a sum not exceeding $10 for each animal; provided, that he has paid all taxes assessed against said animal; provided further, that payment of such claims may be made only from proceeds of sales of captured horses.

Section 324. Section Amended.

Section 47-2-7, Utah Code Annotated 1953, is amended to read:

47-2-7. Elimination from private property on request.

Abandoned horses may be eliminated from privately owned land by the [~~board of~~] county [commissioners] executive in the same manner as from the open range when requested so to do by the owner of such land.

Section 325. Section Amended.

Section 53A-2-102, Utah Code Annotated 1953, as last amended by Chapter 116, Laws of Utah 1989, is amended to read:

53A-2-102. Consolidation of school districts — Resolution by school board members — Petition by electors — Election.

(1) Two or more school districts may unite and form a single school district in one of the following ways:

(a) a majority of the members of each of the boards of education of the affected districts shall approve and present to the [~~board of~~] county [commissioners] legislative body of the affected counties a resolution to consolidate the districts. Once this is done, consolidation shall be established under this chapter; or

(b) a majority of the members of the board of education of each affected district, or 15% of the qualified electors in each of the affected districts, shall sign and present a petition to the county [commissioners] legislative body of each affected county. The question shall be voted upon at an election called for that purpose, which shall be the next general or municipal election. Consolidation shall occur if a majority of those voting on the question in each district favor consolidation.

(2) The elections required under Subsection (1)(b) shall be conducted and the returns canvassed as provided by election laws.

Section 326. Section Amended.

Section 53A-2-104, Utah Code Annotated 1953, as last amended by Chapter 48, Laws of Utah 1988, is amended to read:

53A-2-104. Transfer of a portion of a school district — Board resolution — Board petition — Elector petition — Transfer election.

(1) Part of a school district may be transferred to another district in one of the following ways:

(a) presentation to the [~~board of~~] county [~~commissioners~~] legislative body of each of the affected counties of a resolution requesting the transfer, approved by at least four-fifths of the members of the board of education of each affected district;

(b) presentation to the [~~board of~~] county [~~commissioners~~] legislative body of each affected county of a petition requesting that the electors vote on the transfer, signed by a majority of the members of the local school board of each affected school district; or

(c) presentation to the [~~board of~~] county [~~commissioners~~] legislative body of each affected county of a petition requesting that the electors vote on the transfer, signed by 15% of the qualified electors in each of the affected school districts within that county.

(2) The electors of each affected district shall vote on the transfer requested under Subsection (1)(b) or (c) at an election called for that purpose, which may be the next general election. The election shall be conducted and the returns canvassed as provided by election law. A transfer is effected only if a majority of votes cast by the electors in both the proposed transferor district and in the proposed transferee district are in favor of the transfer.

Section 327. Section Amended.

Section 53A-16-106, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-16-106. Annual certification of tax rate proposed by local school board — Inclusion of school district budget — Modified filing date.

(1) Prior to June 22 of each year, each local school board shall certify to the [~~board of commissioners of the~~] county legislative body in which the district is located, on forms prescribed by the State Tax Commission, the proposed tax rate approved by the local school board.

(2) A copy of the district's budget, including items under Section 53A-19-101, and a certified copy of the local school board's resolution which approved the budget and set the tax rate for the subsequent school year beginning July 1 shall accompany the tax rate.

If the tax rate approved by the board is in excess of the "certified tax rate" as defined under Subsection 59-2-924 (2) (a), the date for filing the tax rate and budget adopted by the board shall be that established under Section 59-2-919.

Section 328. Section Amended.

Section 53A-16-108, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-16-108. Levy of tax — Collection and deposit.

(1) After the valuation of property has been extended on the assessment rolls, the county [~~commissioners~~] legislative body shall levy a tax on the taxable property in the respective school districts at the rate submitted by each local school board under Section 53A-16-106.

(2) These taxes shall be collected by the county officers in the same manner as other taxes are collected.

(3) The county treasurer shall pay the tax revenues to the respective district's business administrator who shall hold the tax revenue subject to the order of the local school board.

Section 329. Section Amended.

Section 53A-18-106, Utah Code Annotated 1953, as enacted by Chapter 2, Laws of Utah 1988, is amended to read:

53A-18-106. Bonds a lien on property — Levy of tax to pay bonds.

(1) Bonds issued under this chapter are a lien upon the taxable property of the school district issuing them.

(2) If the local school board neglects or refuses to cause a tax to be levied in accordance with law to meet the outstanding bonds or the interest on the bonds, the [~~board of~~] county [~~commissioners~~] legislative body of the county in which the district is located shall levy the tax and apply the money collected to the payment of the bonds and the interest.

Section 330. Section Amended.

Section 53B-18-202, Utah Code Annotated 1953, as enacted by Chapter 167, Laws of Utah 1987, is amended to read:

53B-18-202. Cooperative contracts for expenses.

The university may enter into cooperative contracts with the United States Department of Agriculture, county or city officers, private and public organizations, corporations, and individuals, to share the expense of establishing and maintaining an agricultural extension service. The county [~~commissioners~~] legislative body of each county may provide sufficient funds to insure that the agricultural extension service functions properly in their respective counties.

Section 331. Section Amended.

Section 54-8-22, Utah Code Annotated 1953, as enacted by Chapter 157, Laws of Utah 1969, is amended to read:

54-8-22. Bonds — Issuance authorized — Amount — Interest — Additional requirements.

After the expiration of [~~thirty~~] 30 days from the date of the adoption of the resolution levying the assessments, the [~~governing~~] county legislative body may issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall bear interest at not exceeding 7% per annum, payable semiannually or annually, and shall mature serially over a period not exceeding twenty years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and [~~ninety~~] 90 days thereafter. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized, and issued in such manner[~~,~~] as the [~~governing~~] county legislative body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied the same shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the proceeds of any property sold for the nonpayment of special assessments but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity, and the [~~governing~~] county legislative body may provide that the bonds shall be redeemable on any interest payment date or dates prior to maturity pursuant to such notice and at such premiums as it deems advisable. The bonds shall be signed by [~~a member of the governing body designated by the governing~~] the county executive and the chair of the county legislative body and shall be countersigned by the city recorder or the clerk of the board of the town trustees or the clerk of the [~~board of~~] county [~~commissioners~~] legislative body, whichever is applicable, and one of such signatures may be a facsimile signature. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

Section 332. Section Amended.

Section 57-7-10, Utah Code Annotated 1953, is amended to read:

57-7-10. Statement of expenses.

Within [~~thirty~~] 30 days after the expiration of the six months prescribed in Section 57-7-3 for filing statements the corporate authorities, or the judge, and the [~~board of~~] county [~~commissioners~~] executive shall render in writing a true account of all moneys expended in the acquisition of the title to the land and in the administration or execution of the trust up to that time, including purchase money, necessary traveling expenses, and the costs for posting and publishing notices. Such account shall be filed in the office of the clerk of the district court of the county in which such city or town may be situated, and shall during ordinary business hours be open for inspection to all persons interested.

Section 333. Section Amended.

Section 59-2-211, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-211. Security for tax on uranium and vanadium mining properties.

(1) The commission, in order to ensure the payment and collection of an ad valorem property tax imposed against uranium and vanadium mining properties, may require the owner or the person engaged in mining the properties to deposit a security with the commission in an amount determined by the commission. The security shall be deposited with the commission within 30 days of proper notice by the commission that the security is required. Notice by registered mail to the last-known address as shown in the records of the commission constitutes proper notice.

(2) The security may be sold by the commission at public sale in order to recover any tax, interest, or penalty due. Notice of the sale may be personally served upon the person who deposited the securities, or served by registered mail sent to the last-known address as shown in the records of the commission. Following the sale, any surplus amount shall be returned to the person who deposited the security.

(3) If the security is not deposited on or before the due date, the commission may declare the tax for that year and any preceding year, if unpaid, in jeopardy, and may proceed to collect the tax under this chapter.

(4) Following recourse to the security by the commission, or to jeopardy proceedings under Part 13 of this chapter, the person engaged in using the properties shall deposit any new security required by the commission prior to resuming operations.

(5) The ad valorem tax imposed upon metalliferous mining claims and properties is a personal obligation of the owner or operator of the affected claims or properties, and the obligations are not satisfied until paid in full. If a mining claim or property is sold at preliminary or final sale under Part 13 of this chapter, the sale does not extinguish the personal obligation of the owner or operator of the claim or property. The personal obligation continues to exist against the owner or operator of the claim or property until paid or otherwise satisfied. Other real or personal property of the owner or operator may be seized or sold to satisfy the personal obligation. This remedy is not exclusive, but is in addition to any other remedy provided by law for the collection of these taxes. Nothing contained in this section abrogates existing powers of the commission or a county [~~governing~~] legislative body to compromise or adjust the assessment of taxes.

Section 334. Section Amended.

Section 59-2-314, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-314. Penalty for failure to complete assessment book.

Any assessor who fails to complete and deliver the assessment book to the county auditor within the time prescribed by law, or who fails to transmit the information required under Section 59-2-313 to the commission, shall pay a penalty of $1,000, to be recovered on the assessor's official bond, for the use of the county, or deducted from salary by the county [~~governing~~] legislative body.

Section 335. Section Amended.

Section 59-2-315, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-315. Liability for willful failure or neglect of duty — Action on official bond — Judgment.

(1) The assessor and sureties are liable on the official bond for all taxes on property within the county which, through willful failure or neglect, is not assessed or which has been willfully assessed at less than its fair market value.

(2) The county attorney shall, upon showing of proper evidence and upon written demand by the commission or the county [~~governing~~] legislative body, commence and prosecute to judgment an action upon the assessor's bond for all taxes lost from willful failure or neglect in assessing property.

(3) If, during the trial of the action against the assessor, the value of the unassessed or underassessed property is determined, the assessor is liable for the difference between the amount of taxes collected and the amount of taxes which should have been collected pursuant to law.

Section 336. Section Amended.

Section 59-2-402, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-402. Proportional assessment of transitory personal property brought from outside state — Exemptions — Reporting requirements — Penalty for failure to file report — Claims for rebates and adjustments.

(1) If any taxable transitory personal property, other than property exempted under Subsection (2), is brought into the state at any time after the assessment date, a proportional assessment shall be made in accordance with rules adopted by the commission based upon the length of time that the property is in the state, but in no event may the minimum assessment be less than 25% of the full year's assessment.

(2) The following property is exempt from proportional assessment under Subsection (1) for the year in which the license fee or tax is paid:

(a) property acquired during the calendar year;

(b) registered motor vehicles with a gross laden weight of 27,000 pounds or less; and

(c) vehicles which are registered and licensed in another state.

(3) If any taxable transitory personal property is brought into the state at any time during the year, the owner of the property, or the owner's agent, shall immediately secure a personal property report form from the assessor, complete it in all pertinent respects, sign it, and file it with the assessor of the county in which the property is located.

(4) If the owner of the taxable transitory personal property, or the owner's agent, fails to secure, complete, and file a personal property report form with the county assessor, the assessor shall estimate the value of the property in accordance with Subsection 59-2-307(2). Any failure on the part of the owner or agent to report as required by this subsection subjects the property owner to a penalty of 50% of the amount of tax finally determined to be due.

(5) If property is exempt on the assessment date but subsequently becomes taxable, it shall be assessed in accordance with Subsection (1).

(6) An owner of taxable transitory personal property, except motor vehicles with a gross laden weight of 27,000 pounds or less, who has paid taxes on the personal property and who removes the property from the state prior to December, is entitled to a rebate of a proportionate share of the taxes paid as determined by the commission. If a claim for rebate or adjustments is filed with the county auditor by December 10, the auditor shall immediately submit the claim with a recommendation to the county [~~governing body~~] executive for its approval or denial. If the claim is not approved prior to the end of the calendar year, or within 30 days after its submission, or if the claim is submitted after December 10, it shall be considered denied, and the owners of the property may file an action in the district court for a refund or an adjustment.

Section 337. Section Amended.

Section 59-2-902, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-902. Minimum basic tax levy for school districts.

(1) If any county fails to comply with Section 59-2-704, then this section determines the adjustment of the basic school levy for school districts within the county. Before June 15, the commission shall ascertain from the State Board of Education the number of weighted pupil units in each school district in the state for the school year commencing July 1 of the current calendar year, estimated according to the Minimum School Finance Act, and the money necessary for the cost of the operation and maintenance of the minimum school program of the state for the school fiscal year beginning July 1 of the current calendar year. The commission shall then estimate the amounts of all surpluses in the Uniform School Fund, as of July 1 of the current cal-

endar year, available for the operation and maintenance of the program, and shall estimate the anticipated income to the fund available for those purposes for the current school year from all sources, including revenues from taxes on income or from taxes on intangible property pursuant to Article XIII, Sec. 12, Utah Constitution.

(2) The commission shall then determine for each school district the amount to be raised by the minimum basic tax levy as its contribution toward the cost of the basic state-supported program, as required by the Minimum School Finance Act.

(3) Each county auditor shall be notified by the commission that the minimum basic tax levy shall be imposed by the school district, to which shall be added an additional amount, if any, due to local undervaluation as provided in this section. The auditor shall inform the county [governing] legislative body as to the amount of the levy. The county [governing] legislative body shall at the time and in the manner provided by law make the levy upon the taxable property in the school district together with further levies for school purposes as may be required by each school district to pay the costs of programs in excess of the basic state-supported school program.

(4) If the levy applied under this section raises an amount in excess of the total basic state-supported school program for a school district, the excess amount shall be remitted by the school district to the State Board of Education to be credited to the Uniform School Fund for allocation to school districts to support the basic state-supported school program. The availability of money shall be considered by the commission in fixing the state property levy as provided in the Minimum School Finance Act.

(5) If the levy does not raise an amount in excess of the total basic state-supported school program for a district, then the difference between the amount which the local levy will raise within the district, and the total cost of the basic state-supported school program within the district shall be computed. This difference, if any, shall be apportioned from the Uniform School Fund to each school district as the contribution of the state to the basic state-supported school program for the district, subject to the following conditions:

(a) Before the apportionment is made, the commission shall determine if the local taxable valuation of any school district is undervalued according to law and if so, the dollar amount of the undervaluation. The dollar amount of the undervaluation shall be multiplied by the district basic uniform school levy at 98%. The resulting dollar amount shall be divided by the current year estimated yield of .0002 per dollar of taxable value at 98% based on the district's taxable valuation prior to adjusting for undervaluation.

(b) The resulting levy amount shall be added to the required district basic uniform levy to determine the combined district basic school levy adjusted for undervaluation. The combined rate of levy shall be certified to the county auditor and employed by the auditor and the county [governing] legislative body in lieu of the required basic school local levy.

Section 338. Section Amended.

Section 59-2-909, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-909. Time for adoption of levy — County purpose requirement.

The county [governing] legislative body of each county shall adopt a proposed or, if the tax rate is not more than the certified tax rate, a final tax rate on the taxable property of the county before June 22 to provide funds for county purposes.

Section 339. Section Amended.

Section 59-2-910, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-910. Amount available for each purpose.

The county [governing] legislative body shall determine the amount which shall be available for each purpose authorized by law.

Section 340. Section Amended.

Section 59-2-911, Utah Code Annotated 1953, as last amended by Chapter 264, Laws of Utah 1991, is amended to read:

59-2-911. Exceptions to maximum levy limitation.

(1) The maximum levies set forth in Section 59-2-908 do not apply to and do not include:

(a) levies made to pay outstanding judgment debts;

(b) levies made in any special improvement districts;

(c) levies made for extended services in any county service area;

(d) levies made for county library services;

(e) levies made to be used for storm water, flood, and water quality control;

(f) levies made to share disaster recovery expenses for public facilities and structures as a condition of state assistance when a Presidential Declaration has been issued under the Disaster Relief Act of 1974 (Public Law 93-288, 42 U.S.C. Section 5121);

(g) levies made to pay interest and provide for a sinking fund in connection with any bonded or voter authorized indebtedness, including the bonded or voter authorized indebtedness of county service areas, special service districts, and special improvement districts;

(h) levies made to fund local health departments;

(i) levies made to fund public transit districts;

(j) levies made to establish, maintain, and replenish special improvement guaranty funds;

(k) levies made in any special service district;

(l) levies made to fund municipal-type services to unincorporated areas of counties under Title 17, Chapter 34;

(m) levies made to fund the purchase of paramedic or ambulance facilities and equipment and to defray administration, personnel, and other costs of providing emergency medical and paramedic services, but this exception only applies to those counties in which a resolution setting forth the intention to make those levies has been duly adopted by the county [~~governing~~] legislative body and approved by a majority of the voters of the county voting at a special or general election; and

(n) all other exceptions to the maximum levy limitation pursuant to statute.

(2) Upon the retirement of bonds issued for the development of a convention complex described in Section 17-12-4, and notwithstanding Section 59-2-908, any county of the first class may continue to impose a property tax levy equivalent to the average property tax levy previously imposed to pay debt service on those retired bonds. The revenues from this continued levy shall be used only for the funding of convention facilities as defined in Section 59-12-602.

Section 341. Section Amended.

Section 59-2-912, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-912. Time for adoption of levy — Certification to county auditor.

The [~~governing~~] county legislative body of each taxing entity shall, before June 22 of each year, adopt a proposed or, if the tax rate is not more than the certified tax rate, a final tax rate for the taxing entity. The [~~governing~~] county legislative body shall report the rate and levy, and submit the statement required under Section 59-2-913 and any other information prescribed by rules of the commission for the preparation, review, and certification of the rate, to the county auditor of the county in which the taxing entity is located. If the [~~governing~~] county legislative body of any taxing entity fails to comply with this section, the county [~~governing body~~] executive of the county in which the taxing entity is located shall notify the taxing entity by certified mail of the deficiency and forward all available documentation to the commission. The commission shall hold a hearing on the matter and certify an appropriate rate.

Section 342. Section Amended.

Section 59-2-919, Utah Code Annotated 1953, as last amended by Chapter 36, Laws of Utah 1992, is amended to read:

59-2-919. Resolution proposing tax increases — Notice — Contents — Personal mailed notice in addition to advertisement — Contents — Hearing — Dates.

A tax rate in excess of the certified tax rate may not be levied until a resolution has been approved by the taxing entity in accordance with the following procedure:

(1) The taxing entity shall advertise its intent to exceed the certified tax rate in a newspaper of general circulation in the county. The advertisement shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least five days a week, unless the only newspaper in the county is published less than five days a week. It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter. The advertisement shall be run once each week for the two weeks preceding the adoption of the final budget. The advertisement shall state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement, which shall be not less than seven days after the day the first advertisement is published, for the purpose of hearing comments regarding any proposed increase and to explain the reasons for the proposed increase. The meeting on the proposed increase may coincide with the hearing on the proposed budget of the taxing entity.

(2) The form and content of the notice shall be substantially as follows:

"NOTICE OF TAX INCREASE

The (name of the taxing entity) has proposed to budget an increase in its property tax revenue from $_____ to $_____ or ___% and to (increase/decrease) its total budget from $_____ to $_____ or ___%. The proposed increase in property tax revenues will come from the following sources (include all of the following provisions):

(a) $_____ of the proposed increase will come from an increase in the property tax rate from (last year's ad valorem property tax rate) to (this year's property tax rate); and

(b) $_____ of the proposed increase will come from (provide a commission approved explanation of the cause of adjustment or increased revenues, such as reappraisals or factoring orders);

(c) $_____ of the proposed increase will come from natural increases in the value of the tax base due to (explain cause of new growth, such as new building activity, annexation, etc.);

(d) a home valued at $75,000 in (name of the taxing entity) which based on last year's property tax rate and budget paid $_____ in property taxes would pay the following:

(i) $_____ if (name of taxing entity) does not budget an increase in property tax revenue exclusive of new growth; and

(ii) $_____ if the proposed increase in budgeted property tax revenues exclusive of new growth is adopted.

All concerned citizens are invited to attend a public hearing on the tax increase to be held on (date and time) at (meeting place)."

(3) The commission shall adopt rules governing the joint use of one advertisement under this section or Section 59-2-918 by two or more taxing entities and may, upon petition by any taxing entity, authorize either:

(a) the use of weekly newspapers in counties having both daily and weekly newspapers where the weekly newspaper would provide equal or greater notice to the taxpayer; or

(b) the use of a commission-approved direct notice to each taxpayer if the cost of the advertisement would cause undue hardship and the direct notice is different and separate from that provided for in Subsection (4).

(4) In addition to providing the notice required by Subsection (1), the county auditor, on or before July 22 of each year, shall notify, by mail, all owners of real estate as defined in Section 59-2-102 shown on the assessment roll, on a form approved by the commission, which shall be uniform in content in all counties throughout the state, of the value of the property, the date the county board of equalization will meet to hear complaints on the valuation, itemized tax information for all taxing entities, the tax impact on the property, and the time and place of the required public hearing for each entity. This notice shall be mailed at least ten days before the county board of equalization meets and at least ten days before the public hearing on the proposed increase in the certified tax rate.

(5) The taxing entity, after the hearing has been held in accordance with the above procedures, may adopt a resolution levying a tax rate in excess of the certified tax rate. If the resolution adopting the tax rate is not adopted on the day of the public hearing, the scheduled time and place for consideration and adoption of the resolution shall be announced at the public hearing. If the resolution is to be considered at a day and time that is more than two weeks after the public hearing, the taxing entity shall advertise the date of the proposed adoption of the resolution in the same manner as provided under Subsections (1) and (2).

(6) All hearings shall be open to the public. The governing body of the taxing entity conducting the hearing shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.

(7) Each taxing entity shall notify the county legislative body by March 1 of each year of the date, time, and place of its public hearing. A taxing entity may not schedule its hearing at the same time as another overlapping taxing entity in the same county, but all taxing entities in which the power to set tax levies is vested in the same governing board or authority may consolidate the required hearings into one hearing. The county [~~governing~~] legislative body shall resolve any conflicts in hearing dates and times after consultation with each affected taxing entity.

Section 343. Section Amended.

Section 59-2-1001, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1001. County board of equalization — Public hearings — Hearing officers — Notice of decision — Rulemaking.

(1) The county [~~governing~~] legislative body is the county board of equalization and the county auditor is the clerk of the county board of equalization.

(2) The county board of equalization shall adjust and equalize the valuation and assessment of the real and personal property within the county, subject to regulation and control by the commission as prescribed by law. The county board of equalization shall meet and hold public hearings each year to examine the assessment roll and equalize the assessment of property in the county, including the assessment for general taxes of all taxing entities located in the county.

(3) For the purpose of this chapter, the county board of equalization may appoint hearing officers for the purpose of examining applicants and witnesses. The hearing officers shall transmit their findings to the board, where a quorum shall be required for final action upon any application for exemption, deferral, reduction, or abatement.

(4) The clerk of the board of equalization shall notify the taxpayer, in writing, of any decision of the board. The decision shall include any adjustment in the amount of taxes due on the property resulting from a change in the taxable value and shall be considered the corrected tax notice.

(5) During the session of the board, the assessor or any deputy whose testimony is needed shall be present, and may make any statement or introduce and examine witnesses on questions before the board.

(6) The county board of equalization may make and enforce any rule which is consistent with statute or commission rule, and necessary for the government of the board, the preservation of order, and the transaction of business.

Section 344. Section Amended.

Section 59-2-1005, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1005. Procedures for appeal — Personal property — Time for appeal — Hearing — Decision — Appeal to commission.

(1) The county [~~governing~~] legislative body shall include a notice of procedures for appeal of any personal property valuation with each tax notice. If personal property is subject to a fee in lieu of tax or the uniform tax under Article XIII, Sec. 14, Utah Constitution, and the fee or tax is based upon the value of the property, the basis of the value may be appealed to the commission.

(2) Any taxpayer dissatisfied with the taxable value of the taxpayer's personal property may appeal

by filing an application no later than 30 days after the mailing of the tax notice.

(3) After giving reasonable notice, the board shall hear the appeal and render a written decision. The decision shall be rendered no later than 60 days after receipt of the appeal.

(4) If any taxpayer is dissatisfied with the decision of the board, the taxpayer may file an appeal with the commission as established in Section 59-2-1006.

Section 345. Section Amended.

Section 59-2-1101, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1989, is amended to read:

59-2-1101. Exemption of property devoted to public, religious, or charitable uses — Proportional payments for government-owned property — Intangibles exempt — Affidavit required.

(1) The exemptions authorized by this part may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed, unless the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b), or (c), in which case the entity shall collect and pay a proportional tax based upon the length of time that the property was not owned by the entity.

(2) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of the state, school districts, and public libraries;

(c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, the Interlocal Cooperation Act;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery; and

(g) intangible property.

(3) (a) The owner who receives exempt status for property, if required by the commission, shall file an affidavit, on or before March 1 each year, certifying the use to which the property has been placed during the past year. The affidavit shall contain the following information in summary form:

(i) identity of affiant;

(ii) the basis of the affiant's knowledge of the use of the property;

(iii) authority to make the affidavit on behalf of the owner;

(iv) county where property is located; and

(v) nature of use of the property.

(b) If the affidavit is not filed within the time limits prescribed by the county board of equalization, the exempt status may, after notice and hearing, be revoked and the property then placed on the tax rolls.

(4) The county [~~governing~~] legislative body may adopt rules to effectuate the exemptions provided in this part.

Section 346. Section Amended.

Section 59-2-1106, Utah Code Annotated 1953, as last amended by Chapter 74, Laws of Utah 1990, is amended to read:

59-2-1106. Exemption of property owned by blind persons or their unremarried surviving spouses or minor orphans — Amount — Application.

(1) The first $11,500 of taxable value of real and tangible personal property in this state owned by blind persons, their unremarried surviving spouses, or minor orphans, is exempt from taxation, subject to Subsections (2) and (3).

(2) Every person applying for the exemption for the blind shall, on or before July 1 in each year, file an application with the county [~~governing body~~] executive of the county in which the person resides.

(3) The first year's application shall be accompanied by a statement signed by a licensed ophthalmologist verifying that the person:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision no greater than 20 degrees.

Section 347. Section Amended.

Section 59-2-1107, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1107. Indigent persons — Amount of abatement.

The county [~~governing body~~] executive may remit or abate the taxes of any poor person in an amount not exceeding $300 or not more than 50% of the total tax assessed for the current year, whichever is less, subject to the conditions of Section 59-2-1109.

Section 348. Section Amended.

Section 59-2-1108, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1108. Indigent persons — Deferral of taxes — Treatment of deferred taxes.

(1) The county board of equalization may, after giving notice, defer any tax levied on residential property, subject to the conditions of Section 59-2-1109. If the owner of that property is poor, the property may not be subjected to a tax sale during the period of deferment.

(2) Taxes deferred by the board of equalization accumulate with interest as a lien against the property until the property is sold or otherwise disposed of. Deferred taxes bear interest at the rate of 6% per year and have the same status as a lien under Sections 59-2-1301 and 59-2-1325.

(3) Deferral may be granted by the county [~~governing~~] legislative body at any time if:

(a) the holder of any mortgage or trust deed outstanding on the property gives written approval of the application; and

(b) the applicant is not the owner of income producing assets which could be liquidated to pay the tax.

(4) Any assets transferred to relatives in the prior three-year period shall be considered by the county [~~governing~~] legislative body in making its determination.

Section 349. Section Amended.

Section 59-2-1109, Utah Code Annotated 1953, as last amended by Chapter 182, Laws of Utah 1991, is amended to read:

59-2-1109. Indigent persons — Tax relief, deferral, or abatement — Application.

(1) No person under the age of 65 years is eligible for tax relief, deferral, or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

(a) the county [~~governing~~] legislative body finds that extreme hardship would prevail if the grants were not made; or

(b) the person is disabled.

(2) An application for the exemption shall be filed on or before July 1 with the county [~~governing~~] legislative body of the county in which the property is located. The application shall set forth adequate facts to support the person's eligibility to receive the exemption.

(a) The application shall include an affidavit setting forth the eligibility of the applicant for the exemption.

(b) Both husband and wife shall sign the application if they seek an exemption on a residence in which they both reside and which they own as joint tenants.

(3) For purposes of this section:

(a) A poor person is any person:

(i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208 (1);

(ii) who resides for not less than ten months of each year in the residence for which the tax relief, deferral, or abatement is requested; and

(iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due.

(b) "Residence" includes a mobile home as defined under Section 59-2-601.

(4) The commission shall adopt rules to implement this section.

(5) Any poor person may qualify for the deferral of taxes under Section 59-2-1108, or if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107, or both.

Section 350. Section Amended.

Section 59-2-1202, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

59-2-1202. Definitions.

As used in this part:

(1) "Claimant" means a homeowner or renter who has filed a claim under this part and is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part and who has reached the age of 65 prior to the close of that calendar year. A surviving spouse, who otherwise qualifies under this section, is an eligible claimant regardless of age. If two or more individuals of a household are able to meet the qualifications for a claimant, they may determine among them as to who the claimant shall be, but if they are unable to agree, the matter shall be referred to the county [~~governing~~] legislative body for a determination of the claimant of an owned residence and to the commission for a determination of the claimant of a rented residence.

(2) "Gross rent" means rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement. If a claimant occupies two or more residences in the year and does not own the residence as of the lien date, gross rent means the total rent paid for the residences during the one-year period for which the renter files a claim under this part.

(3) "Homeowner's credit" means a credit against a claimant's property tax liability.

(4) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(5) "Household income" means all income received by all persons of a household in the calendar year next preceding the year in which property taxes are due or, in the case of renters, the year in which a claim is filed.

(6) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code and all nontaxable income, including, but not limited to, the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance, and relief, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans disability pensions, all payments received under the Federal Social Security

and state unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workman's compensation, and the gross amount of "loss of time" insurance. Income does not include gifts from nongovernmental sources or surplus foods, other relief in kind supplied by a public or private agency, or relief provided under this part.

(7) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest, and charges for service, levied on a claimant's residence in this state, and in the case of a mobile home includes taxes imposed on both the land upon which the home is situated and also on the structure of the home itself, whether classified as real property or personal property taxes. For purposes of this subsection property taxes accrued are levied on the lien date. If a claimant owns a residence on the lien date, property taxes accrued mean taxes levied on the lien date, even if that claimant does not own a residence for the entire year. When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as its principal place of residence. If a residence is an integral part of a large unit such as a farm or a multipurpose or multidwelling building, property taxes accrued shall be the same percentage of the total property taxes accrued as the value of the residence is of the total value. For purposes of this subsection, "unit" refers to the parcel of property covered by a single tax statement of which the residence is a part.

(8) "Renter's credit" means a credit measured by reference to 10% of the gross rent.

(9) "Residence" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built and includes a mobile home or houseboat but does not include personal property such as furniture, furnishings, or appliances. For purposes of this subsection, "owned" includes a vendee in possession under a land contract or one or more joint tenants or tenants in common.

Section 351. Section Amended.

Section 59-2-1206, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-1206. Application for homeowner's credit — Time for filing — Payment from General Fund.

(1) Every claimant applying for a homeowner's credit shall file an application for the credit with the county [~~governing~~] legislative body before May 1 in each year. The application shall be on forms provided by the commission and shall include a household income statement signed by the claimant stating that the income statement is correct and that the claimant qualifies for the credit. The liability of the claimant for property taxes accrued shall be reduced for that year by the full amount of the homeowner's credit allowable and the claimant shall pay only the difference, if any. Any eligible claimant who fails to submit an application before the May 1 deadline may request reimbursement for allowable credit by filing the application form directly with the commission by December 31.

(2) The county [~~governing~~] legislative body shall compile a list of claimants and the homeowner's credits granted to them for purposes of obtaining payment from the General Fund for that portion of the claimant's liability for property taxes accrued represented by the credits granted. Upon certification by the commission the payment shall be made to the county on or before January 1 if the list of claimants and the credits granted are received by the commission on or before the preceding November 30. Otherwise payment shall be made within 30 days of receipt of the list of claimants and credits from the county.

Section 352. Section Amended.

Section 59-2-1207, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

59-2-1207. Claim applied against tax liability — One claimant per household per year.

(1) The amount of any claim otherwise payable under this part may be applied by the commission against any liability outstanding on the books of the commission against the claimant, or against a spouse who was a member of the claimant's household in the year to which the claim relates.

(2) Only one claimant per household per year is entitled to payment under this part.

(3) The amount of any homeowner's credit otherwise allowable under this part may be applied by the county [~~governing body~~] against any property tax liability outstanding on the books of the county against the claimant, or against a spouse who was a member of the claimant's household in the year to which the claim relates.

Section 353. Section Amended.

Section 59-2-1212, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

59-2-1212. Statement required of property owner claimant.

Every property owner claimant under this part shall supply to the county [~~governing body~~], in support of the claim, a statement that the property taxes accrued have been or will be paid and that there are no delinquent property taxes less the credit allowed on the residence.

Section 354. Section Amended.

Section 59-2-1214, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-1214. Redetermination of claim by commission or board.

If, on the audit of any claim filed under this part, the commission or the county [governing] legisla-

tive body determines the amount has been incorrectly determined, the commission or the [board] county legislative body shall redetermine the claim and notify the claimant of the redetermination and its reason for the redetermination. The redetermination shall be final unless appealed within 30 days after this notice.

Section 355. Section Amended.

Section 59-2-1215, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-1215. Fraudulent or negligently prepared claim — Penalties and interest — Procedure.

(1) If the commission or the county [governing] legislative body determines that a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full, the credit shall be cancelled, and the amount paid or claimed may be recovered by assessment, and the assessment shall bear interest from the date of the claim, until refunded or paid, at the rate of 1% per month. The claimant, and any person who assists in the preparation or filing of an excessive claim or supplies information upon which an excessive claim was prepared, with fraudulent intent, is guilty of a class A misdemeanor.

(2) If the commission or the county [governing] legislative body determines that a claim is excessive and negligently prepared, 10% of the corrected claim shall be disallowed, the proper portion of any amount paid shall be similarly recovered by assessment, and the assessment shall bear interest at 1% per month from the date of payment until refunded or paid.

Section 356. Section Amended.

Section 59-2-1219, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

59-2-1219. Claim disallowed if residence obtained for purpose of receiving benefits.

A claim shall be disallowed if the commission or county [governing] legislative body finds that the claimant received title to a residence primarily for the purpose of receiving benefits under this part.

Section 357. Section Amended.

Section 59-2-1220, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

59-2-1220. Extension of time for filing claim.

In case of sickness, absence, or other disability, or if, in its judgment, good cause exists, the commission or county [governing] legislative body may extend the time for filing a claim for a period not to exceed six months.

Section 358. Section Amended.

Section 59-2-1303, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1992, is amended to read:

59-2-1303. Seizure and sale — Method and procedure.

Unless taxes or uniform fees on personal property assessed by the county assessor are paid or secured as provided under Section 59-2-1302, the assessor shall collect the taxes, including accrued interest and penalties, by seizure and sale of any personal property owned by the person against whom the tax is assessed in the following manner:

(1) Sale shall be made:

(a) at public auction;

(b) of a sufficient amount of property to pay the taxes, or uniform fees and interest, penalties, and costs;

(c) when practicable, in the city, town, or precinct where the property was seized; and

(d) after one week's notice of the time and place of the sale, given by publication in a newspaper having general circulation in the county, or by posting in three public places in the county.

(2) For seizing or selling personal property the assessor may charge in each case the actual and necessary expenses for travel and seizing, handling, keeping, selling, or caring for that property.

(3) Upon payment of the price bid for any personal property sold under this section, the delivery of the property, with a bill of sale, vests title in the purchaser.

(4) All sale proceeds in excess of taxes, or uniform fees and interest, penalties, and costs shall be returned to the owner of the personal property, and until claimed shall be deposited in the county treasury and made subject to the order of the owner, the owner's heirs, or assigns.

(5) The unsold portion of any property may be left at the place of sale at the risk of the owner.

(6) If there is no acceptable purchaser of the property, the property shall be declared the property of the county. The county [governing body] executive may sell or rent any property held in the name of the county at any time after the sale upon terms determined by the [governing] county legislative body.

Section 359. Section Amended.

Section 59-2-1310, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1310. Collection by seizure and sale — Procedure — Costs.

(1) The treasurer shall collect the taxes delinquent on personal property assessed by the commission as determined by the assessor, except when sufficient real estate is liable for the tax, by seizure and sale of any personal property owned by the delinquent taxpayer.

(2) The sale shall be at public auction, and of a sufficient amount of property to pay the taxes and costs, and when practicable shall be made in the city, town, or precinct where seized.

(3) The sale shall be made after one week's notice of the time and place of the sale, given by publication in a newspaper having general circulation in the county, or by posting in three public places in the county.

(4) For seizing or selling personal property the treasurer may charge in each case the actual and necessary expenses for travel and seizing, handling, keeping, selling, or caring for property so seized or sold.

(5) On payment of the price bid for any personal property sold, its delivery, with a bill of sale, vests title in the purchaser.

(6) All excess of the proceeds of any sale over the taxes and costs shall be returned to the owner of the property sold, and until claimed shall be deposited in the county treasury and disposed of under Title 78, Chapter 44, subject to the order of the owner, or the owner's heirs or assigns.

(7) If there is no acceptable purchaser of the property, the property shall be declared the property of the county. The county [~~governing body~~] executive may sell or rent any property held in the name of the county at any time after the sale upon terms determined by the governing body.

(8) The unsold portion of any property may be left at the place of sale at the risk of the owner.

Section 360. Section Amended.

Section 59-2-1320, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1320. Settlements with county governing bodies.

On the first Monday of March and June, and the second Monday of September and December, the county treasurer shall settle with the county [~~governing~~] legislative body for all moneys collected by the treasurer, and on those days shall deliver to and file in the office of the county auditor a statement under oath showing:

(1) an account of all transactions and receipts since the last settlement; and

(2) that all money collected is in the county treasury.

Section 361. Section Amended.

Section 59-2-1321, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1321. Erroneous or illegal assessments — Deductions and refunds.

The county [~~governing~~] legislative body, upon sufficient evidence being produced that property has been either erroneously or illegally assessed, may order the county treasurer to allow the taxes on that part of the property erroneously or illegally assessed to be deducted before payment of taxes. Any taxes, interest, and costs paid more than once, or erroneously or illegally collected, may, by order of the county [~~governing~~] legislative body, be refunded by the county treasurer, and the portion of taxes, interest, and costs paid to the state or any taxing entity shall be refunded to the county, and the appropriate officer shall draw a warrant for that amount in favor of the county.

Section 362. Section Amended.

Section 59-2-1332, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1332. Extension of date of delinquency.

(1) The county [~~governing~~] legislative body may, upon a petition of not less than 100 taxpayers or upon its own motion for good cause, by proclamation, extend the date when taxes become delinquent from November 30 to noon on December 20. If the county [~~governing~~] legislative body so extends this date, the governing body shall publish a notice of the proclamation covering this extension in a newspaper of general circulation in the county in at least two issues before November 1 of the year in which the taxes are to be paid.

(2) In all cases where the county [~~governing~~] legislative body extends the date when taxes become delinquent, the date for the selling of property to the county for delinquent taxes shall be extended 20 days from the dates provided by law.

Section 363. Section Amended.

Section 59-2-1332.5, Utah Code Annotated 1953, as last amended by Chapter 40, Laws of Utah 1991, is amended to read:

59-2-1332.5. Publication of delinquent list — Contents — Notice.

On or before December 31, the county treasurer shall, under the direction of the county [~~governing body~~] executive, publish the delinquent list in one issue of a newspaper having general circulation in the county. The list shall contain (1) the names of the owners, when known, and (2) a description or the property identification number of the delinquent property. The list shall be arranged alphabetically and contain the amount of taxes due for the preceding year, exclusive of penalty. The county treasurer shall publish with the list a notice that unless the delinquent taxes, together with the penalty, are paid before January 16, the real property upon which the taxes are a lien, unless that property is held by the county under a prior preliminary tax sale, shall be sold for taxes, penalty, and costs on that date.

Section 364. Section Amended.

Section 59-2-1333, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1333. Errors or omissions — In assessment book — Authority to correct.

Omissions, errors, or defects in form in the assessment roll, when it can be ascertained what was intended, may, with the consent of the county [~~governing~~] legislative body, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes and after the original assessment was made.

Section 365. Section Amended.

Section 59-2-1341, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1341. Options of treasurer upon protest.

In case the protest is made, the treasurer shall either sell the property assessed for the whole amount appearing upon the assessment roll at preliminary tax sale or withdraw the property from preliminary tax sale and report the case to the county [~~governing~~] legislative body. In that case the [~~governing~~] county legislative body may either direct the foreclosure of the lien of the tax by action or direct the treasurer to proceed with the sale.

Section 366. Section Amended.

Section 59-2-1347, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1347. Redemption — Tax subsequently assessed to be paid — Adjustment or deferral of taxes.

(1) If property is sold to the county at preliminary tax sale and is subsequently assessed, no person may be permitted to redeem the property from the sale without paying also the amount of the subsequent assessment, interest, penalty, and costs, unless otherwise provided by law.

(a) If any interested person applies to the county [~~governing~~] legislative body for an adjustment or deferral of taxes levied against property assessed by the county assessor, a sum less than the full amount due may be accepted, or the full amount may be deferred, where, in the judgment of the county [~~governing~~] legislative body, the best human interests and the interests of the state and the county are served.

(b) If any interested person applies to the commission for an adjustment of taxes levied against property assessed by the commission, a sum less than the full amount due may be accepted, where, in the judgment of the commission, the best human interests and the interests of the state and the county are served.

(2) If an application is made, the applicant shall submit a statement, setting forth the following:

(a) a description of the property;

(b) the value of the property for the current year;

(c) the amount of delinquent taxes, interest, and penalties;

(d) the amount proposed to be paid in settlement or to be deferred; and

(e) any other information required by the county [~~governing~~] legislative body.

(3) Blank forms for the application shall be prepared by the commission. No deferral may be granted without the written consent of the holder of any mortgage or trust deed outstanding on the property. The amount deferred shall be recorded as a lien on the property and shall bear interest at a rate equal to the Federal Discount Rate as of January 1 of each year of settlement and deferral. The amount deferred together with accrued interest shall be due and payable when the property is sold or otherwise conveyed.

(4) Within ten days after the consummation of any adjustment or deferral, the county [~~governing~~] legislative body or the commission, as the case may be, shall cause the adjustment or deferral to be posted in the county where the property involved is located. The publication shall contain (a) the name of the applicant, (b) the book, page, and line of the assessment book for the current year in which the property involved is described, (c) the value of the property for the current year, (d) the sum of the delinquent taxes, interest, and penalty due, and (e) the adjusted amount paid or deferred. A record of the action taken by the county [~~governing~~] legislative body shall be sent to the commission at the end of each month for all action taken during the preceding month, on forms to be provided by the commission. A record of the action taken by the commission shall be sent to the county [~~governing~~] legislative body of the counties affected by the action.

Section 367. Section Amended.

Section 59-2-1349, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1349. Co-owners — Procedures for redemption.

If two or more persons own a piece of property which has been sold for taxes at preliminary tax sale, any owner may redeem the owner's interest in the property upon payment of that portion of the taxes, interest, penalties, and costs which the owner's interest bears to the whole, as determined by the county [~~governing~~] legislative body, together with the sum of 50 cents for a redemption certificate.

Section 368. Section Amended.

Section 59-2-1350, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1350. Land irregularly or erroneously assessed not to be sold.

If the county auditor discovers before the final tax sale that because of an irregular or erroneous assessment any property should not be sold, the auditor may not sell the property, and the county [~~governing~~] legislative body shall cause the tax records to reflect the correction in the next succeeding year, on the basis of the value and rates of the year for which it was erroneously assessed, to be collected as other taxes are collected.

Section 369. Section Amended.

Section 59-2-1351, Utah Code Annotated 1953, as last amended by Chapter 222, Laws of Utah 1992, is amended to read:

59-2-1351. Sales by county — Notice of final May tax sale — Tax deed — Entries on record.

(1) Upon receiving the Final May Tax Sale Listing from the county treasurer, the county auditor shall immediately advertise for sale during the month of May all real estate sold to the county at preliminary sale and not previously redeemed and upon which the period of redemption is expiring in the nearest fu.thcoming final May tax sale.

(2) Notice of the final tax sale shall be provided as follows:

(a) published four times in a newspaper published and having general circulation in the county, once in each of four successive weeks immediately preceding the date of sale; or

(b) if no newspaper is published in the county, posted in five public places in the county, as determined by the auditor, at least 25 but no more than 30 days prior to the date of sale; and

(c) sent by certified mail to the last known recorded owner and all other recorded lienholders, as of the preceding March 31, at their last-known address.

(3) In the case of the sale of the total parcel of property, unrecorded or unnotified lienholders may assert their liens against unclaimed property to the extent that money is available to satisfy the liens.

(4) The notice shall be in substantially the following form:

NOTICE OF FINAL TAX SALE

Notice is hereby given that on the ____ day of May, 19__, at __ o'clock __. m., at the front door of the county courthouse in ____ County, Utah, I will offer for sale at public auction and sell to the highest bidder for cash, under the provisions of Section 59-2-1351, the following described real estate located in the county and now held by it under preliminary tax sale. No bid for less than the total amount of taxes, interest, penalty, and costs which are a charge upon the real estate will be accepted.
(Here describe the real estate)

IN WITNESS WHEREOF I have hereunto set my hand and official seal this ____ day of ____, 19__.

_____
County Auditor

_____
County

(5) In describing the real estate, the location of any tract or parcel of property within a section, survey, plat, or other subdivision of property may be indicated by grouping the particular descriptions of the tracts or parcels under headings designating the section, survey, plat, or other subdivisions in which the tracts or parcels are included. The description shall also include the name and address of the last known recorded owner of each tract and parcel of property to be sold and, when possible, a street address or general description of the property.

(6) (a) At the time specified in the notice the auditor shall:

(i) attend at the place appointed, offer for sale, and sell all real estate for which an acceptable bid is made; and

(ii) refuse to offer for sale real estate for which the description of the real estate is so defective as to convey no title.

(b) The auditor may post at the place of sale a copy of the published list of real estate to be offered and cry the sale by reference to the list rather than crying each tract or parcel separately.

(7) The county [~~governing~~] legislative body shall establish by rule procedures for the sale of the delinquent property that best protects the financial interest of the delinquent property owner and meets the needs of local governments to collect delinquent property taxes due.

(8) The governing body may accept any one of the following bids:

(a) A bid in an amount sufficient to pay the taxes, penalties, interest, and administrative costs, for less than the entire parcel.

(i) The highest bid shall be construed to mean the bid of that bidder who will pay in cash the full amount of the taxes, penalties, interest, and administrative costs for the smallest portion of the entire parcel.

(ii) A bid for less than an entire parcel to purchase a strip of property around the entire perimeter of the parcel, or to purchase a strip of the parcel which, if conveyed, would prevent access to the remainder of the parcel by the redemptive owner or otherwise unreasonably diminish the value of that remainder, as determined by the county [~~governing~~] legislative body, may not be accepted.

(iii) In the event the bid accepted is for less than the entire parcel, the auditor shall note the fact, with a description of the property covered by the bid, upon the tax sale record and the balance of the parcel not affected by the bid shall be considered to have been redeemed by the owner.

(b) The highest bid amount for the entire parcel of property. However, a bid may not be accepted for an amount which is insufficient to pay the taxes, penalties, interest, and administrative costs.

(c) The county [~~governing~~] legislative body may decide that none of the bids represented are acceptable.

(d) Once the county [~~governing body~~] executive has closed the sale of a particular parcel of property as a result of accepting a bid on the parcel, the successful bidder or purchaser of the property may not unilaterally rescind the bid. The county [governing] legislative body may enforce the terms of the bid by obtaining a legal judgment against the purchaser in the amount of the bid, plus interest and attorney's fees.

(9) (a) The county auditor may, in the name of the county, execute deeds conveying in fee simple all property sold at the public sale to the purchaser and to attest this with the auditor's seal. Deeds issued by the county auditor under this section shall recite the following:

(i) the total amount of all the delinquent taxes, penalties, interest, and administrative costs which were paid in for the execution and delivery of the deed;

(ii) the year for which the property was assessed and sold to the county at preliminary sale;

(iii) a full description of the property; and

(iv) the name of the grantee.

(b) When the deed is executed and delivered by the auditor, it shall be prima facie evidence of all proceedings subsequent to the preliminary sale, and of the conveyance of the property to the grantee in fee simple.

(c) A copy of any deed issued by the county auditor under this section shall be:

(i) recorded by the county recorder; and

(ii) promptly sent to the State Land Board.

(d) The fee for the recording shall be included in the administrative costs of the sale.

(e) The deed shall be substantially in the following form:

TAX DEED

____ County, a body corporate and politic of the state of Utah, grantor, hereby conveys to ____, grantee, of ____ the following described real estate in ____ County, Utah:

(Here describe the property conveyed)

This conveyance is made in consideration of payment by the grantee of the sum of $____ delinquent taxes, penalties, interest, and costs constituting a charge against the real estate, which was sold to the county at preliminary sale for nonpayment of general taxes assessed against it for the year 19__ in the sum of $____.

Dated this ____ day of ____, 19__.
(Auditor's Seal)

County _____
By _____
County Auditor

(10)(a) Any property offered for sale and for which there is no purchaser shall be struck off to the county by the county auditor, who shall then:

(i) publicly declare substantially as follows: "All property here offered for sale and which has not been struck off to a private purchaser is hereby struck off and sold to the county of ____ (naming the county), and I hereby declare the fee simple title of the property to be vested in the county;"

(ii) make an endorsement opposite each of the entries in the tax sale record showing the preliminary sale of the property for delinquent taxes, substantially as follows: "The fee simple title to the property described in this entry was on the ____ day of May, 19__, sold and conveyed to the county of ____ in payment of general taxes charged against the property;" and

(iii) sign the auditor's name to the record.

(b) The fee simple title to the property shall then vest in the county.

(c) After following the procedures in Subsection 10(a), the auditor shall deposit the tax sale record with the county recorder. The book shall become a part of the official records of the recorder and is considered to have been recorded by the recorder.

(d) The recorder shall make the necessary entries in the index, abstract record, and plat book showing the conveyance of all property sold and conveyed to the county pursuant to this section.

(11)(a) All property for which there is no acceptable purchaser at the sale under this section may be disposed of by the county [governing] executive, with the approval of the county legislative body, at any time after the sale for a price and upon terms determined by the governing body.

(b) The buyer shall pay at least 20% cash at the time of purchase and the balance on or before four years in annual or more frequent installments, together with interest on unpaid balances at 6% per annum payable with each installment.

(c) The equity of the purchaser shall be subject to taxation as other tangible property.

(12)(a) If there is no acceptable purchaser of the property as mentioned in Subsections (1) through (9), the county [governing] executive, with the approval of the county legislative body, may rent or lease any and all property held in the name of the county at any time after the sale for a price and upon terms determined by the governing body for farming, grazing, mining, or drilling purposes.

(b) Lands leased for farming, grazing, mining, or drilling purposes may be sold at the discretion of the county [governing] executive, with the approval of the county legislative body, during the term of the lease, but any sale shall be made subject to the lease.

(c) The county [governing] executive, with the approval of the county legislative body, may enter into leasehold terms for asphalt, oil, or gas that the county [governing body] considers to be in the best interest of the county as long as:

(i) the mineral, asphalt, oil, or gas is produced from, or attributable to the property leased; and

(ii) each lease for oil and gas reserves a royalty of not less than 12 1/2%.

(d) If considered to be in the best interests of the county, the county [governing body] executive may:

(i) enter into agreements for the pooling or unitizing of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis; and

(ii) with the consent of its lessee, change any and all terms of leases issued by it to facilitate the efficient and economic production of oil and gas from the property under its jurisdiction.

(e) All leases for mineral, asphalt, or oil and gas already entered into by county governing bodies are ratified.

(13)(a) All money received upon the sale of property made under this section shall be paid into the county treasury, and the treasurer shall settle for the amount as in the case of money received for redemption.

(b) Money received as rents and installments of purchase price shall be apportioned to state and other taxing entities interested in the taxes last levied upon the property in proportion to their respective interests in the taxes. Any money received in excess of the taxes due on that property and administrative costs by the county may not be paid to any taxing entity. Money in excess of these claims shall be paid to the state treasurer and treated as unclaimed property.

(c) Money received as rents from the rental or leasing of property held in the name of the county shall first be applied to the cost of administering and supervising the property. The treasurer shall settle with the taxing entities on funds remaining as in the case of money received for redemption.

(d) The county clerk may execute deeds for all property sold under this subsection in the name of the county and attest the same by seal, vesting in the purchaser all of the title of all taxing entities in the real estate so sold.

Section 370. Section Amended.

Section 59-2-1355, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1355. Trial — Findings — Decree.

The action shall be tried and determined as actions to foreclose mortgage liens, and the court shall determine and adjudge the amount of taxes, interest, penalties, and costs on each parcel of property which has been separately assessed, and shall enter its decree determining the rights, and priorities of liens, of all parties to the action. The court shall also in its decree direct the sheriff to advertise and sell, as in the case of sales on execution, each parcel of property, or so much as may be necessary for the payment of the total amount of the general taxes due, with interest, penalties, and costs, unless the amount is paid within a time named in the decree, but not to exceed 30 days from the entry of the decree. The decree shall provide that any of the parties to the action may become purchasers at any sale, that if less than an entire parcel of property is sold, it shall be sold at foreclosure sale in such a manner as not to convey to the purchaser a strip of property around the entire perimeter of the parcel, or a strip of the parcel which, if conveyed, would prevent access to the remainder of the parcel by the redemptive owner or otherwise unreasonably diminish the value of that remainder, as determined by the county [governing body] executive. The decree shall also provide that if all delinquent taxes, together with interest, levied on the parcel of property, and all penalties and costs, are paid within the time fixed in the decree for payment, then no sale may be made. After the time for redemption has expired, if no redemption has been made, the sheriff shall execute and deliver to the purchaser a deed conveying to the purchaser all the right, title, and interest of each and all the parties, but subject to the lien of any general or special taxes which may have been levied on the property conveyed, other than those for the payment of which the sale has been made.

Section 371. Section Amended.

Section 59-2-1368, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-1368. Delict of county treasurer — Penalty.

Any county treasurer who neglects or refuses to settle or make the required payment shall forfeit three months' salary, and upon notice from the state auditor to the county [~~governing~~] legislative body that the settlement has not been made, the county [~~governing~~] legislative body shall withhold the compensation.

Section 372. Section Amended.

Section 59-2-1371, Utah Code Annotated 1953, as renumbered and amended by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-1371. Delict of county auditor — Penalty.

Every county auditor who fails to make and transmit any required report or statement shall forfeit three months' salary, and the county [~~governing~~] legislative body shall withhold that compensation.

Section 373. Section Amended.

Section 62A-4-603, Utah Code Annotated 1953, as enacted by Chapter 248, Laws of Utah 1991, is amended to read:

62A-4-603. Appropriation and funding — Requirements.

(1) Funding for centers under this section is intended to be broad-based, provided by a line item appropriation by the Legislature to the division, and is intended to include federal grant monies, local government monies, and private donations.

(2) The money appropriated shall be used to contract with intergovernmental bodies that qualify under Subsection (3) to provide a comprehensive, multidisciplinary, nonprofit, intergovernmental response to abused children.

(3) To qualify for contracting as a Children's Justice Center, a comprehensive, multidisciplinary, nonprofit, intergovernmental body consisting of two or more public agencies and other persons shall enter into written agreements with one another for joint or cooperative action pursuant to this part. The cooperating public agencies and other persons shall make up the center's advisory board, which shall comprise the following people from the county or area:

(a) the Office of Social Services regional director or his designee;

(b) a county attorney or his designee;

(c) a county sheriff or a chief of police or his designee;

(d) [a chairman of a] the county [commission] executive or his designee;

(e) a physician licensed to practice medicine and surgery under Sections 58-12-26 through 58-12-43, Utah Medical Practice Act;

(f) a licensed mental health professional;

(g) a criminal defense attorney; and

(h) at least four members of the community at large.

(4) The advisory board shall not supersede the authority of the contracting public agency as designated in Subsection 62A-4-604 (1)(e).

(5) Appointees and designees shall serve at the request and upon written agreement of the creating public agencies and persons.

Section 374. Section Amended.

Section 62A-8-101, Utah Code Annotated 1953, as last amended by Chapter 181, Laws of Utah 1990, is amended to read:

62A-8-101. Definitions.

As used in this chapter:

(1) "Board" means the Board of Substance Abuse established in accordance with Section 62A-1-105.

(2) "Director" means the director of the Division of Substance Abuse.

(3) "Division" means the Division of Substance Abuse established in Section 62A-8-103.

(4) "Local substance abuse authority" means a county [governing] legislative body.

Section 375. Section Amended.

Section 62A-8-202, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

62A-8-202. Definitions.

As used in this part:

(1) "Juvenile substance abuse offender" means any juvenile found to come within the provisions of Section 78-3a-16 for a drug or alcohol related offense, as designated by the Board of Juvenile Court Judges.

(2) "Local substance abuse authority" means a county [commission] legislative body designated to provide substance abuse services in accordance with Section 17A-3-701.

(3) "Teen substance abuse school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Section 376. Section Amended.

Section 62A-12-101, Utah Code Annotated 1953, as last amended by Chapter 181, Laws of Utah 1990, is amended to read:

62A-12-101. Definitions.

As used in this chapter:

(1) "Board" means the Board of Mental Health established in accordance with Sections 62A-1-105 and 62A-1-107.

(2) "Director" means the director of the Division of Mental Health.

(3) "Division" means the Division of Mental Health.

(4) "Local mental health authority" means a county [governing] legislative body.

(5) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the board.

Section 377. Section Amended.

Section 62A-12-217, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-12-217. Designated examiners — Fees.

Designated examiners shall be allowed a reasonable fee by the [board of] county [commissioners] legislative body of the county in which the proposed patient resides or is found, unless they are otherwise paid.

Section 378. Section Amended.

Section 62A-12-242, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-242. Reexamination of court order for commitment — Procedures — Costs.

(1) Any patient committed pursuant to Section 62A-12-234 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal guardian, parent, spouse, relative, or friend, to the district court of the county in which the patient resides or is detained.

(2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with Section 62A-12-234, except that those proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of commitment or the filing of a previous petition under this section, provided that the court may hold a hearing within a shorter period of time if good cause appears. The costs of proceedings for such judicial determination shall be paid by the county in which the patient resided or was found prior to commitment, upon certification, by the clerk of the district court in the county where the proceedings are held, to the [board of] county [com-

missioners] legislative body that those proceedings were held and the costs incurred.

Section 379. Section Amended.

Section 63-11-17, Utah Code Annotated 1953, as last amended by Chapter 165, Laws of Utah 1979, is amended to read:

63-11-17. Powers and duties of board and division of parks and recreation.

The board shall have the power to:

(1) Establish the policies best designed to accomplish the objectives and purposes set out in this act;

(2) Make regulations governing the use of the state park system.

The division shall have power to acquire real and personal property in the name of the state by all legal and proper means, including purchase, gifts, devise, eminent domain, lease, designation of state land, exchange, or otherwise, subject to the approval of the executive director and the governor. "Real property" as used herein includes land under water as well as upland and all other property commonly or legally defined as real property. In acquiring any real or personal property, or in establishing or designating any area as herein authorized, the credit of the state shall not be pledged without the consent of the legislature.

The board shall have power to enact appropriate regulations to protect state parks and property from misuse or damage and to preserve the peace within state parks by deputizing agents of the division as peace officers and by deputizing peace officers of the state's political subdivisions as agents of the division of parks and recreation. The officers and administrators of the division and such other persons as the division may deputize shall have the same power and shall follow the same procedure in making arrests and the handling of prisoners and in the general enforcement of this act as other peace officers.

The division of wildlife resources shall retain the power and jurisdiction conferred upon it by law within state parks and on property controlled by the division of parks and recreation with reference to fish and game, subject to such reasonable rules and regulations as the board of parks and recreation may make to ensure the accomplishment of the objectives and purposes of this act.

The division of parks and recreation shall permit multiple use of state parks and property controlled by it for such purposes as grazing, fish and game, mining, development and utilization of water and other natural resources, and other uses, subject to such reasonable rules and regulations as the board may make within the general policies of the department of natural resources to ensure the accomplishment of the objectives and purposes of this act.

Before acquiring any real property, the division shall notify the county [commissioners] legislative body of the county where such property is situated of its intention to acquire the same, and if the county [commissioners] legislative body so request within ten days of receipt of said notice, the board shall hold a public hearing in said county concerning such matter.

Acceptance of gifts or devises of land or other property shall be in the discretion of the division, subject to the approval of the executive director of natural resources and the governor.

Acquisition of property by eminent domain shall be in the manner authorized by Title 78, Chapter 34. The division of parks and recreation shall have authority to make charges for special services and use of facilities, the income from which shall be available for park and recreation purposes. The division shall have authority to conduct and operate such services as are necessary for the comfort and convenience of the public. The board shall promulgate appropriate rules and regulations governing the collection of such charges.

The director of the division shall establish procedures for the issuance of permits without charge to citizens of this state 62 years or older which shall be nontransferable, and shall entitle the permittee and any person or persons accompanying such permittee in a single, private, noncommercial vehicle to general admission without charge to any state park.

The division is empowered to lease or rent concessions of all lawful kinds and nature in state parks and property to persons, partnerships and corporations for a valuable consideration upon the recommendation of the board by utilizing bid procedures established by the department of finance.

The division is authorized and instructed to proceed without delay to negotiate with the federal government concerning the Weber Basin and other recreation and reclamation projects. The board, in connection with the board of state lands, is encouraged to recommend exchanges of state lands wherever the same can be done to advantage and will help accomplish the objectives and purposes of this act.

Section 380. Section Amended.

Section 63-11-17.5, Utah Code Annotated 1953, as last amended by Chapter 167, Laws of Utah 1986, is amended to read:

63-11-17.5. Powers and duties of board and division concerning areas along rivers and streams — Definitions — Limitations on construction.

(1) Upon the transfer to the Division of Parks and Recreation of the properties, rights, interests, powers, functions, duties, and liabilities of the Provo-Jordan River Parkway Authority as provided in Section 63-11-16.5, the Division and Board of Parks and Recreation shall have the same powers, functions, and duties as previously covered by this chapter but in addition shall establish and coordinate programs for the development of recreational areas, water conservation, flood control, and wildlife conservation along those rivers and streams that are impacted by high density populations or that are prone to flooding. In this connection the Division of Parks and Recreation shall provide for:

(a) The development of those areas along rivers or streams as the division determines to be suitable and desirable for recreation usage.

(b) The restoration and preservation of points of historical interest along rivers and streams.

(c) The development of those areas along rivers or streams that the division, in consultation with the appropriate county [commissioners] executive, determines to be suitable and desirable for flood control.

(d) The development of those areas along rivers or streams that the division determines to be suitable and desirable for reclamation.

(e) The development of those areas along rivers or streams that the division determines to be suitable and desirable for wildlife management.

(f) The development of those areas along rivers or streams that the division determines to be suitable and desirable for water conservation.

(g) The regulation and control of types of development other than those set forth above in this Subsection (1) along rivers and streams designated by the division within their present flood plains.

(2) As used in this section:

(a) "Flood plains" means the lands along the course of the river or stream which are periodically flooded and for which flood control protective works would normally be provided or desirable. The 1952 flood is used as a present flood plain criterian for the Jordan River.

(b) "Division" means the Division of Parks and Recreation.

(c) "Advisory council" means the Riverway Enhancement Advisory Council.

(3) The division may not permit the construction of any structures, subdivisions, or other developments on or along rivers or streams, or within their present flood plains, which are in violation of any ordinances of any political subdivision having jurisdiction in that area but may in respect to this development impose requirements in excess of and in addition to those provided in those ordinances. The more restrictive of the requirements imposed by the political subdivision or by the division are applicable. The division may not be authorized to administer water rights.

Section 381. Section Amended.

Section 63-12-4, Utah Code Annotated 1953, is amended to read:

63-12-4. Apportionment by the county legislative body.

The [board of] county [commissioners] legislative body of each county participating therein shall immediately upon receipt of the apportionment proceed to apportion the same in the manner following, to wit: One-half to the several school districts of the county, according to the number of school children residing in each of said districts over six and under eighteen years of age, and one-half for the improvement of the public roads in said county.

Section 382. Section Amended.

Section 63-51-8, Utah Code Annotated 1953, as last amended by Chapter 169, Laws of Utah 1988, is amended to read:

63-51-8. Transportation Commission and county legislative body — Co-operation in development or utilization — Written agreements authorized — Survey and location work.

The Transportation Commission and the various county [commissions] executives shall cooperate with persons engaged or to be engaged in industrial development or the development of or utilization of natural resources in this state through a natural resource or industrial facility who desire to assist this state or its counties in obtaining financing through prepaid sales or use taxes for improvements to existing state or county roads or the construction of new state or county roads which are necessary to provide access to areas of natural resource or industrial facilities. In those instances where it is determined that the improvements or construction referred to cannot be financed with existing public funds or when the necessary improvement or construction would be unduly delayed by postponing the improvements or construction until funds are otherwise available and the legislature has appropriated the necessary funds pursuant to Section 63-51-6, the Transportation Commission or any county [commission] executive is authorized to enter into written agreements with the person engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility providing for the necessary improvements or construction if that person agrees to the prepayment of sales or use taxes as provided in this chapter to the extent necessary to provide the funds needed to finance the necessary improvements or construction. The agreements so authorized shall include such assurances as are necessary to provide to the state or the county adequate funds for the payment of all obligations incurred by the state or county for the necessary improvements or construction and for the transfer of funds and all necessary adjustments, if the funds prepaid exceed the actual expenditures made for the improvements or construction. If the actual expenditures made by the state or its agencies or political subdivisions for the improvements or construction exceed the amount of prepaid sales and use taxes actually imposed by Title 59, Chapter 12, then no refund shall be allowed for the excess amount prepaid as sales or use taxes. Initial survey and location work by the Transportation Commission or county may proceed prior to the execution of such agreements if otherwise authorized and funded.

Section 383. Section Amended.

Section 68-3-12, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

68-3-12. Rules of construction.

(1) In the construction of these statutes, the following general rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute:

(a) The singular number includes the plural, and the plural the singular.

(b) Words used in one gender comprehend the other.

(c) Words used in the present tense include the future.

(2) In the construction of these statutes, the following definitions shall be observed, unless the definition would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute:

(a) "Adjudicative proceeding" means:

(i) all actions by a board, commission, department, officer, or other administrative unit of the state that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(ii) judicial review of all such actions.

(b) "Councilman" includes a town trustee or a city commissioner, and "city commissioner" includes a councilman.

(c) "County executive" means:

(i) the county commission in the traditional management arrangement established by Section 17-4-2 and Title 17, Chapter 5;

(ii) the county executive in the "county executive and chief administrative officer-council" optional form of management arrangement authorized by Section 17-35a-13;

(iii) the county executive in the "county executive-council" optional form of management arrangement authorized by Section 17-35a-14;

(iv) the county manager in the "council-manager" optional form of management arrangement authorized by Section 17-35a-15; and

(v) the county council in the "council-county administrative officer" optional form of management arrangement authorized by Section 17-35a-15.5.

(d) "County legislative body" means:

(i) the county commission in the traditional management arrangement established by Section 17-4-2 and Title 17, Chapter 5;

(ii) the county council in the "county executive and chief administrative officer-council" optional form of management arrangement authorized by Section 17-35a-13;

(iii) the county council in the "county executive-council" optional form of management arrangement authorized by Section 17-35a-14;

(iv) the county council in the "council-manager" optional form of management arrangement authorized by Section 17-35a-15; and

(v) the county council in the "council-county administrative officer" optional form of management arrangement authorized by Section 17-35a-15.5.

[~~(c)~~] (e) "Executor" includes administrator, and the term "administrator" includes executor, when the subject matter justifies such use.

[~~(d)~~] (f) "Guardian" includes a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and a person who is appointed by a court to manage the estate of a minor or incapacitated person.

[~~(e)~~] (g) "Highway" and "road" include public bridges, and may be held equivalent to the words "county way," "county road," "common road," and "state road."

[~~(f)~~] (h) "Him," "his," and other masculine pronouns include "her," "hers," and similar feminine pronouns unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

[~~(g)~~] (i) "Insane person" include idiots, lunatics, distracted persons, and persons of unsound mind.

[~~(h)~~] (j) "Land," "real estate," and "real property" include land, tenements, hereditaments, water rights, possessory rights, and claims.

[~~(i)~~] (k) "Man" or "men" when used alone or in conjunction with other syllables as in "workman," includes "woman" or "women" unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

[~~(j)~~] (l) "Month" means a calendar month, unless otherwise expressed, and the word "year," or the abbreviation "A.D." is equivalent to the expression "year of our Lord."

[~~(k)~~] (m) "Oath" includes "affirmation," and the word "swear" includes "affirm." Every oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose."

[~~(l)~~] (n) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

[~~(m)~~] (o) "Personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein.

[~~(n)~~] (p) "Personal representative," "executor," and "administrator" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

[~~(o)~~] (q) "Population" shall be as shown by the last preceding state or national census, unless otherwise specially provided.

[(p)] (r) "Property" includes both real and personal property.

[(q)] (s) "Sheriff," "county attorney," "clerk," or other words used to denote an executive or ministerial officer, may include any deputy, or other person performing the duties of such officer, either generally or in special cases; and the words "county clerk" may be held to include "clerk of the district court."

[(r)] (t) "Signature" includes any name, mark, or sign written with the intent to authenticate any instrument or writing.

[(s)] (u) "State," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the District and the territories.

[(t)] (v) "Town" may mean incorporated town and may include city, and the word "city" may mean incorporated town.

[(u)] (w) "Vessel," when used with reference to shipping, includes steamboats, canal boats, and every structure adapted to be navigated from place to place.

[(v)] (x) "Will" includes codicils.

[(w)] (y) "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer; and "process" means a writ or summons issued in the course of judicial proceedings.

[(x)] (z) "Writing" includes printing, handwriting, and typewriting.

Section 384. Section Amended.

Section 71-2-2, Utah Code Annotated 1953, as last amended by Chapter 135, Laws of Utah 1959, is amended to read:

71-2-2. Memorials by counties.

The [board of] county [commissioners] legislative body of the several counties may erect and maintain, and contribute to the erection and maintenance of, memorials to the memory of veterans of the several wars in which the United States of America shall have been a belligerent, in the form of public buildings, monuments, recreational areas and facilities, parks, and public places; provided, that no [board of] county [commissioners] legislative body may erect and maintain, or assist in, or contribute to, the erection or maintenance of any such memorial which shall have its site outside of the boundaries of the county.

Section 385. Section Amended.

Section 71-2-3, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1961, is amended to read:

71-2-3. County tax for memorials.

For the raising of funds with which to carry out the provisions of the next preceding section, and for such use only, the county [commissioners] legislative body may levy and collect an annual tax upon the property situate within the county.

Section 386. Section Amended.

Section 73-2-23, Utah Code Annotated 1953, as last amended by Chapters 3 and 169, Laws of Utah 1988, is amended to read:

73-2-23. Emergency powers of state engineer — Multi-county flood mitigation activities — Termination of assistance.

(1) In addition to the emergency powers under Section 73-2-22, the state engineer shall assist counties in emergency flood mitigation on intercounty waterways when all the following conditions exist:

(a) two or more counties are involved;

(b) the flood mitigation activity has or may have adverse effect on the county;

(c) the county [commission] executive of that adversely impacted county requests the state engineer's involvement;

(d) the requesting county is providing an ongoing flood control program with jurisdiction-wide funding equivalent to .0004 per dollar of taxable value of taxable property; and

(e) the requesting county has established a flood control program through zoning.

(2) Multi-county flood mitigation activities by the state engineer shall include:

(a) assisting the counties in emergency flood mitigation planning;

(b) furnishing engineering or other technical services;

(c) making recommendations in emergency situations, and, if requested, participating in making emergency flood control decisions; and

(d) in the event a decision is not reached, the final decision-making authority.

(3) The assistance or involvement will cease when in the state engineer's judgment the flood conditions or potential for flooding subsides or when the county governing bodies of all affected counties request that the jurisdiction cease.

Section 387. Section Amended.

Section 76-10-806, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1977, is amended to read:

76-10-806. Action for abatement of public nuisance.

The county attorney of the county where the public nuisance exists, upon direction of the [board of] county [commissioners] executive, or city attorney of the city where the public nuisance exists, upon direction of the board of city commissioners, or attorney general, upon direction of the governor, or any of the above attorneys without the necessity of direction, is empowered to institute an action in the name of the county, city, or state, as the case may be, to abate a public nuisance. The action shall be brought in the district court of the district where the public nuisance exists and shall be in the form pre-

scribed by the Rules of Civil Procedure of the State of Utah for injunctions, but none of the above attorneys shall be required to execute a bond with respect to the action. If the action is instituted, however, to abate the distribution or exhibition of material alleged to offend public decency, the action shall be in the form prescribed by the Rules of Civil Procedure of Utah for injunctions, but no restraining order or injunction shall issue except upon notice to the person sought to be enjoined; and that person shall be entitled to a trial of the issues commencing within three days after filing of an answer to the complaint and a decision shall be rendered by the court within two days after the conclusion of the trial. As used in this part, "distribute," "exhibit," and "material" mean the same as provided in section 76-10-1201.

Section 388. Section Amended.

Section 77-16-2, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-16-2. Appointment of examining alienists — Report — Additional evidence by defendant — Findings — Sentencing — Compensation of alienists.

(1) The examination of the defendant shall be conducted by two or more alienists appointed by the judge. Upon completion of the examination but not later than 30 days after the order directing the examination, a written report of the results shall be provided to the sentencing judge. If the report discloses that the person is not suffering from any form of mental disease or defect which may have substantially contributed to the commission of the offense, the judge, after affording the defendant an opportunity to see the report, may impose sentence. Prior to the imposition of sentence, if the defendant so desires, he may offer additional evidence on the question of his mental condition.

(2) If the report or other evidence presented to the court discloses that the defendant suffers from any form of mental disease or defect which substantially contributed to the commission of the offense, but which was not of such magnitude as to preclude sentence, the judge shall make written findings of fact as to the defendant's condition and order him committed to the Utah state prison or other facility for indefinite confinement for treatment until the defendant is otherwise released pursuant to this chapter.

(3) The judge shall fix the compensation, if any, to be paid the examining alienists and upon certification of the amount of compensation by the judge, the [board of] county [commissioners] executive in the county wherein the offense was committed shall make payment.

Section 389. Section Amended.

Section 78-5-102, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-5-102. Offices of justice court judges.

(1) Justice court judges holding office in:

(a) county precincts are county justice court judges; and

(b) cities or towns are municipal justice court judges.

(2) With the concurrence of the governing bodies of both the county and municipality, a justice court judge may hold both the offices of county and municipal justice court judge.

(3) [~~As an executive function, the board of~~] The county [~~commissioners~~] legislative body may for public convenience divide the county into precincts to create county justice courts. Each precinct shall have one justice court judge.

(4) A municipality or county may contract with any other municipality or municipalities within the county under Title 11, Chapter 13, Interlocal Co-operation Act, to establish a justice court. A justice court established under the Interlocal Co-operation Act shall meet the requirements for certification under Section 78-5-139. A justice court established under the Interlocal Co-operation Act shall have territorial jurisdiction as if established separately.

(5) Counties have the same rights and restraints as provided for municipalities with respect to assuming responsibility for the jurisdiction of justice courts provided in Section 10-3-923.

Section 390. Section Amended.

Section 78-5-107, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1991, is amended to read:

78-5-107. Residence — Place of holding court.

(1) (a) County justice court judges may reside in and hold court in any municipality within the precinct but may exercise only the jurisdiction provided by law for county justice courts.

(b) County justice court judges may also, at the direction of the county [~~commission~~] legislative body, hold court anywhere in the county as needed but may only hear cases arising within the precinct.

(2) A municipal justice court judge shall:

(a) reside in the county where the municipality is located or in an adjacent county; and

(b) hold court in the municipality where the court is located except he may hold court at the county jail or municipal prison as directed by the municipal governing body.

Section 391. Section Amended.

Section 78-7-13, Utah Code Annotated 1953, is amended to read:

78-7-13. Sheriff to supply court rooms when the county legislative body neglect.

If suitable rooms for holding the district court and for chambers of the judge are not provided in the place appointed for holding said court in any county [~~by the board of county commissioners~~], together with attendants, furniture, lights, and stationery sufficient for the transaction of business, the court

or the judge thereof may direct the sheriff to provide such rooms, attendants, furniture, fuel, lights and stationery; and the expenses incurred, certified by the judge to be correct, are a charge against the county and must be paid out of the general fund thereof.

Section 392. Section Amended.

Section 78-12-30, Utah Code Annotated 1953, is amended to read:

78-12-30. Actions on claims against county, city or town.

Actions on claims against a county, city or incorporated town, which have been rejected by the [~~board of~~] county [~~commissioners~~] executive, city commissioners, city council, or board of trustees, as the case may be, must be commenced within one year after the first rejection thereof by such board of county or city commissioners, city council, or board of trustees.

CHAPTER 228
H. B. No. 274
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

ELECTION LAW REVISIONS

By Jeff Alexander

AN ACT RELATING TO ELECTIONS; REVISING PORTIONS OF THE RECODIFIED ELECTION CODE TO REFLECT CURRENT PRACTICES; TO ELIMINATE OBSOLETE REQUIREMENTS; AND TO CLARIFY EXISTING LANGUAGE; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20A-1-203, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-1-302, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-1-401, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-2-103, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-2-104, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-201, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-202, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-302, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-305, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-306, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-401, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-3-405, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-4-101, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-4-202, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-201, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-301, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-602, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-603, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993
20A-5-605, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993

REPEALS AND REENACTS:
20A-1-508, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993

REPEALS:
20-3-40, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 20A-1-203, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-203. Calling and purpose of special elections.

(1) Statewide and local special elections may be held for any purpose authorized by law.

(2) (a) Statewide special elections shall be conducted using the procedure for regular general elections.

(b) Except as otherwise provided in this title, local special elections shall be conducted using the procedures for regular municipal elections.

(3) The governor may call a statewide special election by issuing an executive order that designates:

(a) the date for the statewide general election; and

(b) the purpose for the statewide general election.

(4) The Legislature may call a statewide special election by passing a joint or concurrent resolution that designates:

(a) the date for the statewide general election; and

(b) the purpose for the statewide general election.

(5)(a) The governing body of a local political subdivision may call a local special election only for:

(i) a vote on a bond issue;

(ii) a vote on a voted leeway program authorized by Section 53A-17a-133 or 53A-17a-134;

(iii) a referendum authorized by Title 20, Chapter 11; and

(iv) an initiative authorized by Title 20, Chapter 11.

(b) The governing body of a local political subdivision may call a local special election by adopting an ordinance or resolution that designates:

(i) the date for the local general election; and

(ii) the purpose for the local general election.

Section 2. Section Amended.

Section 20A-1-302, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-302. Opening and closing of polls.

(1) Polls at all elections open at 7 a.m. and shall remain open until 8 p.m. of the same day.

[~~(2) (a) Upon the opening of the polls, one of the judges shall verbally proclaim that the polls are open.~~]

[~~(b) Thirty minutes before the closing of the polls, one of the judges shall verbally proclaim that the polls will close in 30 minutes.~~]

[~~(c)~~] (2) The election judges shall allow every voter who arrives at the polls by 8 p.m. to vote.

Section 3. Section Amended.

Section 20A-1-401, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-401. Election laws — Liberally construed.

(1) Courts and election officers shall construe the provisions of Title 20A, Election Code, liberally to carry out the intent of this title.

(2) [Sunday] Saturdays, Sundays, and holidays shall be included in all computations of time made under the provisions of Title 20A, Election Code.

Section 4. Section Repealed and Reenacted.

Section 20A-1-508, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is repealed and reenacted to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county attorney, the county surveyor, and the county assessor.

(b) "County offices" does not mean the offices of president and vice president of the United States, United States senators and representatives, members of the Utah Legislature, state constitutional officers, and judges.

(2) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this subsection.

(b) (i) To appoint an interim replacement, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three nominees for the interim replacement to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint an interim replacement from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed as interim replacement under this Subsection (2) shall hold office until their successor is elected and has qualified.

(3) (a) The requirements of this subsection apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the person was elected but before April 10 of the next even-numbered year.

(b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(ii) All persons intending to become candidates for the vacant office shall:

(A) file a declaration of candidacy according to the procedures and requirements of Section 20-4-9;

(B) if nominated as a party candidate or qualified as an independent or write-in candidate under Section 20-7-20, run in the regular general election; and

(C) if elected, complete the unexpired term of the person who created the vacancy.

(4) (a) The requirements of this subsection apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more;

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50 days before the primary election.

(b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk shall notify the public and each registered political party that:

(A) the vacancy exists; and

(B) identifies the date and time by which a person interested in becoming a candidate must file a declaration of candidacy.

(ii) All persons intending to become candidates for the vacant offices shall, within five days after the date that the notice is made, ending at 5 p.m. on the fifth day, file a declaration of candidacy for the vacant office as required by Section 20-4-9.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk at least 35 days before the primary election.

(5) (a) The requirements of this subsection apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 50 days or less remain before the primary but more than 50 days remain before the regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county central committees of each political party registered under this title that wishes to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the general election ballot.

(6) (a) The requirements of this subsection apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 50 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the county central committee of the same political party of the prior office holder and invite that committee to submit the names of three nominees to fill the vacancy.

(ii) That county central committee shall, within 30 days, submit the names of three nominees to fill the vacancy to the county legislative body.

(iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint one of those nominees to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy within 45 days, the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(B) contains the list of nominees submitted by the party central committee.

(ii) The governor shall appoint a person to fill the vacancy from that list of nominees to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed to fill the vacancy under Subsection (6) shall hold office until their successor is elected and has qualified.

(7) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(8) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

Section 5. Section Amended.

Section 20A-2-103, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-2-103. Special elections — Lists of voters.

(1) (a) A special registration of voters is not required for a statewide or local special election.

(b) The last official or revised register is the register for the statewide or local special election.

(2) If a statewide or local special election is held at the same time and place as a regular general election, a municipal general election, or a primary, persons qualified to vote at those elections may also vote in the statewide or local special election.

(3) (a) If a statewide or local special election is held on a date other than the date of a regular or municipal general election, the county clerk of each county in which the municipality or entity is wholly or partly located shall register persons to vote in that election during regular office hours.

(b) The county clerk may not register persons to vote in that election if ten or fewer days remain before the election.

(4) The county clerk of each county in which the entity holding the statewide or local special election is located shall [~~cause registration agents in the municipality or entity to~~] make registration lists or copies of those lists available at each polling place for use by registered voters entitled to use those polling places.

Section 6. Section Amended.

Section 20A-2-104, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-2-104. Voter registration form.

(1) Every person applying to be registered shall complete a registration form printed in substantially the following form:

.....

UTAH ELECTION REGISTRATION FORM

Name of Voter..... Date of Birth.....
First Middle Last
Street Address of Principal Place of Residence.....
.....
City County State Zip Code
Telephone Number (optional).....
Place of Birth.....
Last former address at which I was registered to vote (if known).....
.....
City County State Zip Code Voting
[District] Precinct (if known)

I do swear (or affirm), subject to penalty of law for false statements, that the information contained in this form is true, and that I am a citizen of the United States and a resident of the state of Utah, residing at the above address. I will be at least 18 years old and will have resided in Utah for 30 days immediately before the next election to be held.....
Signed and sworn.....
Voter's Signature
Date....., 19...

NOTICE: IN ORDER TO VOTE, YOUR NAME MUST APPEAR IN THE OFFICIAL REGISTER.
FOR OFFICIAL USE ONLY
Voting [District] Precinct.....
Voting I.D. Number.....

.....

(2) Book voter registration forms shall be four-part forms printed in white, canary, pink, and goldenrod on 5-1/2 inch by 8-1/2 inch paper.

(3) (a) After the form is completed, the registratior agent shall retain the canary copy, deliver the goldenrod copy to the voter, and mail the white and pink copies to the county clerk in the prestamped and preaddressed envelopes provided by the county clerk's office.

(b) Any other person authorized to register voters shall:

(i) give the goldenrod copy to the voter; and

(ii) mail or deliver the white, canary, and pink copies to the county clerk.

(c) The county clerk shall:

(i) retain the white copy in a permanent countywide alphabetical file, which may be electronic or some other recognized system; and

(ii) mail the remaining copies to the appropriate persons.

Section 7. Section Amended.

Section 20A-3-201, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-201. Watchers.

(1) (a) (i) For each regular general election or statewide special election, and for each primary, each registered political party and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) Each party poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the county chair of each of the parties.

(iii) Each issue poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the individual appointing him.

(b) (i) For each municipal general election, municipal primary, local special election, or bond election that uses paper ballots, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots [and], another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(ii) For each municipal general election, municipal primary, local special election, or bond election that uses ballot cards, each candidate and any person interested in an issue appearing on the ballot may appoint one person to act as a voting poll watcher to observe the casting of ballots, another person to act as a counting poll watcher to observe the counting of ballots, and another person to act as an inspecting poll watcher to inspect the condition and observe the securing of ballot packages.

(iii) Each candidate poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the candidate appointing him.

(iv) Each issue poll watcher shall be designated, and his selection made known to the election judges, by an affidavit made by the individual appointing him.

(2) If an appointed poll watcher is temporarily absent for meals, or is sick or otherwise absent, that poll watcher may substitute some other watcher of similar political beliefs by informing the election judges of the substitution by affidavit.

(3) Voting poll watchers may watch and observe the voting process, and may make a written memorandum, but they may not interfere in any way with the process of voting except to challenge a voter as provided in this part.

(4) The counting poll watcher shall remain in the counting room, except in the case of necessity, until the close of the polls and may not divulge the progress of the count until the count is completed.

(5) (a) It is unlawful for a counting poll watcher to communicate in any manner, directly or indirectly, by word or sign, the progress of the count, the result so far, or any other information about the count.

(b) Any person who violates this subsection is guilty of a third degree felony.

(6) The inspecting poll watcher may be present in the office of the clerk or recorder to whom ballots are delivered after elections to:

(a) inspect the condition of the packages containing the ballots upon their arrival; and

(b) observe the placement of these packages in a safe and secure place.

Section 8. Section Amended.

Section 20A-3-202, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-202. Challenges — Record challenges — Official register and in pollbook.

(1) (a) When any person applies for a ballot or when a person offers a ballot for deposit in the ballot box, the person's right to vote in that voting precinct and in that election may be orally challenged by an election judge or any challenger orally stating the challenged voter's name and the basis for the challenge.

(b) A person may challenge another person's right to vote by alleging that:

(i) the voter is not the person whose name appears in the official register[,] and under which name the right to vote is claimed;

(ii) the voter is not a resident of Utah;

(iii) the voter is not a citizen of the United States;

(iv) the voter has not or will not have resided in Utah for 30 days immediately before the date of the election;

(v) the voter does not live in the voting precinct;

(vi) the voter does not live within the geographic boundaries of the entity holding the election;

(vii) the voter's principal place of residence is not in the voting precinct;

(viii) the voter's principal place of residence is not in the geographic boundaries of the election area;

(ix) the voter has voted before in the election;

(x) the voter is not at least 18 years old; or

(xi) the voter is involuntarily confined or incarcerated in jail or prison and was not a resident of the entity holding the election before the voter was confined or incarcerated.

[~~(c) If the person challenged takes an oath before any of the election judges that the grounds of challenge are false, the judges shall allow the person to vote.~~]

[~~(d) If the person applying to vote does not meet the legal requirements to vote, or refuses to take the oath, the election judges may not deliver a ballot to him.~~]

(2) (a) If the person challenged signs a written affidavit certifying that he meets all the requirements for voting, the election judges shall give the voter a ballot and allow the voter to vote.

(b) If the person challenged refuses to sign the written affidavit, the election judges may not give the voter a ballot or allow the voter to vote.

(c) (i) It is unlawful for any person to sign an affidavit certifying that he meets all the requirements for voting when that person knows he does not meet at least one of those requirements.

(ii) Any person who violates this Subsection (c) is guilty of a class B misdemeanor.

[~~(2)~~] (3) (a) Any person may challenge the right to vote of any person whose name appears on the posting list by filing a written signed statement identifying the challenged voter's name and the basis for the challenge with the registration agent on the Saturday before the election between 6 p.m. and 9 p.m.

(b) The person challenging a person's right to vote shall allege one or more of the grounds established in Subsection (1)(b) as the basis for the challenge.

(c) The registration agent shall transmit the written challenges to election judges of that voting precinct as provided in Section 20A-5-203.

(d) On election day, the judges shall raise the written challenge with the voter before giving the voter a ballot.

(e) If the person challenged takes an oath before any of the election judges that the grounds of the challenge are false, the judges shall allow the person to vote.

(f) If the person applying to vote does not meet the legal requirements to vote, or refuses to take the oath, the election judges may not deliver a ballot to him.

[~~(3)~~] (4) The election judges shall record all challenges in the official register and on the challenge sheets in the pollbook.

(5) If, as of the date of any election, a person has not resided within the voting precinct for at least 20 days and has not registered to vote in that voting precinct, the person may vote at the voting precinct in which he resided before he moved to the new voting precinct if he is legally registered in that voting precinct.

Section 9. Section Amended.

Section 20A-3-302, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-302. Absentee voting — No polling place for remote districts.

(1) Whenever, on the 60th day before an election, there are 100 or less persons registered to vote in a voting precinct, the county legislative body of the county in which the voting precinct is located may elect to administer an election entirely by absentee ballot.

(2) If the county legislative body of the county in which the voting precinct is located decides to administer an election entirely by absentee ballot, the county clerk shall mail to each registered voter within that voting precinct:

(a) an absentee ballot;

(b) a statement that there will be no polling place for the election;

(c) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for his vote to be counted; and

(d) a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, he will be unable to vote in that election because there will be no polling place in the voting precinct on the day of the election.

(3) Any voter who votes by absentee ballot under this subsection is not required to apply for an absentee ballot as required by Section 20-6-3.

(4) (a) The county clerk of a county that administers an election entirely by absentee ballot shall:

(i) obtain, in person, the signatures of each voter within that voting precinct before the election; and

(ii) maintain the signatures on file in the county clerk's office.

(b) (i) Upon receiving the returned absentee ballots, the county clerk shall compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same.

(ii) If the county clerk questions the authenticity of the signature on the absentee ballot, the clerk shall immediately contact the voter to verify the signature.

(iii) If the voter does not confirm his signature on the absentee ballot, the county clerk shall:

(A) immediately send another absentee ballot and other voting materials as required by this subsection to the voter; and

(B) disqualify the initial absentee ballot.

(c) The county clerk may deputize the registration agent in the voting precinct and authorize the registration agent to:

(i) obtain the signatures required by Subsection (4)(a) and mail them to the county clerk; and

(ii) distribute absentee ballot application forms.

Section 10. Section Amended.

Section 20A-3-305, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-305. Mailing of ballot to voter — Enclose self-addressed envelope — Affidavit.

(1) Upon timely receipt of an absentee voter application properly filled out and signed, or as soon after receipt of the application as the official absentee ballots for the voting precinct in which the applicant resides have been printed, the election officer shall either:

(a) give the applicant an official absentee ballot and envelope to take home and complete; or

(b) mail an official absentee ballot, postage paid, to the absentee voter and enclose an envelope printed as required in Subsection (2).

(2) The election officer shall ensure that:

(a) the name, official title, and post office address of the election officer is printed on the front of the envelope; and

(b) a printed affidavit in substantially the following form[:] is printed on the back of the envelope:
"County of____
State of____

I, ____, solemnly swear that: I am a resident voter in full possession of my mental faculties, of the ____ voting precinct in ____ County, Utah; I am entitled to vote in that voting precinct at the next election; (I am physically disabled) or (I expect to be absent from the entity holding the election on the day the election will be held) or (I will be serving as an election judge in another election precinct on election day); and I will have no opportunity to vote in person on that day.

_____
Signature of Absentee Voter"

Section 11. Section Amended.

Section 20A-3-306, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-306. Voting ballot — Returning ballot.

(1) (a) To vote [an] a mail-in absentee ballot, the absentee voter shall:

[~~(a)~~] (i) complete and sign the affidavit on the envelope;

[~~(b)~~] (ii) mark his votes on the absentee ballot;

[~~(c)~~] (iii) place the voted absentee ballot in the envelope;

[~~(d)~~] (iv) securely seal the envelope; and

[~~(e)~~] (v) attach postage and deposit the envelope in the mail or deliver it in person to the election officer from whom the ballot was obtained.

(b) To vote an absentee ballot in the office of the election officer, the absent voter shall:

(i) complete and sign the affidavit on the envelope;

(ii) mark his votes on the absent-voter ballot;

(iii) place the voted absent-voter ballot in the envelope;

(iv) securely seal the envelope; and

(v) give the ballot and envelope to the election officer.

(2) An absentee ballot is not valid unless it is:

(a) received at the office of the appropriate election officer before the closing of polls on election day; or

(b) clearly postmarked on the day before election day and received in the office of the election officer before noon on the day of the official canvass following the election.

Section 12. Section Amended.

Section 20A-3-401, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-401. Intent and purpose of part.

(1) Each election officer, election official, and judge shall liberally interpret and apply this part to:

(a) make it possible for Utah voters living or serving abroad to vote in county, state, and national elections during their absence;

(b) enable these voters to register more conveniently; and

(c) conform to 42 U.S.C. 1973ff, Uniformed and Overseas Citizens Absentee Voting Act.

[~~(2) This part may not be construed to apply to municipal and local special elections.~~]

[~~(3)~~] (2) The state selective service, all military organizations, and citizens and officers of Utah or of the respective counties and municipalities of the state shall cooperate with the election and party officers in carrying out the intent and purpose of this part.

[~~(4)~~] (3) All state and county officers of Utah shall:

(a) do all things and perform all acts necessary to put into effect the provisions of any Act of Congress or this state allowing uniformed and overseas citizen voters to vote; and

(b) permit the use of any official ballot authorized by any Act of Congress and this part as a ballot supplementary to the official Utah election military ballot.

[~~(5)~~] (4) Each provision of this part prevails over any inconsistent provision of any other statute or any part of any statute.

Section 13. Section Amended.

Section 20A-3-405, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-3-405. Registration of military voters and overseas citizen voters.

(1)(a)(i) Any military [~~or~~] voter who is a legal resident of Utah but is stationed outside Utah and who is not otherwise registered to vote in Utah and any overseas citizen voter who is a legal resident of Utah but who is outside the territorial limits of the United States and who is not otherwise registered to vote in Utah may register in the manner provided by this section.

(ii) That registration entitles him to vote in [~~the~~] Utah elections as provided for in this part.

(b) The county clerk shall cause a registration and voting certificate to be printed on the back of the ballot envelope in substantially the following form:

"REGISTRATION AND
VOTING CERTIFICATE

I ____ (Print Name), place of birth ____, date of birth ____, solemnly swear (or affirm) that I am now a citizen of the United States and am at least 18 years old or will be 18 years old on the ____ (Date of election to be inserted) that I am a legal resident of ____ County, residing at ____ (Street and Number if any or rural route number) in the city or town of ____, state of Utah; that I am: (check appropriate blank)

____In the armed forces of the United States;

____In the merchant marine of the United States;

____In the American Red Cross, in the Society of Friends, in the United States service organizations, attached to and serving with the armed forces of the United States;

____A citizen of the United States residing outside the territorial limits of the United States;

____A spouse or dependent of a person who meets the requirements of the above;
that I have never been convicted of treason or crime against the elective franchise or other high crime causing a loss of my franchise without thereafter being restored to my civil rights; and that I expect to be absent from the above-named county on the date of the election.

_____
Signature of voter
Identification Number ____

(To be signed when voter is physically unable to see or write.)

_____.

Signature of additional witness who is a commissioned, noncommissioned, or petty officer not below the rank of sergeant (or its equivalent) or other person authorized to administer oaths, who does swear that at the request of ____ (the voter), he assisted him in voting because the voter was on account of physical disability unable to see or write. At the voter's direction he did read to him the registration and voting certificate and filled in the blanks and marked the ballot as the voter directed and signed his name at his request in the presence of both attesting officers.

This ballot may be voted even though an official federal ballot has already been voted, and if received by the proper election officials in time to be counted under the provisions of law, will be counted in lieu of the federal ballot."

(2) (a) Any overseas citizen voter whose overseas service was terminated by discharge from the armed forces, by separation from the merchant marine, or by termination of service or employment outside the territorial limits of the United States too late to enable that voter to register to vote as required by this title may register to vote by filing an affidavit establishing his eligibility with the county clerk of his county of residence by noon on the day before the election.

(b) After receiving and verifying the affidavit, the county clerk shall give the person a regular absentee ballot to vote.

Section 14. Section Amended.

Section 20A-4-101, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-4-101. Counting paper ballots during election day.

(1) Each county legislative body or municipal legislative body that has voting precincts that use paper ballots[~~,~~] and each election judge in those voting precincts shall comply with the requirements of this section.

(2) (a) Each county legislative body or municipal legislative body shall provide:

(i) two sets of ballot boxes for all voting precincts where both receiving and counting judges have been appointed; and

(ii) a counting room for the use of the election judges counting the ballots during the day.

(b) At any election in any voting precinct in which both receiving and counting judges have been appointed, when at least 20 votes have been cast, the receiving judges shall:

(i) close the first ballot box and deliver it to the counting judges; and

(ii) prepare and use another ballot box to receive voted ballots.

(c) Upon receipt of the ballot box, the counting judges shall:

(i) take the ballot box to the counting room;

(ii) count the votes in the ballot box; and

(iii) when they have finished counting the votes in the ballot box, return the emptied box to the receiving judges.

(d) (i) During the course of election day, whenever there are at least 20 ballots contained in a ballot box, the receiving judges shall deliver that ballot box to the counting judges for counting; and

(ii) the counting judges shall immediately count the ballots contained in that box.

(e) The counting judges shall continue to exchange the ballot boxes and count ballots until the polls close.

(3) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the count.

(4) The counting judges shall apply the standards and requirements of Section 20A-4-104 to resolve any questions that arise as they count the ballots.

Section 15. Section Amended.

Section 20A-4-202, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-4-202. Election officers — Disposition of ballots.

(1) (a) Upon receipt of the election returns from an election judge, the election officer shall:

(i) ensure that the election judge has provided all of the ballots and election returns;

(ii) inspect the ballots and election returns to ensure that they are sealed; and

(iii) (A) for paper ballots, deposit and lock the ballots and election returns in a safe and secure place; or

(B) for punch card ballots, count the ballots and deposit and lock the ballots and election returns in a safe and secure place.

(b) Inspecting poll watchers appointed as provided in Section 20A-3-201 may be present and observe the election officer's receipt, inspection, and deposit of the ballots and election returns.

(2) Each election officer shall:

(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;

(b) package and seal a true copy of the ballot label used in each voting [~~district~~] precinct;

(c) preserve all other official election returns for at least 22 months after an election; and

(d) after that time, destroy them without opening or examining them.

(3) (a) The election officer shall package and retain all tabulating cards and other materials used in the programming of the automatic tabulating equipment;

(b) The election officer:

(i) may access these tabulating cards and other materials;

(ii) may make copies of these materials and make changes to the copies;

(iii) may not alter or make changes to the materials themselves; and

(iv) within 22 months after the election in which they were used, may dispose of those materials or retain them.

(4) (a) If an election contest is begun within 12 months, the election officer shall:

(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or

(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

(b) When all election contests arising from an election are complete, the election officer shall either:

(i) retain the ballots and election returns until the time for preserving them under this section has run; or

(ii) destroy the ballots and election returns remaining in his custody without opening or examining them if the time for preserving them under this section has run.

Section 16. Section Amended.

Section 20A-5-201, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-201. Registration agents — Appointment.

(1) (a) Each county legislative body shall:

(i) appoint one person as registration agent for each voting precinct from names furnished and certified by the chairman and secretary of the political party from which the appointment is to be made; and

(ii) ensure that the registration agent appointed for a voting precinct belongs to the political party that received the highest number of total votes for governor, lieutenant governor, attorney general,

state auditor, and state treasurer in that voting precinct at the last regular general election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(b) If the chairman and secretary of the political party fail to provide the county legislative body with a list of names within ten days after being requested to do so by the county clerk, the county legislative body shall appoint qualified persons to be registration agents according to the requirements of this chapter.

(2) (a) If the voting precinct boundaries have been changed since the last regular general election, the county legislative body shall comply with the procedures and requirements of this subsection in making the appointment.

(b) When two or more voting precincts have been created out of a single voting [~~district~~] precinct, the county legislative body shall:

(i) appoint a person as registration agent for each voting precinct; and

(ii) ensure that the person is a member of the political party that cast the highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer in the old voting precinct at the last regular general election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(c) When a voting district is created by combining two or more voting precincts, or parts of two or more voting precincts, the county legislative body shall ensure that the registration agent appointed for that precinct is a member of the political party that cast the highest number of votes for governor, lieutenant governor, attorney general, state auditor, and state treasurer in the newly created voting precinct at the last November election at which all of those offices were elected, excluding the vote for any candidate who had no opposition.

(3) (a) The county legislative body shall appoint registration agents every two years at the regular meeting of the county legislative body held nearest to the first day of the June before the regular general election.

(b) The county legislative body shall appoint registration agents to serve two year terms, but may remove them at any time for cause.

(c) The county legislative body may not appoint a person who is a candidate for, or who holds, an elective state, county, municipal, school district, special district, or other public office to be a registration agent.

(d) A person who is a candidate for, or who holds, an elective state, county, municipal, school district, special district, or other public office may not act as a registration agent.

(e) A registration agent may also serve as an election judge.

(f) The county clerk shall provide each registration agent with written notice of his appointment.

(4) (a) Each county legislative body shall provide each registration agent with all books, stationery, and other supplies necessary to carry out the provisions of this chapter.

(b) The registration agent shall return all remaining materials to the county clerk, or to a person designated by the county clerk, when his appointment ends.

(5) A registration agent who resigns or becomes a nonresident of his voting precinct shall:

(a) notify the county clerk of that fact; and

(b) deliver to the county clerk, or to another person designated by the county clerk, the official register for the voting precinct and all other books, documents, and materials in the agent's possession that pertain to the office.

(6) (a) (i) The chair of the county legislative body, upon receipt of notice of the death, disqualification, or resignation of any registration agent after the opening and before the closing of the registration books, shall immediately, without giving notice, appoint some competent person to fill the vacancy.

(ii) The person appointed shall qualify within two days after receiving notice of the appointment.

(b) (i) If a registration agent is sick or otherwise unable to serve on a designated registration day, the registration agent shall select a responsible adult to perform the agent's duties on that day.

(ii) The county clerk shall approve the substituted adult.

(iii) If possible the substitute shall use the original designated registration office.

(iv) If it is necessary to use an alternate registration site, the substitute registration agent shall post a large sign on the front door of the building in which the regular registration site is located that identifies the address of the alternate registration site.

(7) (a) Before entering upon the duties prescribed in this chapter, each registration agent shall:

(i) take and subscribe the oath of office required by Article IV, Section 10, of Utah's Constitution before any person authorized to administer an oath; and

(ii) file the oath with the county clerk.

(b) Each county legislative body shall establish a per diem of not more than $20 per day as compensation for all services provided by registration agents.

(c) Each registration agent shall:

(i) keep a written account that clearly shows the number of days spent in the performance of their official duties; and

(ii) swear to and file the account with their county auditor.

(8) The county clerk shall make detailed entries of all proceedings had under this chapter and notify in writing the registration agents of their appointment.

Section 17. Section Amended.

Section 20A-5-301, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-301. Combined voting precincts — Municipalities.

(1) (a) The municipal legislative body of cities of the first and second class may combine two regular county voting precincts into one municipal voting precinct for purposes of a municipal election if they designate the location and address of each of those combined voting precincts.

(b) The polling place shall be within the combined voting precinct or within 1/2 mile of the boundaries of the voting precinct.

(2) (a) The municipal legislative body of cities of the third class and towns[~~,~~] may combine two or more regular county voting precincts into one municipal voting precinct for purposes of an election if they designate the location and address of that combined voting precinct.

(b) If only two precincts are combined, the polling place shall be within the combined precinct or within 1/2 mile of the boundaries of the combined voting precinct.

(c) If more than two precincts are combined, the polling place should be as near as practical to the middle of the combined precinct.

Section 18. Section Amended.

Section 20A-5-602, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-602. Election judges — Appointment for local elections.

(1) [~~(a)~~] At least 15 days before the date scheduled for any local election, the municipal legislative body or special district board shall appoint or provide for the appointment of:

(a) in jurisdictions using paper ballots:

(i) three registered voters from their jurisdiction to serve as election judges for each voting precinct and at least one registered voter from their jurisdiction to serve as an alternate election judge when the [~~municipality or special district uses paper~~] ballots [~~or automatic tabulating equipment;~~] will be counted after the polls close; or

(ii) three registered voters from their jurisdiction to serve as receiving judges in each voting precinct and three registered voters from their jurisdiction to serve as counting judges in each voting precinct when ballots will be counted throughout election day;

(b) in jurisdictions using automated tabulating equipment, three registered voters from their jurisdiction to serve as election judges for each voting precinct and at least one registered voter from their jurisdiction to serve as an alternate election judge;

(c) in jurisdictions using voting machines, four registered voters from their jurisdiction to serve as election judges for each voting precinct and at least one registered voter from their jurisdiction to serve as an alternate election judge [~~when the municipality or special district uses voting machines~~]; and

[~~(iii)~~] (d) in all jurisdictions, at least one registered voter from their jurisdiction to serve as canvassing judge.

[~~(b)~~] (2) The municipal legislative body and special district board may not appoint a member of any candidate's immediate family to serve as an election judge in that candidate's voting precinct.

[~~(2)~~] (3) The clerk shall:

(a) prepare and file a list containing the name, address, voting precinct, and telephone number of each person appointed; and

(b) make the list available in the clerk's office for inspection, examination, and copying during business hours.

[~~(3)~~] (4) (a) The municipal legislative body and special district board shall compensate election judges for their services.

(b) The municipal legislative body and special district board may not compensate their election judges at a rate higher than that paid by the county to its election judges.

Section 19. Section Amended.

Section 20A-5-603, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-603. Vacancies — Removal of election judges.

[~~(1) Each election officer shall:~~]

[~~(a) issue a certificate under the election officer's official seal certifying the appointment of each judge and alternate; and~~]

[~~(b) mail the certificate, a blank acceptance of appointment, and an oath to each judge and alternate.~~]

[~~(2) (a) Each election judge and alternate shall file the oath and acceptance in the following form with the election officer within seven days after receipt of the certificate of appointment:~~]

[~~"I, ____, do solemnly swear (or affirm) that I accept appointment as an election judge or alternate and will support, obey, and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of my office with fidelity; that I am a citizen of the United States and the State of Utah; that I am a registered voter in voting precinct ____ in the (jurisdiction) ____; that I will perform the duties of election judge according to law and the best of my ability; that I will endeavor to prevent fraud, deceit, and abuse in conducting the election; that I will not try to discover how any voter voted, or disclose how any voter voted if, in the discharge of my duties as judge, that knowledge comes to me; and that I will not disclose the result of the votes until the polls have closed."~~]

[~~(b) If an election judge or alternate fails to timely file the oath and acceptance, the position is vacant.~~]

[~~(3)~~] (1) (a) If a judge or alternate is unable to serve, that judge or alternate shall immediately notify the election officer, who shall fill the vacancy as provided in this section.

[~~(4)~~] (b) The election officer may fill a vacancy occurring under this section by appointing the alternate to serve[;] or, if that is impossible, by appointing some other qualified person to fill the vacancy.

[~~(5)~~] (2) The election officer shall summarily remove any election judge who:

(a) neglects his duty;

(b) commits or encourages fraud in connection with any election;

(c) violates any election law;

(d) knowingly permits any person to violate any election law;

(e) has been convicted of a felony; or

(f) commits any act that interferes or tends to interfere with a fair and honest election.

Section 20. Section Amended.

Section 20A-5-605, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-5-605. Duties of election judges on election day.

(1) (a) Receiving judges shall arrive at the polling place 30 minutes before the polls open and remain until the official election returns are prepared for delivery.

(b) Counting judges shall be at the polls as directed by the [~~county clerk~~] election officer and remain until the official election returns are prepared for delivery.

(2) Upon their arrival to open the polls, each set of election judges shall:

(a) designate which judge shall preside and which judges shall act as clerks;

(b) in voting precincts using paper ballots, select one of their number to deliver the election returns to the election officer or to the place that the election officer designates;

(c) in voting precincts using ballot cards, select two of their number, each from a different party, to deliver the election returns to the election officer or to the place that the election officer designates;

(d) display the United States flag;

(e) open the voting devices and examine them to see that they are in proper working order;

(f) place the voting devices, voting booths, and the ballot box in plain view of election judges and watchers;

(g) open the ballot packages in the presence of all the judges;

(h) check the ballots, supplies, records, and forms;

(i) if directed to do so by the election officer, make any necessary corrections to the official ballots before they are distributed at the polls;

(j) post the sample ballots, instructions to voters, and constitutional amendments, if any; and

(k) open the ballot box in the presence of those assembled, turn it upside down to empty it of anything, and then, immediately before polls open, lock it, or if locks and keys are not available, tape it securely;

(3) (a) If any election judge fails to appear on the morning of the election, or fails or refuses to act, at least six qualified electors from the voting precinct who are present at the polling place at the hour designated by law for the opening of the polls shall fill the vacancy by appointing another qualified person from the voting precinct who is a member of the same political party as the judge who is being replaced to act as election judge.

(b) If a majority of the receiving election judges are present, they shall open the polls, even though the alternate judge has not arrived.

(4) (a) If it is impossible or inconvenient to hold an election at the polling place designated, the election judges, after having assembled at or as near as practicable to the designated place, and before receiving any vote, may move to the nearest convenient place for holding the election.

(b) If the judges move to a new polling place, they shall display a proclamation of the change and station a police officer or some other proper person at the original polling place to notify voters of the location of the new polling place.

(5) If the election judge who received delivery of the ballots produces packages of substitute ballots accompanied by a written and sworn statement of the election officer that the ballots are substitute ballots because the original ballots were not received, were destroyed, or were stolen, the election judges shall use those substitute ballots as the official election ballots.

(6) If, for any reason, none of the official or substitute ballots are ready for distribution at a polling place or, if the supply of ballots is exhausted before the polls are closed, the election judges may use unofficial ballots, made as nearly as possible in the form of the official ballot, until substitutes prepared by the election officer are printed and delivered.

(7) (a) If any registration agent has failed or refused to deliver a copy of the official register of the voting precinct to the election judges, the election judges may take and use the posting list that is posted in the voting precinct.

(b) The election judges shall include a note in their returns explaining the reason for using that posting list instead of the copy of the official register that should have been delivered to them.

(8) When it is time to open the polls, one of the election judges shall announce that the polls are open as required by Section 20A-1-302.

(9) (a) The election judges shall comply with the voting procedures and requirements of Title 20A, Chapter 3, in allowing people to vote.

(b) The election judges may not allow any person, other than election officials and those admitted to

vote, within six feet of voting machines, voting booths, and the ballot box.

(c) Besides the election judges and watchers, the election judges may not allow more than four voters in excess of the number of voting booths provided within six feet of voting machines, voting booths, and the ballot box.

(d) (i) If necessary, the election judges shall instruct each voter about how to operate the voting device before the voter enters the voting booth.

(ii) If the voter requests additional instructions after entering the voting booth, two election judges, who are of different political parties, may, if necessary, enter the booth and give the voter additional instructions.

Section 21. Repealer.

Section 20-3-40, General election laws applicable — Powers of state board of canvassers, Utah Code Annotated 1953, is repealed.

CHAPTER 229
H. B. No. 300
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

NASA LIFE SUPPORT SYSTEM FUNDING

By Kim R. Burningham

AN ACT RELATING TO APPROPRIATIONS; EXTENDING THE DEADLINE FOR THE INSTITUTE FOR LIFE SUPPORT TO OBTAIN FEDERAL MATCHING DOLLARS.

THIS ACT AMENDS UNCODIFIED MATERIAL.

UNCODIFIED SECTION 1

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

Section 1. Appropriation — Conditions for distribution — Lapsing.

(1) There is appropriated for fiscal year 1992-93, $800,000 from the General Fund to the Division of Business and Economic Development for distribution to the Institute for Life Support in Space, a Utah nonprofit corporation, subject to the fulfillment of the conditions in Subsection (2).

(2) The Division of Business and Economic Development shall distribute the appropriation under Subsection (1) to help cover [~~first year~~] start-up costs of the institute if:

(a) the National Aeronautics and Space Administration provides at least $1,250,000 to fund the institute before July 1, [~~1993~~] 1994;

(b) the National Aeronautics and Space Administration commits to establish the Institute for Life Support in Space in Utah;

(c) the Institute for Life Support in Space enters a contract with the Division of Business and Economic Development in collaboration with the Office of Business Creation to control the expenditure of distributed funds; and

(d) the state auditor verifies that the conditions under Subsections (a) through (c) have been fulfilled.

(3) The appropriation under this section lapses to the General Fund if another state is selected for the institute or if not distributed before July 1, [~~1993~~] 1994.

CHAPTER 230
H. B. No. 326
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

CRIMINAL SOLICITATION AMENDMENTS

By Frank R. Pignanelli

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING CRIMINAL SOLICITATION; PROVIDING CRIMINAL LIABILITY TO SOLICITOR; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-4-203, AS ENACTED BY CHAPTER 189, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 76-4-203, Utah Code Annotated 1953, as enacted by Chapter 189, Laws of Utah 1990, is amended to read:

76-4-203. Criminal solicitation — Elements.

(1) An actor commits criminal solicitation if with intent that a felony be committed, he solicits, requests, commands, offers to hire, or importunes another person to engage in specific conduct that under the circumstances as the actor believes them to be would be a felony or would cause the other person to be a party to the commission of a felony.

(2) An actor may be convicted under this section only if the solicitation is made under circumstances strongly corroborative of the actor's intent that the offense be committed.

(3) It is not a defense under this section that the person solicited by the actor:

(a) does not agree to act upon the solicitation;

(b) does not commit an overt act;

(c) does not engage in conduct constituting a substantial step toward the commission of any offense;

(d) is not criminally responsible for the felony solicited;

(e) was acquitted, was not prosecuted or convicted, or was convicted of a different offense or of a different type or degree of offense; or

(f) is immune from prosecution.

(4) It is not a defense under this section that the actor:

(a) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or

(b) fails to communicate with the person he solicits to commit an offense, if the intent of the actor's conduct was to effect the communication.

(5) Nothing in this section prevents an actor who otherwise solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense from being prosecuted and convicted as a party to the offense under Section 76-2-202 if the person solicited actually commits the offense.

CHAPTER 231
H. B. No. 353
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

MAYORAL TRANSITION PROCESS

By Jeff Alexander

AN ACT RELATING TO MAYORAL VACANCIES; PROVIDING EXPANDED PROCEDURES FOR APPOINTING A SUCCESSOR WHEN A MAYOR RESIGNS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-3-1222, AS LAST AMENDED BY CHAPTER 27, LAWS OF UTAH 1979

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

Section 1. Section Amended.

Section 10-3-1222, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1979, is amended to read:

10-3-1222. Council-mayor form — Vacancy in office of mayor.

(1)(a) If any vacancy occurs in the office of mayor of any municipality organized under the council-mayor form of government, the council shall within 30 days [~~shall by appointment~~] appoint a successor to fill the vacancy [~~created~~] until the next municipal election when a successor can be elected and qualified.

(b) If the vacancy is caused by the resignation of a mayor, the council may appoint a person to fill the vacancy before the effective date of the outgoing mayor's resignation by making the effective date of the appointment the same as the effective date of the resignation.

(2)(a) The [~~chairman~~] chair of the council shall become acting mayor pending the appointment of a person to fill the [~~office~~] vacancy.

(b) While serving as acting mayor, the council chair shall:

(i) continue to act as a council member; and

(ii) vote at council meetings.

CHAPTER 232
H. B. No. 355
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

PROCUREMENT CODE AMENDMENTS

By Orville D. Carnahan

AN ACT RELATING TO PROCUREMENT; REVISING PROCUREMENT CODE PROVISIONS TO ELIMINATE RESPONSIBILITIES NOW HANDLED BY OTHER ENTITIES; MODIFYING THE MEMBERSHIP OF THE PROCUREMENT POLICY BOARD; REPEALING CERTAIN PROVISIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-56-2, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1983, FIRST SPECIAL SESSION
63-56-3, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986
63-56-5, AS LAST AMENDED BY CHAPTER 2, LAWS OF UTAH 1988 SECOND SPECIAL SESSION
63-56-6, AS LAST AMENDED BY CHAPTER 183, LAWS OF UTAH 1990
63-56-7, AS LAST AMENDED BY CHAPTER 196, LAWS OF UTAH 1985
63-56-9, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1992
63-56-11, AS ENACTED BY CHAPTER 75, LAWS OF UTAH 1980
63-56-14, AS ENACTED BY CHAPTER 75, LAWS OF UTAH 1980
63-56-21, AS LAST AMENDED BY CHAPTER 299, LAWS OF UTAH 1983
63-56-35.7, AS LAST AMENDED BY CHAPTER 65, LAWS OF UTAH 1984
63-56-38, AS LAST AMENDED BY CHAPTERS 7 AND 271, LAWS OF UTAH 1989

REPEALS:
63-56-12, AS ENACTED BY CHAPTER 75, LAWS OF UTAH 1980
63-56-35, AS LAST AMENDED BY CHAPTER 259, LAWS OF UTAH 1981

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

Section 1. Section Amended.

Section 63-56-2, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1983, First Special Session, is amended to read:

63-56-2. Application of chapter.

(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in Section 63-56-3, this chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract. [~~It shall also apply to the disposal of state supplies.~~]

(3)(a) Only the following sections shall apply to local public procurement units: Sections 63-56-3, 63-56-5, 63-56-16, 63-56-19 through 63-56-33, 63-56-35.5, 63-56-36 through 63-56-41, 63-56-45 through 63-56-50, and 63-56-59 through 63-56-63; provided, however, that, except as provided in Sections 63-56-70 and 63-56-71, the jurisdiction of the procurement appeals board is limited to matters involving state agencies.

(b) Subsection 63-56-14(1)(b) also applies to local public procurement units.

(c) For the purpose of application of those sections and subsections to a local public procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer" or "head of a purchasing agency" shall mean any person conducting procurement for a local public procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations promulgated by a local public procurement unit to implement or supplement those sections.

(d) In addition to the sections and subsections listed above, each local public procurement unit shall adopt ordinances relating to the procurement of architect-engineer services not inconsistent with the provisions of part G of this chapter.

(e) Any other section of this chapter, or its implementing regulations, may be adopted by any local public procurement unit [~~at its discretion~~].

(f) Any other implementing regulations adopted by local public procurement units [~~shall~~] may not be inconsistent with the provisions of this chapter.

(4) Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Section 2. Section Amended.

Section 63-56-3, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

63-56-3. Compliance with federal law — Exemptions from chapter.

(1) This chapter is not applicable to funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act.

(2) This chapter is not applicable to grants awarded by the state or contracts between the state and local public procurement units except as provided in part I of this chapter.

(3) This chapter shall not prevent the state or a local public procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(4) When a procurement involves the expenditure of federal assistance or contract funds, the chief pro-

curement officer or head of a purchasing agency shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

[~~(5) This chapter shall not apply to the Division of Surplus Property.~~]

Section 3. Section Amended.

Section 63-56-5, Utah Code Annotated 1953, as last amended by Chapter 2, Laws of Utah 1988 Second Special Session, is amended to read:

63-56-5. Definitions.

As used in this chapter:

(1) "Architect-engineer services" are those professional services within the scope of the practice of architecture as defined in Section 58-3-2, or professional engineering as defined in Section 58-22-2.

(2) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(3) "Change order" means a written order signed by the procurement officer, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the procurement officer to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(4) (a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work.

(b) "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(5) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(6) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

(7) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(8) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(9) "External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

(10) "Grant" means the furnishing by the state or by any other public or private source assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from the award is not a grant but a procurement contract.

(11) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(12) "Local public procurement unit" means any political subdivision or institution of higher education of the state or public agency of any subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties, municipalities, political subdivisions created by counties or municipalities under the Interlocal Cooperation Act, the Utah Housing Finance Agency, the Utah Technology Finance Corporation, or the Legislature and its staff offices. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals, not including a state agency or a local public procurement unit.

(14) "Policy board" means the procurement policy board created by Section 63-56-6.

[~~(14)~~] (15) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

[~~(15)~~] (16) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

[~~(16)~~] (17) "Procurement officer" means any person or board duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority.

[~~(17)~~] (18) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

[~~(18)~~] (19) "Purchase description" means the words used in a solicitation to describe the supplies,

services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

[~~(19)~~] (20) "Purchasing agency" means any state agency other than the purchasing division which is authorized by this chapter or its implementing regulations, or by way of delegation from the chief procurement officer, to enter into contracts.

[~~(20)~~] (21) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

[~~(21)~~] (22) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

[~~(22)~~] (23) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

[~~(23)~~] (24) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

[~~(24)~~] (25) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

[~~(25)~~] (26) "State agency" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment or official of this state.

[~~(26)~~] (27) "State public procurement unit" means the purchasing division and any other purchasing agency of this state.

[~~(27)~~] (28) "Supplies" means all property, including [~~but not limited to~~] equipment, materials, and printing[~~, excluding leases of real property, and land or a permanent interest in land which shall be procured according to Section 63-1-38.3~~].

[~~(28) "Surplus supplies" means any supplies that are no longer needed for public use. It includes expendable supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.~~]

(29) "Using agency" means any state agency which utilizes any supplies, services, or construction procured under this chapter.

Section 4. Section Amended.

Section 63-56-6, Utah Code Annotated 1953, as last amended by Chapter 183, Laws of Utah 1990, is amended to read:

63-56-6. Creation of procurement policy board.

(1) (a) [A] There is created a state procurement policy board[~~, hereafter referred to as the policy board, is created~~].

(b) The policy board shall consist of seven members who shall be appointed as follows:

[~~(a)~~] (i) an employee of a state institution of higher education, [~~to be~~] appointed by the board of regents;

[~~(b)~~] (ii) an employee of the Department of Human Services, [~~to be~~] appointed by the executive director of that department;

[~~(c)~~] (iii) an employee of the Department of Transportation, [~~to be~~] appointed by the director of that department;

[~~(d)~~] (iv) an employee of [~~the state board of education, to be~~] a school district appointed by [~~that board~~] a cooperative purchasing entity for school districts;

[~~(e)~~] (v) an employee of the [~~building board, to be~~] Division of Facilities Construction and Management appointed by the director of that [~~board~~] division;

[~~(f)~~] (vi) an employee of a county, [~~to be~~] appointed by the [~~governor's advisory committee on community affairs~~] Utah Advisory Council on Intergovernmental Relations; and

[~~(g)~~] (vii) an employee of a city, [~~to be~~] appointed by the [~~governor's advisory committee on community affairs~~] Utah Advisory Council on Intergovernmental Relations.

[~~(2)~~] (c) Members of the policy board shall:

(i) be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions[~~. They shall~~]; and

(ii) serve at the pleasure of their [~~respective~~] appointing authorities.

(2) (a) The policy board shall:

(i) adopt rules of procedure for conducting its business; and [~~shall~~]

(ii) elect a chairperson to serve for one year.

(b) The chairperson [~~shall be eligible for election~~] may be elected to succeeding terms.

(c) The chief procurement officer shall serve as the nonvoting secretary to the policy board.

Section 5. Section Amended.

Section 63-56-7, Utah Code Annotated 1953, as last amended by Chapter 196, Laws of Utah 1985, is amended to read:

63-56-7. Powers and duties of board.

(1) Except as otherwise provided in Sections 63-56-2 and 63-56-14, the policy board shall [~~have the authority and responsibility to promulgate~~]:

(a) make rules, consistent with this chapter, governing the procurement, management, and control[~~, and disposal~~] of any and all supplies, services, and construction to be procured by the state[. The ~~policy board shall~~]; and

(b) consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The policy board [~~shall have the power to~~] may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter[~~, but shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto. Upon~~];

(ii) upon the request of a local public procurement unit, [~~the policy board may~~] review that procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter[~~. The policy board may~~]; and

(iii) approve the use of innovative procurement methods proposed by local public procurement units.

(b) The policy board may not exercise authority over the award or administration of:

(i) any particular contact; or

(ii) over any dispute, claim, or litigation pertaining to any particular contract.

Section 6. Section Amended.

Section 63-56-9, Utah Code Annotated 1953, as last amended by Chapter 32, Laws of Utah 1992, is amended to read:

63-56-9. Duties of chief procurement officer.

Except as otherwise specifically provided in this chapter, the chief procurement officer serves as the central procurement officer of the state and shall:

(1) adopt office policies governing the internal functions of the purchasing division;

(2) procure or supervise the procurement of all supplies, services, and construction needed by the state;

(3) exercise general supervision and control over all inventories or supplies belonging to the state;

(4) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction;

(5) prepare statistical data concerning the procurement[~~;~~] and usage[~~, and disposition~~] of all supplies, services, and construction;

(6) before June 1, 1990, notify all public procurement units of the requirements of Section 63-56-20.7 regarding purchases of recycled paper and recycled paper products, recycling requirements, and provide guidelines on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper; and

(7) before July 1, 1992:

(a) establish standards and specifications for determining which supplies are considered recycled, based upon his review of current definitions and standards employed by national procurement, product recycling, and other relevant organizations and the federal Environmental Protection Agency;

(b) compile and update as necessary the specifications, a list of recycled supplies available on state contract, and sources where the supplies may be obtained;

(c) make the compiled information under Subsection (b) available to:

(i) all local government entities under Section 11-37-101;

(ii) all local health departments under Section 26A-1-108.7;

(iii) all procurement officers or other persons responsible for purchasing supplies within the public school system under Title 53A, State System of Public Education;

(iv) all procurement officers or other persons responsible for purchasing supplies within the state system of higher education under Title 53B, State System of Higher Education; and

(v) all procurement officers or other persons responsible for purchasing supplies for all public procurement units as defined in Section 63-56-5; and

(d) present a written report to the Health and Environment Interim Committee annually prior to November 30 regarding the purchases of recycled goods on state contracts during the prior fiscal year.

Section 7. Section Amended.

Section 63-56-11, Utah Code Annotated 1953, as enacted by Chapter 75, Laws of Utah 1980, is amended to read:

63-56-11. Transfer of power to policy board.

Except as otherwise provided in this chapter, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, and sale[~~, and disposal~~] of supplies, services, and construction vested in or exercised by any state agency on the effective date are transferred to the policy board as they relate to its duties and to the purchasing division as they relate to its duties.

Section 8. Section Amended.

Section 63-56-14, Utah Code Annotated 1953, as enacted by Chapter 75, Laws of Utah 1980, is amended to read:

63-56-14. Rules and regulations of policy board and building board.

[~~The~~] (1) (a) Except as provided in Subsection (2), the policy board shall [~~promulgate rules and regulations relating to~~] make rules governing state procurement[~~, except that the building board shall promulgate rules and regulations relating to building construction and architect-engineer services procured by the building board. Rules and regulations shall be promulgated in accordance with~~] by complying with the procedures and requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act [~~; Title 63, Chapter 46~~].

(b) The procurement rules adopted by the policy board under this section apply to all local public procurement units unless the local public procurement unit's legislative body has adopted separate rules governing procurement.

(2) The State Building Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

Section 9. Section Amended.

Section 63-56-21, Utah Code Annotated 1953, as last amended by Chapter 299, Laws of Utah 1983, is amended to read:

63-56-21. Use of competitive sealed proposals in lieu of bids — Procedure.

(1)(a) When, [under] according to rules [~~and regulations~~] established by the Procurement Policy Board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer above the level of procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals.

(b) (i) Competitive sealed proposals may be used for the procurement of [~~any of the types of~~] services [~~specified in section 63-56-12~~] of consultants, professionals, and providers as defined by the policy board by rule, whether or not the determination described in this subsection has been made[~~; provided that rules and regulations shall establish~~].

(ii) The policy board shall make rules establishing guidelines to assure maximum practicable competition in those procurements, including the relative importance, if any, of the fee to be charged by an offeror. [~~Rules and regulations~~]

(iii) The rules may provide that it is either not practicable or not advantageous to the state to procure certain types of supplies, services, or construction by competitive sealed bidding or competitive sealed proposals.

(2) (a) Proposals shall be solicited through a request for proposals.

(b) Public notice of the request for proposals shall be given in accordance with policy board rules [and ~~regulations~~].

(3)(a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.

(b) A register of proposals shall be prepared in accordance with policy board rules [and ~~regulations~~] and shall be open for public inspection after the contract [~~award~~] is awarded.

(4) The request for proposals shall state the relative importance of price and other evaluating factors.

(5)(a) As provided in the request for proposals and under policy board rules [and ~~regulations~~], discussions may be conducted with responsible offerors who submit proposals [~~determined to be reasonably susceptible of being selected for award~~] for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(b) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and [~~prior to award~~] before the contract is awarded for the purpose of obtaining best and final offers.

(c) In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) (a) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals.

(b) No other factors or criteria shall be used in the evaluation.

(c) The contract file shall contain the basis on which the award is made.

Section 10. Section Amended.

Section 63-56-35.7, Utah Code Annotated 1953, as last amended by Chapter 65, Laws of Utah 1984, is amended to read:

63-56-35.7. Counties and municipalities eligible to participate in state agreements, contracts, and surplus property program.

[~~Counties and~~] Utah counties, municipalities [~~of this state are eligible to~~], and local public procurement units may purchase from or otherwise participate in state public procurement unit agreements and contracts [~~and may participate in the state surplus property program administered by the Division of Surplus Property~~].

Section 11. Section Amended.

Section 63-56-38, Utah Code Annotated 1953, as last amended by Chapters 7 and 271, Laws of Utah 1989, is amended to read:

63-56-38. Bonds necessary when contract is awarded — Waiver — Action — Attorneys' fees.

(1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the state, which shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the state; and

(b) a payment bond satisfactory to the state that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other

form satisfactory to the state, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

(2) Rules may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the state considers [~~either or both~~] any or all of the bonds to be unnecessary to protect the state.

(3) A person shall have a right of action on a payment bond under this section for any unpaid amount due him if:

(a) he has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and

(b) he has not been paid in full within 90 days after the last date on which he performed the labor or service or supplied the equipment or material for which the claim is made.

(4) An action upon a payment bond shall be brought in a court of competent jurisdiction in any county where the construction contract was to be performed and not elsewhere. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.

(5) In any suit upon a payment bond, the court shall award reasonable attorneys' fees to the prevailing party, which fees shall be taxed as costs in the action.

Section 12. Repealer.

Section 63-56-12, Circumstances where state agency may act as purchasing agency, Utah Code Annotated 1953, as enacted by Chapter 75, Laws of Utah 1980; and

Section 63-56-35, Additional rules and regulations, Utah Code Annotated 1953, as last amended by Chapter 259, Laws of Utah 1981, are repealed.

CHAPTER 233
S. B. No. 37
Passed February 22, 1993
Approved March 19, 1993
Effective May 3, 1993

COUNTIES RESPONSIBILITIES FOR POOR PERSONS

By Craig A. Peterson

AN ACT RELATING TO COUNTIES; REPEALING PROVISIONS CREATING THE COMMISSIONER OF THE POOR; GOVERNING THE HOSPITALIZATION AND MEDICAL TREATMENT OF THE POOR; AND REPORTS OF THE COMMISSION CONCERNING THE POOR.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
17-5-64, AS LAST AMENDED BY CHAPTER 212, LAWS OF UTAH 1977
17-5-65, UTAH CODE ANNOTATED 1953
17-5-66, AS LAST AMENDED BY CHAPTER 212, LAWS OF UTAH 1977

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

Section 1. Repealer.

Section 17-5-64, Commissioner of poor — Pauper clerks — Duties, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1977;

Section 17-5-65, Orders of board — Admission of patients — Private patients, Utah Code Annotated 1953; and

Section 17-5-66, Reports of commissioner concerning poor persons, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1977, are repealed.

CHAPTER 234
S. B. No. 19
Passed February 12, 1993
Approved March 18, 1993
Effective July 1, 1993

DEPARTMENT OF PUBLIC SAFETY REORGANIZATION

By Alarik Myrin
Wilford R. Black, Jr.
Paul T. Fordham
Eldon A. Money
Craig A. Peterson

AN ACT RELATING TO PUBLIC SAFETY; REORGANIZING THE DEPARTMENT; CREATING NEW DIVISIONS AND ELIMINATING SOME EXISTING DIVISIONS; CODIFYING EXISTING STRUCTURE AND FUNCTIONS; CLARIFYING RULEMAKING AUTHORITY; CODIFYING POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, DIVISIONS, BOARDS, AND DIRECTORS; CONFORMING COMMISSIONER'S APPOINTMENT DATE TO CURRENT TERM; CHANGING MEMBERSHIP ON CERTAIN DEPARTMENTAL BOARDS; REPEALING PROVISION REQUIRING A PROPORTIONATE NUMBER OF HIGHWAY PATROL PERSONS TO VEHICLES REGISTERED; PROVIDING CERTAIN PENALTIES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-8-103, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
11-3-1, AS ENACTED BY CHAPTER 127, LAWS OF UTAH 1983
11-3-3.5, AS ENACTED BY CHAPTER 268, LAWS OF UTAH 1992
11-3-4, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1992
11-3-8, AS ENACTED BY CHAPTER 127, LAWS OF UTAH 1983
11-3-10, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1992
11-4-2, AS LAST AMENDED BY CHAPTER 20, LAWS OF UTAH 1965
17-22-1.5, AS REPEALED AND REENACTED BY CHAPTER 54, LAWS OF UTAH 1990
17-25A-1, AS ENACTED BY CHAPTER 44, LAWS OF UTAH 1990
17-25A-3, AS ENACTED BY CHAPTER 44, LAWS OF UTAH 1990
17-30-1, AS ENACTED BY THE PEOPLE NOV. 8, 1960
17-30-6, AS ENACTED BY THE PEOPLE NOV. 8, 1960
17-39-3, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
23-13-2, AS LAST AMENDED BY CHAPTER 27, LAWS OF UTAH 1992
26-2-27, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988
26-21-5, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
26-21-6, AS LAST AMENDED BY CHAPTER 202, LAWS OF UTAH 1991
31A-19-210, AS LAST AMENDED BY CHAPTER 87, LAWS OF UTAH 1991
31A-22-1301, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1985
32A-1-105, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1991
32A-1-202, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-1-303, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
41-1A-203, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-205, AS RENUMBERED AND AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
41-1A-802, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-1401, AS LAST AMENDED BY CHAPTER 1 AND LAST AMENDED BY CHAPTER 239, LAWS OF UTAH 1992
41-1A-1402, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-3-303, AS RENUMBERED AND AMENDED BY CHAPTER 234 AND LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-6-35.5, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1988
41-6-37, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1987
41-6-44, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1991
41-6-44.4, AS ENACTED BY CHAPTER 78, LAWS OF UTAH 1992
41-6-44.8, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1991
41-6-44.10, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1992
41-6-163.6, AS LAST AMENDED BY CHAPTERS 95, 111, AND 276, LAWS OF UTAH 1992
41-6-182, AS LAST AMENDED BY CHAPTER 156, LAWS OF UTAH 1990
41-6-185, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
41-6-189, AS ENACTED BY CHAPTER 229, LAWS OF UTAH 1992
41-12A-103, AS LAST AMENDED BY CHAPTER 203, LAWS OF UTAH 1991
41-22-10.9, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1989
49-4-203, AS LAST AMENDED BY CHAPTERS 225 AND 285, LAWS OF UTAH 1990
49-4A-203, AS LAST AMENDED BY CHAPTERS 225 AND 285, LAWS OF UTAH 1990
53A-3-410, AS LAST AMENDED BY CHAPTER 246, LAWS OF UTAH 1992
53A-6-103, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1991

53A-11-501, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988
53A-11-502, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988
53A-11-503, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988
53A-11-504, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988
53A-13-208, AS LAST AMENDED BY CHAPTER 8, LAWS OF UTAH 1991
54-11-10, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
62A-4-514, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1992
63-5-5, AS LAST AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
63-5B-102, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1992
63-55-241, AS LAST AMENDED BY CHAPTERS 7 AND 234, LAWS OF UTAH 1992
63-55-263, AS LAST AMENDED BY CHAPTERS 7 AND 241, LAWS OF UTAH 1992
63-63A-4, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
63-63A-9, AS ENACTED BY CHAPTER 233, LAWS OF UTAH 1992
64-13-27, AS LAST AMENDED BY CHAPTER 224, LAWS OF UTAH 1989
67-19-27, AS ENACTED BY CHAPTER 139, LAWS OF UTAH 1979
67-22-2, AS LAST AMENDED BY CHAPTER 206, LAWS OF UTAH 1992
73-18-20.5, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
76-6-601, AS LAST AMENDED BY CHAPTER 93, LAWS OF UTAH 1990
76-6-607, AS ENACTED BY CHAPTER 78, LAWS OF UTAH 1979
76-8-707, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-501, AS LAST AMENDED BY CHAPTER 10, LAWS OF UTAH 1991
76-10-505.5, AS ENACTED BY CHAPTER 101, LAWS OF UTAH 1992
76-10-511, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-520, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-521, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-522, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
76-10-523, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973
77-1A-1, AS LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992
77-18-2, AS LAST AMENDED BY CHAPTERS 164 AND 290, LAWS OF UTAH 1992
78-3A-39.5, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1992
78-3A-44, AS LAST AMENDED BY CHAPTER 77, LAWS OF UTAH 1991
78-5-105, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-30-3.5, AS ENACTED BY CHAPTER 167, LAWS OF UTAH 1992

ENACTS:
11-3-3.1, UTAH CODE ANNOTATED 1953
53-1-101, UTAH CODE ANNOTATED 1953
53-1-102, UTAH CODE ANNOTATED 1953
53-1-104, UTAH CODE ANNOTATED 1953
53-1-105, UTAH CODE ANNOTATED 1953
53-1-106, UTAH CODE ANNOTATED 1953
53-1-108, UTAH CODE ANNOTATED 1953
53-1-116, UTAH CODE ANNOTATED 1953
53-1-201, UTAH CODE ANNOTATED 1953
53-1-202, UTAH CODE ANNOTATED 1953
53-1-203, UTAH CODE ANNOTATED 1953
53-1-204, UTAH CODE ANNOTATED 1953
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53-4-102, UTAH CODE ANNOTATED 1953
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53-4-104, UTAH CODE ANNOTATED 1953
53-4-201, UTAH CODE ANNOTATED 1953
53-5-101, UTAH CODE ANNOTATED 1953
53-5-102, UTAH CODE ANNOTATED 1953
53-5-103, UTAH CODE ANNOTATED 1953
53-5-104, UTAH CODE ANNOTATED 1953
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53-5-701, UTAH CODE ANNOTATED 1953
53-5-702, UTAH CODE ANNOTATED 1953
53-5-703, UTAH CODE ANNOTATED 1953
53-6-101, UTAH CODE ANNOTATED 1953
53-6-102, UTAH CODE ANNOTATED 1953
53-6-201, UTAH CODE ANNOTATED 1953
53-7-201, UTAH CODE ANNOTATED 1953
53-7-220, UTAH CODE ANNOTATED 1953
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53-7-224, UTAH CODE ANNOTATED 1953
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53-8-101, UTAH CODE ANNOTATED 1953
53-8-102, UTAH CODE ANNOTATED 1953
53-8-201, UTAH CODE ANNOTATED 1953
53-8-202, UTAH CODE ANNOTATED 1953
63-55-253.5, UTAH CODE ANNOTATED 1953

RENUMBERS AND AMENDS:
53-1-103, (RENUMBERED FROM 41-13-1, UTAH CODE ANNOTATED 1953)
53-1-107, (RENUMBERED FROM 41-13-2, AS LAST AMENDED BY CHAPTER 114, LAWS OF UTAH 1991)
53-1-109, (RENUMBERED FROM 63-1-39, AS LAST AMENDED BY CHAPTER 227, LAWS OF UTAH 1988)

53-1-110, (RENUMBERED FROM 41-13-10, AS ENACTED BY CHAPTER 102, LAWS OF UTAH 1967)
53-1-111, (RENUMBERED FROM 63-87-1, AS ENACTED BY CHAPTER 81, LAWS OF UTAH 1992)
53-1-112, (RENUMBERED FROM 41-13-12, AS ENACTED BY CHAPTER 329, LAWS OF UTAH 1983)
53-1-113, (RENUMBERED FROM 41-13-13, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1989)
53-1-114, (RENUMBERED FROM 41-13-14, AS ENACTED BY CHAPTER 329, LAWS OF UTAH 1983)
53-1-115, (RENUMBERED FROM 41-13-15, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-2-104, (RENUMBERED FROM 63-5-3, AS ENACTED BY CHAPTER 254, LAWS OF UTAH 1981)
53-2-105, (RENUMBERED FROM 63-5-6, AS ENACTED BY CHAPTER 250, LAWS OF UTAH 1989)
53-2-106, (RENUMBERED FROM 63-5A-10, AS LAST AMENDED BY CHAPTER 166, LAWS OF UTAH 1989)
53-3-101, (RENUMBERED FROM 41-2-101, AS LAST AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-102, (RENUMBERED FROM 41-2-102, AS LAST AMENDED BY CHAPTER 80, LAWS OF UTAH 1992)
53-3-104, (RENUMBERED FROM 41-2-118, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-105, (RENUMBERED FROM 41-2-103, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-106, (RENUMBERED FROM 41-2-120, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-202, (RENUMBERED FROM 41-2-104, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-203, (RENUMBERED FROM 41-2-105, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-204, (RENUMBERED FROM 41-2-109, AS LAST AMENDED BY CHAPTERS 78 AND 80, LAWS OF UTAH 1992)
53-3-205, (RENUMBERED FROM 41-2-112, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-206, (RENUMBERED FROM 41-2-117, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992)
53-3-207, (RENUMBERED FROM 41-2-121, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-208, (RENUMBERED FROM 41-2-113, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-3-209, (RENUMBERED FROM 41-2-114, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1989)
53-3-210, (RENUMBERED FROM 41-2-111, AS LAST AMENDED BY CHAPTER 8, LAWS OF UTAH 1991)
53-3-211, (RENUMBERED FROM 41-2-115, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-212, (RENUMBERED FROM 41-2-116, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-213, (RENUMBERED FROM 41-2-110, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-3-214, (RENUMBERED FROM 41-2-125, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-215, (RENUMBERED FROM 41-2-123, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-216, (RENUMBERED FROM 41-2-122, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-217, (RENUMBERED FROM 41-2-124, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-218, (RENUMBERED FROM 41-2-126, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-219, (RENUMBERED FROM 41-2-126.5, AS ENACTED BY CHAPTER 188, LAWS OF UTAH 1989)
53-3-220, (RENUMBERED FROM 41-2-127, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-221, (RENUMBERED FROM 41-2-128, AS LAST AMENDED BY CHAPTERS 190 AND 241, LAWS OF UTAH 1991)
53-3-222, (RENUMBERED FROM 41-2-129, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-223, (RENUMBERED FROM 41-2-130, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1992)
53-3-224, (RENUMBERED FROM 41-2-131, AS LAST AMENDED BY CHAPTER 161 AND RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-225, (RENUMBERED FROM 41-2-132, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-226, (RENUMBERED FROM 41-2-134, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-227, (RENUMBERED FROM 41-2-136, AS LAST AMENDED BY CHAPTER 80, LAWS OF UTAH 1992)
53-3-228, (RENUMBERED FROM 41-2-135, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-229, (RENUMBERED FROM 41-2-133, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-3-230, (RENUMBERED FROM 41-2-137, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-3-303, (RENUMBERED FROM 41-2-202, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)

53-3-304, (RENUMBERED FROM 41-2-201, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-401, (RENUMBERED FROM 41-2-701, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-402, (RENUMBERED FROM 41-2-703, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-403, (RENUMBERED FROM 41-2-702, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-404, (RENUMBERED FROM 41-2-707, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-405, (RENUMBERED FROM 41-2-720, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-406, (RENUMBERED FROM 41-2-704, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-407, (RENUMBERED FROM 41-2-708, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-408, (RENUMBERED FROM 41-2-709, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-409, (RENUMBERED FROM 41-2-710, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-410, (RENUMBERED FROM 41-2-711, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-411, (RENUMBERED FROM 41-2-712, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-412, (RENUMBERED FROM 41-2-713, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-413, (RENUMBERED FROM 41-2-714, AS LAST AMENDED BY CHAPTER 109, LAWS OF UTAH 1992)
53-3-414, (RENUMBERED FROM 41-2-715, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-415, (RENUMBERED FROM 41-2-706, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-416, (RENUMBERED FROM 41-2-705, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-417, (RENUMBERED FROM 41-2-716, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-418, (RENUMBERED FROM 41-2-717, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1990)
53-3-419, (RENUMBERED FROM 41-2-718, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-420, (RENUMBERED FROM 41-2-719, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1989)
53-3-502, (RENUMBERED FROM 41-2-301, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1990)
53-3-503, (RENUMBERED FROM 41-2-307, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-504, (RENUMBERED FROM 41-2-302, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-505, (RENUMBERED FROM 41-2-303, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1990)
53-3-506, (RENUMBERED FROM 41-2-305, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1989)
53-3-507, (RENUMBERED FROM 41-2-306, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-508, (RENUMBERED FROM 41-2-308, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-509, (RENUMBERED FROM 41-2-309, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-3-603, (RENUMBERED FROM 41-2-501, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-604, (RENUMBERED FROM 41-2-502, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-605, (RENUMBERED FROM 41-2-503, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-606, (RENUMBERED FROM 41-2-504, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-607, (RENUMBERED FROM 41-2-506, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-702, (RENUMBERED FROM 41-2-602, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-703, (RENUMBERED FROM 41-2-608, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-704, (RENUMBERED FROM 41-2-601, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-705, (RENUMBERED FROM 41-2-603, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-706, (RENUMBERED FROM 41-2-604, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-707, (RENUMBERED FROM 41-2-605, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-708, (RENUMBERED FROM 41-2-606, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-709, (RENUMBERED FROM 41-2-609, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-802, (RENUMBERED FROM 41-2-401, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-803, (RENUMBERED FROM 41-2-402, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)

53-3-804, (RENUMBERED FROM 41-2-403, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-805, (RENUMBERED FROM 41-2-404, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-806, (RENUMBERED FROM 41-2-405, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-807, (RENUMBERED FROM 41-2-406, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991)
53-3-808, (RENUMBERED FROM 41-2-407, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-809, (RENUMBERED FROM 41-2-408, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987)
53-3-810, (RENUMBERED FROM 41-2-409, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-4-202, (RENUMBERED FROM 32A-15-102, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990)
53-4-203, (RENUMBERED FROM 32A-15-104, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990)
53-4-204, (RENUMBERED FROM 32A-15-106, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990)
53-4-205, (RENUMBERED FROM 32A-15-108, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990)
53-5-202, (RENUMBERED FROM 77-26A-2, AS ENACTED BY CHAPTER 121, LAWS OF UTAH 1983)
53-5-203, (RENUMBERED FROM 77-26-3, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1992)
53-5-204, (RENUMBERED FROM 77-26-23, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1988)
53-5-206, (RENUMBERED FROM 77-26-3.5, AS ENACTED BY CHAPTER 59, LAWS OF UTAH 1992)
53-5-207, (RENUMBERED FROM 77-26-5, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-208, (RENUMBERED FROM 77-26-8, AS LAST AMENDED BY CHAPTER 23, LAWS OF UTAH 1991)
53-5-209, (RENUMBERED FROM 77-26-9, AS LAST AMENDED BY CHAPTERS 30 AND 233, LAWS OF UTAH 1992)
53-5-210, (RENUMBERED FROM 77-26-10, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-211, (RENUMBERED FROM 77-26-13, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1992)
53-5-212, (RENUMBERED FROM 77-26-14, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1992)
53-5-213, (RENUMBERED FROM 77-26-15, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-214, (RENUMBERED FROM 77-26-16, AS LAST AMENDED BY CHAPTERS 167 AND 233, LAWS OF UTAH 1992)
53-5-215, (RENUMBERED FROM 77-26-17, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-216, (RENUMBERED FROM 77-26-18, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-217, (RENUMBERED FROM 77-26-19, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-218, (RENUMBERED FROM 77-26-22, AS LAST AMENDED BY CHAPTER 143, LAWS OF UTAH 1989)
53-5-219, (RENUMBERED FROM 77-26-12, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980)
53-5-301, (RENUMBERED FROM 34-37-1, AS ENACTED BY CHAPTER 94, LAWS OF UTAH 1973)
53-5-302, (RENUMBERED FROM 34-37-2, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1981)
53-5-303, (RENUMBERED FROM 34-37-3, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION)
53-5-304, (RENUMBERED FROM 34-37-5, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1981)
53-5-305, (RENUMBERED FROM 34-37-6, AS LAST AMENDED BY CHAPTER 153, LAWS OF UTAH 1977)
53-5-306, (RENUMBERED FROM 34-37-7, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION)
53-5-307, (RENUMBERED FROM 34-37-8, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1981)
53-5-308, (RENUMBERED FROM 34-37-9, AS LAST AMENDED BY CHAPTER 153, LAWS OF UTAH 1977)
53-5-309, (RENUMBERED FROM 34-37-10, AS LAST AMENDED BY CHAPTER 153, LAWS OF UTAH 1977)
53-5-310, (RENUMBERED FROM 34-37-11, AS ENACTED BY CHAPTER 94, LAWS OF UTAH 1973)
53-5-311, (RENUMBERED FROM 34-37-12, AS ENACTED BY CHAPTER 94, LAWS OF UTAH 1973)
53-5-312, (RENUMBERED FROM 34-37-16, AS ENACTED BY CHAPTER 98, LAWS OF UTAH 1981)
53-5-313, (RENUMBERED FROM 34-37-13, AS ENACTED BY CHAPTER 94, LAWS OF UTAH 1973)
53-5-314, (RENUMBERED FROM 34-37-15, AS ENACTED BY CHAPTER 98, LAWS OF UTAH 1981)
53-5-401, (RENUMBERED FROM 41-13A-1, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-402, (RENUMBERED FROM 41-13A-2, AS LAST AMENDED BY CHAPTER 43, LAWS OF UTAH 1989)

53-5-403, (RENUMBERED FROM 41-13A-3, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-404, (RENUMBERED FROM 41-13A-4, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-405, (RENUMBERED FROM 41-13A-5, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1987)
53-5-406, (RENUMBERED FROM 41-13A-6, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-407, (RENUMBERED FROM 41-13A-7, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-408, (RENUMBERED FROM 41-13A-8, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-409, (RENUMBERED FROM 41-13A-9, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-410, (RENUMBERED FROM 41-13A-10, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-411, (RENUMBERED FROM 41-13A-11, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-412, (RENUMBERED FROM 41-13A-12, AS LAST AMENDED BY CHAPTER 22, LAWS OF UTAH 1989)
53-5-413, (RENUMBERED FROM 41-13A-13, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-414, (RENUMBERED FROM 41-13A-14, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-415, (RENUMBERED FROM 41-13A-15, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-416, (RENUMBERED FROM 41-13A-16, AS LAST AMENDED BY CHAPTERS 18 AND 241, LAWS OF UTAH 1991)
53-5-417, (RENUMBERED FROM 41-13A-17, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-418, (RENUMBERED FROM 41-13A-18, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-419, (RENUMBERED FROM 41-13A-19, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-420, (RENUMBERED FROM 41-13A-20, AS ENACTED BY CHAPTER 26, LAWS OF UTAH 1985)
53-5-501, (RENUMBERED FROM 13-18-1, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-502, (RENUMBERED FROM 13-18-2, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-503, (RENUMBERED FROM 13-18-3, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-504, (RENUMBERED FROM 13-18-4, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-505, (RENUMBERED FROM 13-18-5, AS LAST AMENDED BY CHAPTER 130, LAWS OF UTAH 1991)
53-5-506, (RENUMBERED FROM 13-18-6, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-507, (RENUMBERED FROM 13-18-7, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
53-5-508, (RENUMBERED FROM 13-18-8, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-509, (RENUMBERED FROM 13-18-9, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
53-5-510, (RENUMBERED FROM 13-18-10, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION)
53-5-511, (RENUMBERED FROM 13-18-11, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-512, (RENUMBERED FROM 13-18-12, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
53-5-513, (RENUMBERED FROM 13-18-13, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-514, (RENUMBERED FROM 13-18-14, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION)
53-5-515, (RENUMBERED FROM 13-18-15, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
53-5-516, (RENUMBERED FROM 13-18-16, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-517, (RENUMBERED FROM 13-18-17, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987)
53-5-518, (RENUMBERED FROM 13-18-18, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-519, (RENUMBERED FROM 13-18-19, AS ENACTED BY CHAPTER 18, LAWS OF UTAH 1983)
53-5-603, (RENUMBERED FROM 10-8-102, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990)
53-5-604, (RENUMBERED FROM 10-8-104, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990)
53-5-605, (RENUMBERED FROM 10-8-105, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990)
53-5-606, (RENUMBERED FROM 10-8-106, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990)
53-5-607, (RENUMBERED FROM 10-8-108, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991)
53-5-704, (RENUMBERED FROM 76-10-513, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1986)
53-5-705, (RENUMBERED FROM 76-10-513.5, AS ENACTED BY CHAPTER 276, LAWS OF UTAH 1990)

53-5-706, (RENUMBERED FROM 76-10-515, AS LAST AMENDED BY CHAPTER 76, LAWS OF UTAH 1979)
53-5-707, (RENUMBERED FROM 76-10-516, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1986)
53-5-708, (RENUMBERED FROM 76-10-517, AS ENACTED BY CHAPTER 196, LAWS OF UTAH 1973)
53-5-709, (RENUMBERED FROM 76-10-518, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1986)
53-6-103, (RENUMBERED FROM 67-15-1, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-104, (RENUMBERED FROM 67-15-2, AS LAST AMENDED BY CHAPTER 185, LAWS OF UTAH 1977)
53-6-105, (RENUMBERED FROM 67-15-4, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1987)
53-6-106, (RENUMBERED FROM 67-15-11, AS ENACTED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-107, (RENUMBERED FROM 67-15-17, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-108, (RENUMBERED FROM 67-15-20, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-202, (RENUMBERED FROM 67-15-5, AS ENACTED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-203, (RENUMBERED FROM 67-15-6, AS LAST AMENDED BY CHAPTER 119, LAWS OF UTAH 1992)
53-6-204, (RENUMBERED FROM 67-15-6.5, AS ENACTED BY CHAPTER 211, LAWS OF UTAH 1983)
53-6-205, (RENUMBERED FROM 67-15-7, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1987)
53-6-206, (RENUMBERED FROM 67-15-8, AS LAST AMENDED BY CHAPTER 54, LAWS OF UTAH 1990)
53-6-207, (RENUMBERED FROM 67-15-9, AS ENACTED BY CHAPTER 103, LAWS OF UTAH 1967)
53-6-208, (RENUMBERED FROM 67-15-10, AS LAST AMENDED BY CHAPTER 69, LAWS OF UTAH 1987)
53-6-209, (RENUMBERED FROM 67-15-10.1, AS ENACTED BY CHAPTER 69, LAWS OF UTAH 1987)
53-6-210, (RENUMBERED FROM 67-15-10.2, AS LAST AMENDED BY CHAPTER 135, LAWS OF UTAH 1988)
53-6-211, (RENUMBERED FROM 67-15-10.5, AS LAST AMENDED BY CHAPTER 135, LAWS OF UTAH 1988)
53-6-212, (RENUMBERED FROM 77-1A-7, AS ENACTED BY CHAPTER 174, LAWS OF UTAH 1985)
53-6-213, (RENUMBERED FROM 67-15-21, AS ENACTED BY CHAPTER 150, LAWS OF UTAH 1986)
53-7-101, (RENUMBERED FROM 63-27-101, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-102, (RENUMBERED FROM 63-27-103, AS ENACTED BY CHAPTERS 157 AND 220, LAWS OF UTAH 1991)
53-7-103, (RENUMBERED FROM 63-27-104, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-104, (RENUMBERED FROM 63-27-111, AS LAST AMENDED BY CHAPTERS 157 AND 202, AND RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-105, (RENUMBERED FROM 63-27-122, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-106, (RENUMBERED FROM 63-27-103.1, AS ENACTED BY CHAPTER 130, LAWS OF UTAH 1992)
53-7-202, (RENUMBERED FROM 11-3-2, AS REPEALED AND REENACTED BY CHAPTER 268, LAWS OF UTAH 1992)
53-7-203, (RENUMBERED FROM 63-27-106, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-204, (RENUMBERED FROM 63-27-109, AS LAST AMENDED BY CHAPTER 130, LAWS OF UTAH 1992)
53-7-205, (RENUMBERED FROM 63-27-103.2, AS ENACTED BY CHAPTER 130, LAWS OF UTAH 1992)
53-7-206, (RENUMBERED FROM 11-4-1, AS LAST AMENDED BY CHAPTER 20, LAWS OF UTAH 1965)
53-7-207, (RENUMBERED FROM 11-4-3, AS LAST AMENDED BY CHAPTER 20, LAWS OF UTAH 1965)
53-7-208, (RENUMBERED FROM 11-4-4, AS LAST AMENDED BY CHAPTER 77, LAWS OF UTAH 1977)
53-7-209, (RENUMBERED FROM 63-27-110, AS LAST AMENDED BY CHAPTER 157 AND RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-210, (RENUMBERED FROM 63-27-117, AS LAST AMENDED BY CHAPTER 157 AND RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-211, (RENUMBERED FROM 63-27-118, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-212, (RENUMBERED FROM 63-27-119, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-213, (RENUMBERED FROM 63-27-120, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-214, (RENUMBERED FROM 63-27-121, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-215, (RENUMBERED FROM 63-27-112, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-216, (RENUMBERED FROM 63-27-113, AS RENUMBERED AND AMENDED BY

CHAPTER 220, LAWS OF UTAH 1991)
53-7-217, (RENUMBERED FROM 63-27-114, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-218, (RENUMBERED FROM 63-27-115, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-219, (RENUMBERED FROM 63-27-116, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-222, (RENUMBERED FROM 11-3-3, AS REPEALED AND REENACTED BY CHAPTER 268, LAWS OF UTAH 1992)
53-7-223, (RENUMBERED FROM 11-3-3.2, AS ENACTED BY CHAPTER 268, LAWS OF UTAH 1992)
53-7-225, (RENUMBERED FROM 11-3-6, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1992)
53-7-226, (RENUMBERED FROM 63-27-123, AS ENACTED BY CHAPTER 220, LAWS OF UTAH 1991)
53-7-302, (RENUMBERED FROM 63-29A-101, AS LAST AMENDED BY CHAPTER 56, LAWS OF UTAH 1990)
53-7-303, (RENUMBERED FROM 63-29A-102, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-304, (RENUMBERED FROM 63-29A-103, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-305, (RENUMBERED FROM 63-29A-105, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-306, (RENUMBERED FROM 63-29A-104, AS LAST AMENDED BY CHAPTER 149, LAWS OF UTAH 1988)
53-7-307, (RENUMBERED FROM 63-29A-105.5, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1988)
53-7-308, (RENUMBERED FROM 63-29A-106, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-309, (RENUMBERED FROM 63-29A-107, AS LAST AMENDED BY CHAPTER 149, LAWS OF UTAH 1988)
53-7-310, (RENUMBERED FROM 63-29A-108, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-311, (RENUMBERED FROM 63-29A-109, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-7-312, (RENUMBERED FROM 63-29A-111, AS LAST AMENDED BY CHAPTER 149, LAWS OF UTAH 1988)
53-7-313, (RENUMBERED FROM 63-29A-104.5, AS ENACTED BY CHAPTER 284, LAWS OF UTAH 1992)
53-7-314, (RENUMBERED FROM 63-29A-111.5, AS ENACTED BY CHAPTER 149, LAWS OF UTAH 1988)
53-7-315, (RENUMBERED FROM 63-29A-110, AS LAST AMENDED BY CHAPTER 284, LAWS OF UTAH 1992)
53-7-316, (RENUMBERED FROM 63-29A-112, AS ENACTED BY CHAPTER 164, LAWS OF UTAH 1987)
53-8-103, (RENUMBERED FROM 27-10-1, UTAH CODE ANNOTATED 1953)
53-8-104, (RENUMBERED FROM 27-10-2, UTAH CODE ANNOTATED 1953)
53-8-105, (RENUMBERED FROM 27-10-4, AS LAST AMENDED BY CHAPTER 152, LAWS OF UTAH 1988)
53-8-106, (RENUMBERED FROM 27-10-5, UTAH CODE ANNOTATED 1953)
53-8-107, (RENUMBERED FROM 27-10-6, UTAH CODE ANNOTATED 1953)
53-8-203, (RENUMBERED FROM 41-6-160.5, AS LAST AMENDED BY CHAPTER 234, LAWS OF UTAH 1992)
53-8-204, (RENUMBERED FROM 41-6-160, AS LAST AMENDED BY CHAPTER 11, LAWS OF UTAH 1992)
53-8-205, (RENUMBERED FROM 41-6-158, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992)
53-8-206, (RENUMBERED FROM 41-6-161, AS LAST AMENDED BY CHAPTER 11, LAWS OF UTAH 1992)
53-8-207, (RENUMBERED FROM 41-6-162, AS LAST AMENDED BY CHAPTER 242, LAWS OF UTAH 1979)
53-8-208, (RENUMBERED FROM 41-6-163, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1986)
53-8-209, (RENUMBERED FROM 41-6-156, AS LAST AMENDED BY CHAPTER 242, LAWS OF UTAH 1979)
53-8-210, (RENUMBERED FROM 41-6-157, AS LAST AMENDED BY CHAPTER 78, LAWS OF UTAH 1957)
53-8-211, (RENUMBERED FROM 41-7-3, AS LAST AMENDED BY CHAPTER 62, LAWS OF UTAH 1986)
53-8-212, (RENUMBERED FROM 41-6-159, AS LAST AMENDED BY CHAPTER 68, LAWS OF UTAH 1986)

REPEALS:
11-3-5, AS LAST AMENDED BY CHAPTERS 30 AND 268, LAWS OF UTAH 1992
11-3-7, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1992
13-18-1.5, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
17-39-2, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
17-39-4, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
17-39-5, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
17-39-6, AS ENACTED BY CHAPTER 278, LAWS OF UTAH 1990
17-39-8, AS LAST AMENDED BY CHAPTER 241, LAWS OF UTAH 1991
27-10-3, UTAH CODE ANNOTATED 1953
27-10-8, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1974
32A-15-101, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-15-103, AS RENUMBERED AND AMENDED BY CHAPTER 23 AND

LAST AMENDED BY CHAPTER 261, LAWS OF UTAH 1990
32A-15-105, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
32A-15-107, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
34-37-14, AS LAST AMENDED BY CHAPTER 98, LAWS OF UTAH 1981
41-2-102.5, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
41-2-106, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987
41-2-107, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989
41-2-108, AS LAST AMENDED BY CHAPTER 209, LAWS OF UTAH 1989
41-2-119, AS LAST AMENDED BY CHAPTER 190, LAWS OF UTAH 1991
41-2-304, AS LAST AMENDED BY CHAPTER 162, LAWS OF UTAH 1990
41-2-505, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987
41-2-607, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1987
41-6-164, UTAH CODE ANNOTATED 1953
41-13-3, UTAH CODE ANNOTATED 1953
41-13-4, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION
41-13-5, UTAH CODE ANNOTATED 1953
41-13-6, UTAH CODE ANNOTATED 1953
41-13-7, AS LAST AMENDED BY CHAPTER 40, LAWS OF UTAH 1985
41-13-8, UTAH CODE ANNOTATED 1953
41-13-9, UTAH CODE ANNOTATED 1953
63-5-1, AS ENACTED BY CHAPTER 254, LAWS OF UTAH 1981
63-27-102, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-27-105, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-27-107, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-27-108, AS RENUMBERED AND AMENDED BY CHAPTER 220, LAWS OF UTAH 1991
63-55-267, AS ENACTED BY CHAPTER 137, LAWS OF UTAH 1990
67-15-2.1, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
67-15-3, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1988
67-15-12, AS ENACTED BY CHAPTER 211, LAWS OF UTAH 1983
67-15-13, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983
67-15-14, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983
67-15-15, AS LAST AMENDED BY CHAPTER 211, LAWS OF UTAH 1983
67-15-16, AS ENACTED BY CHAPTER 103, LAWS OF UTAH 1967
67-15-17.5, AS ENACTED BY CHAPTER 211, LAWS OF UTAH 1983
67-15-18, AS ENACTED BY CHAPTER 103, LAWS OF UTAH 1967
77-26-1, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26-2, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26-4, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26-6, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26-7, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26-11, AS LAST AMENDED BY CHAPTER 212, LAWS OF UTAH 1985
77-26-11.5, AS ENACTED BY CHAPTER 72, LAWS OF UTAH 1989
77-26-16.5, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
77-26-20, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980
77-26A-1, AS ENACTED BY CHAPTER 121, LAWS OF UTAH 1983
77-26A-3, AS ENACTED BY CHAPTER 121, LAWS OF UTAH 1983
77-26A-4, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 10-8-103, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

10-8-103. Enforcement.

Municipalities shall enforce [~~the provisions of~~] this article [~~and the rules of the department~~] and Title 53, Chapter 5, Part 6, Moonwalker Safety Act, within their [~~jurisdiction~~] jurisdictions by performing periodic inspections of an assembled moonwalker to ensure compliance with [~~the provisions of~~] this article, the Moonwalker Safety Act, and the rules of the department made under Section 53-5-603.

Section 2. Section Amended.

Section 11-3-1, Utah Code Annotated 1953, as enacted by Chapter 127, Laws of Utah 1983, is amended to read:

11-3-1. Short title.

This [~~act shall be~~] chapter is known [~~and may be cited~~] as the "[~~Utah~~] County and Municipal Fireworks Act."

Section 3. Section Enacted.

Section 11-3-3.1, Utah Code Annotated 1953, is enacted to read:

11-3-3.1. Definitions.

The definitions in Section 53-7-202 apply to this chapter.

Section 4. Section Amended.

Section 11-3-3.5, Utah Code Annotated 1953, as enacted by Chapter 268, Laws of Utah 1992, is amended to read:

11-3-3.5. Licensing of retail sellers of fireworks — Permit required — Fee, insurance, or bond.

(1)(a) A municipality or county may require a retail seller to obtain a license and pay a reasonable fee before selling class C common state approved explosives within the jurisdiction of that municipality or county.

(b) A municipality or county may not restrict the number of licenses to be issued under this section.

[~~(2) The state fire marshal shall:~~]

[~~(a) annually license each importer and wholesaler of pyrotechnic devices; and~~]

[~~(b) charge an annual license fee of $250.~~]

[~~(3)~~] (2)(a) A municipality or county shall require:

(i) a permit to discharge all display fireworks; and

(ii) evidence that the display operator who will set up and discharge the display fireworks has received a display operator's license from the State Fire Marshal Division, Department of Public Safety.

(b) A municipality or county may require a fee, insurance, or a bond before issuing a permit under this subsection.

Section 5. Section Amended.

Section 11-3-4, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1992, is amended to read:

11-3-4. Enforcement — Seizure of fireworks sold unlawfully — Revocation of license.

(1) Each county and municipal officer charged with the enforcement of state and municipal laws, including all fire enforcement officials and the State Fire Marshal Division of the Department of Public Safety, shall enforce this chapter and Sections 53-7-220 through 53-7-225, Utah Fireworks Act.

(2) Any official charged with enforcing this chapter and the Utah Fireworks Act may:

(a) seize display fireworks, fireworks, and unclassified fireworks that are offered for sale, sold, or in the possession of an individual in violation of this chapter or the Utah Fireworks Act; and

(b) recommend to the state fire marshall that each importer or wholesaler selling or offering to sell display fireworks, fireworks, or unclassified fireworks in violation of this chapter or the Utah Fireworks Act have [~~their~~] his license revoked.

Section 6. Section Amended.

Section 11-3-8, Utah Code Annotated 1953, as enacted by Chapter 127, Laws of Utah 1983, is amended to read:

11-3-8. Conflicting local ordinances prohibited.

A county, city, or town may not adopt an ordinance or regulation in conflict with [~~this chapter~~] Sections 53-7-220 through 53-7-225.

Section 7. Section Amended.

Section 11-3-10, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1992, is amended to read:

11-3-10. Exemptions — Limitation on chapter.

(1) This chapter does not apply to class A, class B, and class C explosives that are not for use in Utah, but are manufactured, stored, warehoused, or in transit for destinations outside of Utah.

(2) [~~Nothing in this~~] This chapter [~~supersedes the provisions of~~] does not supersede Section 23-13-7, regarding use of fireworks and explosives by the Division of Wildlife Resources and federal game agents.

(3) Provided that the display operators are properly licensed as required by [~~this chapter~~] Section 53-7-223, [~~nothing in this chapter prohibits~~] municipalities[~~, or~~] and counties for the unincorporated areas within the county[~~, from conducting, permitting, or regulating~~] may conduct, permit, or regulate:

(a) exhibitions of display fireworks; or

(b) pyrotechnic displays held inside public buildings.

Section 8. Section Amended.

Section 11-4-2, Utah Code Annotated 1953, as last amended by Chapter 20, Laws of Utah 1965, is amended to read:

11-4-2. Duty of local governing body — Maintenance of existing equipment.

[~~It shall be the duty of each~~] (1) Each local governing body installing any completely new fire protection system [~~to~~] shall comply with [~~the provisions of this act; provided however, each~~] Title 53, Chapter 7, Utah Fire Prevention and Safety Act.

(2) A local governing body [~~which now operates~~] operating fire protection equipment may maintain, repair, replace, and extend [~~such~~] the equipment with equipment of like character and standards.

Section 9. Section Amended.

Section 17-22-1.5, Utah Code Annotated 1953, as repealed and reenacted by Chapter 54, Laws of Utah 1990, is amended to read:

17-22-1.5. County sheriff qualifications.

(1) In addition to the general qualifications required of county officers by Title 17, Chapter 16, County Officers, each county sheriff must meet [~~and continue to meet~~] each of the following qualifications during his term of office:

(a) Prior to taking office, a county sheriff must be certified as a peace officer according to procedures and requirements of Title [~~67~~] 53, Chapter [~~15~~] 6, and shall satisfactorily complete annual certified training as required in Section 77-1a-1.

(b) After certification, each county sheriff must remain certified as a peace officer during his term of office.

(2) The county governing body shall declare the office of sheriff to be vacant if at any time the incumbent sheriff fails to meet the legal qualifications for office under Subsection (1).

Section 10. Section Amended.

Section 17-25a-1, Utah Code Annotated 1953, as enacted by Chapter 44, Laws of Utah 1990, is amended to read:

17-25a-1. Constables — Nomination — Appointment — Authority.

(1)(a) The legislative governing bodies of counties and cities of the first or second class shall determine whether to appoint constables. If a county or city of the first or second class decides to appoint constables, they shall be nominated and appointed under [~~the provisions of~~] this chapter.

(b) However, a constable holding office on [~~the effective date of this act~~] April 23, 1990, may complete his term. Any subsequent terms he may serve shall be [~~under the provisions of~~] in accordance with this chapter.

(2) To nominate a constable, the county or city of the first or second class shall establish a nominating commission.

(a) The county nominating commission shall consist of one member of the county legislative governing body, one judge, the county attorney, the sheriff of the county, or their designees, and one private citizen.

(b) The city nominating commission shall consist of one member of the city legislative governing body, one judge, the city attorney, the chief of police, or their designees, and one private citizen.

(c) The nominating commission shall review each applicant's credentials and recommend to the legislative governing body of the county or city the nominees it finds most qualified by majority vote.

(3) The county or city legislative governing body shall either appoint or reject any nominee.

(4) The authority of a constable may be withdrawn by the county or city legislative governing body for cause, including if the constable's peace officer certification is suspended or revoked under Section [~~67-15-10.5~~] 53-6-211.

Section 11. Section Amended.

Section 17-25a-3, Utah Code Annotated 1953, as enacted by Chapter 44, Laws of Utah 1990, is amended to read:

17-25a-3. County and city constables — Terms — Authority — Deputies.

(1) Constables appointed by a county or city are appointed for terms of six years and may serve more than one term if reappointed by the appointing body.

(2) Constables serving process outside the county in which they are appointed shall contact the sheriff's office or police department of the jurisdiction prior to serving executions or bench warrants or seizing any property.

(3) The appointed constable may, upon approval of the appointing county or city, employ and deputize persons who are certified as special function peace officers to function as deputy constables.

(4) If the county or city appointing body withdraws the authority of a constable, the authority of all deputy constables is also withdrawn.

(5) If the authority of a constable or deputy constable is withdrawn, notification of the Peace Officer Standards and Training Division of the Department of Public Safety shall be made pursuant to Section [~~67-15-10.1~~] 53-6-209.

Section 12. Section Amended.

Section 17-30-1, Utah Code Annotated 1953, as enacted by The People Nov. 8, 1960, is amended to read:

17-30-1. Definitions.

(1) "Governing body" means the board of county commissioners.

(2) "Appointing authority" means the sheriff of a county having jurisdiction over any peace officer [~~as hereinafter defined~~].

(3) "Peace officer" means any paid deputy sheriff, other than a chief deputy designated by the sheriff, who is in the continuous employ of a county.

(4) "Commission" means the personal merit system commission consisting of three persons appointed by the governing body and having the duty, power, and responsibility for the discharge of the functions of this [~~act~~] chapter.

(5) "[~~The state~~] Department of Public Safety" means the department [~~of public safety as constituted under 41-13-1 through 41-13-9, Utah Code Annotated 1953~~] created in Section 53-1-103.

Section 13. Section Amended.

Section 17-30-6, Utah Code Annotated 1953, as enacted by The People Nov. 8, 1960, is amended to read:

17-30-6. Examinations — How prepared, conducted, and graded — Notice of examination.

(1)(a) [~~At such time as may be~~] When necessary, the commission shall [open] give competitive examinations to determine the qualification of applicants for positions as peace officers.

(b) The [examination] examinations shall be practical in character and shall relate to [such] matters [as] that will fairly test the mental and physical ability and knowledge of the applicants to discharge the duties of the [position] positions. [Such]

(c) The examinations shall be prepared, conducted, and graded under the direction of the [merit system] commission, or by impartial special examiners if the commission [deems] finds it necessary. [~~The state Department of Public Safety shall prepare, upon request from the merit system com-~~

mission of any county, model personnel classification plans for peace officers as well as model competitive examinations, which may be used by said merit system commissions to determine the qualifications of applicants for appointment to positions as peace officers, as well as for in-service promotions, and the state Department of Public Safety shall, upon request from the said merit system commissions, provide an impartial special examiner to direct the merit system competitive examination for the requesting county.]

(2) (a) Notice of examination shall be published one time not less than [fifteen] 15 days prior to the examination in a newspaper of general circulation in the area concerned and shall be posted in a conspicuous place in the office of the department concerned.

(b) The notice shall set forth minimum and maximum wages, physical and educational requirements, and passing grades, which shall be not less than [70 per cent] 70%.

(c) A person completing an examination shall be promptly notified by mail at his last known address of his final grade.

Section 14. Section Amended.

Section 17-39-3, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

17-39-3. Enforcement.

Counties shall enforce [the provisions of] this [article and the rules of the department] chapter and Title 53, Chapter 5, Part 6, Moonwalker Safety Act, in the unincorporated areas by performing periodic inspections of an assembled moonwalker to ensure compliance with [the provisions of] this [article] chapter, the Moonwalker Safety Act, and the rules of the department made under Section 53-5-603.

Section 15. Section Amended.

Section 23-13-2, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1992, is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Aquatic wildlife" means species of fish, crustaceans, aquatic insects, or amphibians.

(2) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(3) "Big game" means species of hoofed protected wildlife.

(4) "Carcass" means the dead body of an animal or its parts.

(5) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board or Board of Big Game Control granting authority to engage in activities not covered by a license, permit, or tag.

(6) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(7) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is [P.O.S.T.] POST certified as a peace or a special function officer.

(8) "Division" means the Division of Wildlife Resources.

(9) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual and his family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual must:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(10) "Endangered" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(11) "Feral" means an animal which is normally domesticated but has reverted to the wild.

(12) "Fishing" means to take fish by any means.

(13) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(14) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(15)(a) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife.

(b) Assistance under Subsection (a) includes the provision of food, shelter, or transportation, or any combination of these.

(16) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(17) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(18) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of his duty.

(19) "License" means the primary document granting authority to engage in activities under:

(a) this title; or

(b) a rule or proclamation of the Wildlife Board or Board of Big Game Control.

(20) "Nonresident" means a person who does not qualify as a resident.

(21) "Open season" means the period of time during which protected wildlife may be legally taken.

(22) "Pecuniary gain" means the acquisition of money or something of monetary value.

(23) "Permit" means a secondary document, including a stamp, which:

(a) requires a license as a prerequisite to its issuance; and

(b) grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board or Board of Big Game Control.

(24) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(25) "Possession" means actual or constructive possession.

(26) "Possession limit" means the number of bag limits one individual may legally possess.

(27) "Private fish installation" means a body of water where privately owned, protected aquatic wildlife are propagated or kept.

(28) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and which restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(29) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(30)(a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (1), except as provided in Subsection (b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(31)(a) "Protected wildlife" means wildlife as defined in Subsection (43), except as provided in Subsection (b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(32) "Released to the wild" means to turn loose from confinement.

(33)(a) "Resident" means a person who:

(i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains his Utah residency if he leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) complies with Subsection (a)(ii).

(c)(i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date he reports for duty under assigned orders in the state if he:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (a)(ii).

(ii) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if he:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(34) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(35) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers.

(36) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(37) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

(38) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (a).

(39) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(40) "Trapping" means taking protected wildlife with a trapping device.

(41) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

(42) "Water pollution" means the introduction of matter or thermal energy to waters within this state which:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

(43) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish; and

(b) vertebrate animals living in nature, except feral animals.

Section 16. Section Amended.

Section 26-2-27, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

26-2-27. Identifying birth certificates of missing children — Procedures.

(1) As used in this section:

(a) [~~"Bureau"~~] "Division" means the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division within the Department of Public Safety.

(b) "Missing child" means a person under the age of 18 who is the subject of a custody dispute, who has been missing for at least 48 hours from his home environment or a temporary placement facility, and whose whereabouts cannot be determined by the person responsible for the child's care.

(2) (a) [~~Upon notification by the bureau, in~~] In accordance with Section [~~77-26-23,~~] 53-5-204, upon notification by the division that a child who was born in this state is missing, the state registrar shall flag the birth certificate record of that child [~~in such a manner~~] so that whenever a copy of the birth certificate or information regarding the birth record is requested, the state registrar [~~shall be~~] is alerted to the fact that the certificate is that of a missing child.

(b) Upon notification by the [~~bureau~~] division that the missing child has been recovered, the state registrar shall remove the flag from that child's birth certificate record. [~~In any event, the~~]

(c) The state registrar shall remove [~~the~~] any remaining flag from the birth certificate when [~~the~~] a missing child reaches age 18.

(3) The state registrar may not provide a copy of a birth certificate of any person whose record is flagged in accordance with Subsection (2) [~~in response to any inquiry~~], except as approved by the [~~bureau~~] division.

(4) (a) When a copy of the birth certificate of a child whose record has been flagged is requested in person, the state registrar shall require that person to complete a form supplying his name, address, telephone number, and relationship to the missing child, and the name and birth date of the missing child.

(b) He shall be informed that a copy of the certificate will be mailed to him.

(c) The state registrar or his personnel shall note the physical description of the person making the request, and shall immediately notify the [~~bureau as to~~] division of the request and the information obtained pursuant to this subsection.

(5) When a copy of the birth certificate of a child whose record has been flagged is requested in writing, the state registrar or his personnel shall immediately notify the [~~bureau~~] division, and provide it with a copy of the written request.

Section 17. Section Amended.

Section 26-21-5, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

26-21-5. Duties of committee.

(1) The committee [~~has the following powers and responsibilities~~] shall:

(a) [~~to establish~~] make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(i) for licensing and revoking licenses for health-care facilities;

(ii) governing the entry of agents of the department into health-care facilities for inspections;

(iii) governing public hearings conducted under this chapter;

(iv) governing appeals related to licensure decisions of the department; and

(v) requiring the submission of architectural plans and specifications for any proposed new health-care facility or renovation to the department for review;

(b) [~~to~~] define the information [~~which~~] that must be submitted to the department with an application for a license pursuant to Section 26-21-9;

(c) [~~to~~] establish fees for licenses issued to health-care facilities under this chapter in accordance with [~~Subsection~~] Section 63-38-3 [~~(2)~~];

(d) [~~to~~] advise the department as requested concerning enforcement of the rules established under this chapter;

(e) [~~to~~] conduct hearings on appeals from enforcement actions of the department as provided in this chapter;

(f) [~~to~~] compel the attendance of witnesses and the production of documents and evidence, administer oaths, and take testimony concerning appeals as provided in this chapter;

(g) [~~to~~] appoint a hearings officer who [~~shall be~~] is empowered to act in its behalf in hearings and appeals as provided in this chapter; an appointed hearings officer [~~shall have~~] has the same powers as the committee in the conduct of [~~such~~] the hearings; and

(h) [~~to~~] advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, and other states and affected groups or persons in carrying out the purposes of this chapter.

(2) Rules made by the committee under Subsection (1)(a)(v) are subject to [~~state fire marshal~~] Utah

Fire Prevention Board rules governing residential health-care facilities [~~established~~] made under Section [~~63-29-7~~] 53-7-204.

Section 18. Section Amended.

Section 26-21-6, Utah Code Annotated 1953, as last amended by Chapter 202, Laws of Utah 1991, is amended to read:

26-21-6. Duties of department.

(1) The department shall [~~have the following powers and responsibilities~~]:

(a) enforce rules established by the committee;

(b) authorize [~~any~~] an agent of the department to conduct inspections of health-care facilities pursuant to rules of the committee;

(c) collect information authorized by the committee [~~which~~] that may be necessary to [~~insure~~] ensure that adequate health-care facilities are available to the public;

(d) collect and credit fees for licenses as free revenue;

(e) collect and credit fees for conducting plan reviews as dedicated credits;

(f) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities;

(g) provide necessary administrative and staff support to the committee;

(h) exercise all incidental powers necessary to carry out the purposes of this chapter; and

(i) review architectural plans and specifications of proposed health-care facilities or renovations of health-care facilities to [~~insure~~] ensure that [~~such~~] the plans and specifications conform to rules established by the committee.

(2) The rules established by the committee under Subsection (1)[~~(h)~~] (i) are subject to the rules of the [~~state fire marshal~~] Utah Fire Prevention Board made pursuant to Section [~~63-29-7~~] 53-7-204.

Section 19. Section Amended.

Section 31A-19-210, Utah Code Annotated 1953, as last amended by Chapter 87, Laws of Utah 1991, is amended to read:

31A-19-210. Premium rate reduction for seniors — Motor vehicle accident prevention course — Curriculum — Certificate — Exception.

(1)(a) Each rate, rating schedule, and rating manual for the liability, personal injury protection, and collision coverages of private passenger motor vehicle insurance policies submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges for those coverages if the principal operator of the covered vehicle is a named insured who is 55 years of age or older and has successfully completed a motor vehicle accident prevention course as outlined in Subsection (2).

(b) Any premium reduction provided by an insurer under this section is presumed to be appropriate unless credible data demonstrates otherwise.

(2)(a) The curriculum for a motor vehicle accident prevention course under this section shall include[~~; but not be limited to, the following subjects~~]:

(i) how impairment of visual and audio perception affects driving performance and how to compensate for that impairment;

(ii) the effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects;

(iii) updates on rules of the road and equipment, including [~~but not limited to,~~] safety belts and safe, efficient driving techniques under present day road and traffic conditions;

(iv) how to plan travel time and select routes for safety and efficiency; and

(v) how to make crucial decisions in dangerous, hazardous, and unforeseen situations.

(b) (i) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Public Safety may make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a course under this section.

(ii) These rules may include provisions allowing the department to conduct on-site visits to ensure compliance with agency rules and this chapter.

(iii) These rules shall be specific as to time and manner of visits and provide for methods to prohibit or remedy forcible visits.

(3) (a) The premium reduction required by this section shall be effective for a named insured for a three-year period after successful completion of the course outlined in Subsection (2).

(b) The insurer may require, as a condition of maintaining the premium reduction, that the named insured not be convicted or plead guilty or nolo contendere to a moving traffic violation for which points may be assessed against the named insured's driver license except for a violation under Subsection [~~41-2-128~~] 53-3-221 (11).

(4) Each person who successfully completes the course outlined in Subsection (2) shall be issued a certificate by the organization offering the course. The certificate qualifies the person for the premium reduction required by this section.

(5) This section does not apply if the approved course outlined in Subsection (2) is attended as a penalty imposed by a court or other governmental entity for a moving traffic violation.

Section 20. Section Amended.

Section 31A-22-1301, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-22-1301. Liability insurance for armed security guards.

Section [41-13a-15] 53-5-415 applies to liability insurance for armed security guards.

Section 21. Section Amended.

Section 32A-1-105, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1991, is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this subsection.

(b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within this definition.

(4) "Beer," "light beer," "malt liquor," or "malted beverages" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

(5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the commission, by a local authority, or both.

(b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises. [It]

(ii) "On-premise beer retailer" includes taverns.

(c) (i) "Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer License.

(ii) "Tavern" includes beer bars, parlors, lounges, cabarets, and night clubs where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in [such] the establishments.

(6) "Billboard" means any light device, painting, drawing, poster, sign, signboard, scoreboard, or other similar public display used to advertise, but does not include:

(a) displays on beer delivery vehicles if the displays do not overtly promote the consumption of alcoholic beverages;

(b) displays in taverns and private clubs, if the displays are not visible to persons off-premises;

(c) point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if the displays are not visible to persons off-premises;

(d) private business signs on the premises of any business engaged primarily in the distribution of beer;

(e) newspapers, magazines, circulars, programs, or other similar printed materials, if the materials are not directed primarily to minors;

(f) menu boards in retail establishments that sell beer for on-premise consumption if the menu boards also contain food items; and

(g) handles on alcoholic beverage dispensing equipment that identify brands of products being dispensed.

(7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted beverages.

(8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose, under a single contract, and at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.

(9) "Church" means a building set apart primarily for the purpose of worship in which religious services are held and with which clergy is associated, and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose, and which is tax exempt under the laws of this state.

(10) "Club" and "private club" means any nonprofit corporation operating as a social club, recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

(11) "Commission" means the Alcoholic Beverage Control Commission.

(12) "Cork-finished wine" means a container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

(13) "Council" means the Citizen's Council on Alcoholic Beverage Control.

(14) "Department" means the Department of Alcoholic Beverage Control.

(15) "Distressed merchandise" means any alcoholic beverage in the possession of the department that

is saleable, but for some reason is unappealing to the public.

(16) "General food store" means any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premise consumption.

(17) "Governing body" means the board of not fewer than five shareholders or voting members of a private club who have been elected and authorized to control or conduct the business and affairs of that club.

(18) "Guest" means a person accompanied by an active member or visitor of a club who enjoys only those privileges derived from the host for the duration of the visit to the club.

(19) (a) "Heavy beer" means all products which contain more than 4% alcohol by volume obtained by fermentation, infusion, or decoction of any malted grain.

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

(20) "Identification card" means the card issued by the commissioner of the Department of Public Safety under Title [41] 53, Chapter [2] 3, Part [4] 8, Identification Card Act.

(21) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

(22) "Licensee" means any person issued a license by the commission to sell, manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

(23) "Limousine" means any motor vehicle licensed by the state or a local authority, other than a bus or taxicab, in which the driver and passengers are separated by a partition, glass, or other barrier and which is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

(24) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

(25) "Local authority" means the county legislative body of the county if the premises are located in an unincorporated area of a county, or the governing body of the city or town if the premises are located in an incorporated city or town.

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

(27) "Member" means a person who, after paying regular dues, has full privileges of a club under this title.

(28) "Minor" means any person under the age of 21 years.

(29) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

(30) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

(31) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission to sell package liquor for consumption off the premises of the agency.

(32) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises [which] that the package agent shall provide and maintain.

(33) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

(34) "Person" means any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

(35) "Policy" means a statement of principles established by the commission to guide the administration of this title and the management of the affairs of the department.

(36) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

(37) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for [the] obtaining [of] an alcoholic beverage for medicinal purposes only.

(38) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for public education, transacting public business, or regularly conducting government activities.

(b) "Public building" does not mean or refer to any building owned by the state or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

(39) "Representative" means an individual who is compensated by salary or commission for representing and selling the alcoholic beverage products of a supplier.

(40) "Residence" means the person's principal place of abode within Utah.

(41) "Restaurant" means any business establishment where a variety of foods is prepared and complete meals are served to the general public, located on a premises having adequate culinary fixtures for food preparation and dining accommodations, and that is engaged primarily in serving meals to the general public.

(42) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

(43)(a) "Rule" means a general statement adopted by the commission to guide the activities of those regulated or employed by the department, to implement or interpret this title, or to describe the organization, procedure, or practice requirements of the department in order to carry out the intent of the law and ensure its uniform application. This definition includes any amendment or repeal of a prior rule.

(b) "Rules" does not include rules concerning only the internal management of the department that do not affect private rights or procedures available to the public, including intradepartmental memoranda.

(44) "Sample" means liquor that has been placed in the possession of the department for analysis and testing, and is not of the same type and brand as any in the department's general inventory or currently on the department's order list.

[~~(46)~~] (45) (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include nursery schools, infant day care centers, or trade or technical schools.

[~~(45)~~] (46) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules [~~adopted~~] made by the commission.

(47)(a) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state. [~~It~~]

(b) "State label" includes the department identification mark and inventory control number.

(48)(a) "State store" means a facility for the sale of package liquor located on premises owned or leased by the state of Utah and operated by state employees.

(b) "State store" does not apply to any licensee, permittee, or to package agencies.

(49) "Supplier" means any person selling alcoholic beverages to the department.

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

(51) "Unsaleable liquor merchandise" means merchandise that is unsaleable because it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically determined to be impure, or that contains sediment, or any foreign substance, or is otherwise considered by the department as unfit for sale.

(52) "Visitor" means a person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

(53) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

(54) "Wholesaler" means any person, other than a licensed manufacturer, engaged in the importation for sale, or in the sale of beer, malt liquor, or malted beverages in wholesale or jobbing quantities to retailers.

(55) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added.

(b) "Wine" is considered "liquor" for purposes of this title.

Section 22. Section Amended.

Section 32A-1-202, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-202. Powers and duties.

(1) (a) The council [~~is independently empowered and its principal duty is to~~] shall consider, investigate, and inquire into any or all matters within the scope of or directly related to this title and matters concerned directly or indirectly with the administration and enforcement of laws related to the sale, purchase, and consumption of alcoholic beverages.

(b) The council may not interfere in the direction or management of the state alcoholic products operation.

(2) (a) The council shall prepare an annual report to the governor, the Legislature, and the commission setting forth, in detail, its activities of the previous year.

(b) The council may make recommendations concerning its activities to the governor, the Legislature, the commission, the director, the department, the commissioner of public safety, or to any other person, commission, or agency.

(3) The commission shall meet with the council at least annually and more frequently if requested by the commission or the council.

[~~(4) The Bureau of Narcotics and Alcoholic Beverage Law Enforcement of the Department of Public Safety shall cooperate with the council in all matters concerning this title.~~]

Section 23. Section Amended.

Section 32A-1-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-303. Additional requirements when age is in question.

(1) In addition to the presentation by the holder of an identification card under Section 32A-1-302, any person authorized to sell or otherwise handle alcoholic beverages or products shall require any person whose age is in question to sign a statement that includes the date and number of the person's identification card.

(2) If the person does not have an identification card, he shall sign an additional statement containing additional information as the commissioner of public safety requires.

(3) The statement and identifying information shall be written on a form provided by the commissioner of public safety and filed alphabetically by the person authorized to sell or otherwise handle alcoholic beverages or products before the close of business on the day on which the statement is executed.

(4) The form is subject to examination by any peace officer, representative of the [~~Bureau of Narcotics and Alcoholic Beverage Law Enforcement~~] Investigations Division of the Department of Public Safety, or authorized employee of the department.

Section 24. Section Amended.

Section 41-1a-203, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-203. Prerequisites for registration.

(1) Except as otherwise provided, prior to registration a vehicle must have:

(a) an identification number inspection under Section 41-1a-204;

(b) passed the safety inspection as provided under Sections 41-1a-205 and [~~41-6-158~~] 53-8-205;

(c) passed the emissions inspection as provided under Section 41-6-163.6;

(d) paid property taxes, the in lieu fee, or received a property tax clearance under Section 41-1a-206;

(e) paid the automobile driver education tax required by Section 41-1a-208; and

(f) paid the applicable registration fee under Part 12, Fee and Tax Requirements.

(2) In addition to the requirements in Subsection (1), an owner whose vehicle has not been previously registered or that is currently registered under a previous owner's name must also apply for a valid certificate of title in the owner's name prior to registration.

(3) A new registration, transfer of ownership, or registration renewal under [~~Sections 73-18-6 and~~] Section 73-18-7 may not be issued for a vessel or outboard motor that is subject to the title provisions of this chapter unless a certificate of title has been or is in the process of being issued in the same owner's name.

(4) A new registration, transfer of ownership, or registration renewal under Section 41-22-3 may not be issued for an off-highway vehicle that is subject to the titling provisions of this chapter unless a certificate of title has been or is in the process of being issued in the same owner's name.

Section 25. Section Amended.

Section 41-1a-205, Utah Code Annotated 1953, as renumbered and amended by Chapter 1 and last amended by Chapter 234, Laws of Utah 1992, is amended to read:

41-1a-205. Safety inspection certificate required for renewal or registration of motor vehicle — Exemptions.

(1) A safety inspection certificate, as required by Section [~~41-6-158~~] 53-8-205, or proof of exemption from safety inspection shall be presented at the time of, and as a condition of, registration or renewal of registration of a motor vehicle.

(2) (a) The safety inspection required under this section may be made no more than two months prior to the renewal of registration, except as provided in Subsection (2)(b).

(b) (i) To renew the registration of a used car, the title of which has been transferred or is to be transferred, [~~proof of~~] a safety inspection certificate received by the previous owner during the past two months may be presented to the division.

(ii) If the transferor is a licensed and bonded used motor vehicle dealer, [~~proof of~~] a safety inspection certificate issued in a licensed and bonded motor vehicle dealer's name during the previous six months may be presented to the division.

(3) The following motor vehicles are exempt from this section:

(a) a new motor vehicle when registered the first time, provided a new car predelivery inspection has been made by a dealer; and

(b) a motor vehicle required to be registered under this chapter that bears a dealer plate or other special plate under Title 41, Chapter 3, Part 5, Special Dealer License Plates, except that if the motor vehicle is propelled by its own power and is not being moved for repair or dismantling, the motor vehicle shall comply with Section 41-6-155 regarding safe mechanical condition.

(4) (a) A safety inspection certificate shall be displayed on:

(i) all registered commercial motor vehicles with a gross vehicle weight rating of 26,000 pounds or more;

(ii) a motor vehicle with three or more axles, pulling a trailer, or pulling a trailer with multiple axles;

(iii) a combination unit; and

(iv) a bus or van for hire.

(b) A commercial vehicle under Subsection [~~(4)~~](a) is exempt from the requirements of Subsection (1).

(5) A motor vehicle may be sold and the title assigned to the new owner without a valid safety inspection, but the motor vehicle may not be registered in the new owner's name until the motor vehicle complies with this section.

Section 26. Section Amended.

Section 41-1a-802, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-802. Identification number inspectors — Duties.

(1) The commission, designated officers and employees of the division, a person operating [~~an official~~] a safety inspection station under [~~Sections 41-6-160 and 41-6-161~~] Title 53, Chapter 8, Part 2, Motor Vehicle Safety Inspection Act, and all peace officers of the state are qualified identification number inspectors.

(2) The qualified identification number inspectors shall, upon the application for the first registration in this state of any vehicle:

(a) inspect the identification number of the vehicle;

(b) make a record of the identification number inspection upon an application form provided by the division; and

(c) verify the facts in the application.

Section 27. Section Amended.

Section 41-1a-1401, Utah Code Annotated 1953, as last amended by Chapter 1 and last amended by Chapter 239, Laws of Utah 1992, is amended to read:

41-1a-1401. Report of stolen and recovered vehicles, vessels, and outboard motors by officials.

(1)(a) A peace officer, upon receiving reliable information that a vehicle, vessel, or outboard motor has been stolen, shall immediately report the theft to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety.

(b) An officer, upon receiving information that a vehicle, vessel, or outboard motor, which he has previously reported as stolen, has been recovered, shall immediately report the recovery to the local law enforcement agency and to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division.

(2) A report of a stolen vehicle, vessel, or outboard motor taken by a law enforcement agency shall include a written advisement to the reporting party of the provisions of Section 76-8-506, and a statement affirming the theft of the vehicle, vessel, or outboard motor signed by the person reporting the theft and witnessed by the person taking the report.

(3) The following information regarding the vehicle, vessel, or outboard motor shall be included in the report and shall be sent to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division:

(a) the registered owner;

(b) the person reporting the theft;

(c) the year, make, model, and color;

(d) the identification number;

(e) the estimated present value;

(f) the license number and state of registration;

(g) the date, time, and place of the theft; and

(h) the name, address, telephone number, policy number, and agent's name of the insurance company insuring the vehicle, vessel, or outboard motor.

(4) If a member of any law enforcement agency confirms that a stolen vehicle, vessel, or outboard motor has been recovered, he shall send the following information regarding the recovered vehicle, vessel, or outboard motor to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division:

(a) the date, time, and place of recovery;

(b) the condition of the vehicle, vessel, or outboard motor; and

(c) the names of peace officers and any other persons involved in the recovery.

(5)(a) Upon receipt of a report of a stolen vehicle, vessel, or outboard motor the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division shall place a notice of theft in the master file computer.

(b) Upon receipt of a report that a stolen vehicle, vessel, or outboard motor has been recovered, the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division shall remove the notice of theft of the vehicle, vessel, or outboard motor from the master file computer.

(6)(a) Except as provided in Section 41-1a-1005, the division shall refuse to register or transfer title to a stolen vehicle until the vehicle is recovered.

(b)(i) If the recovered vehicle is a salvage vehicle as defined in Section 41-1a-1001, then Title 41, Chapter 1a, Part 10, Salvage Vehicles - Junk and Dismantled Vehicles, applies.

(ii) The division may issue an unbranded certificate of title for a recovered vehicle if the vehicle has not suffered major damage in more than one major component part.

Section 28. Section Amended.

Section 41-1a-1402, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-1402. Report by owners or lienholders of thefts and recoveries.

(1) (a) The owner, or person having a lien or encumbrance upon a vehicle, vessel, or outboard motor that has been stolen, may notify the law enforcement agency having jurisdiction where the theft occurred.

(b) In the event of an embezzlement the owner or person may make a report only after having procured the issuance of a warrant for the arrest of the person charged with embezzlement.

(2) (a) If a vehicle, vessel, or outboard motor is recovered, an owner or other person who has given any notice under Subsection (1) shall notify the law enforcement agency where the theft or embezzlement was reported.

(b) The law enforcement agency shall notify the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of recovery.

Section 29. Section Amended.

Section 41-3-303, Utah Code Annotated 1953, as renumbered and amended by Chapter 234 and last amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-3-303. Temporary permits — Inspections required before issuance.

(1) A dealer licensed in accordance with this chapter may not issue a temporary permit under Section 41-3-302 unless:

(a) (i) the motor vehicle for which the temporary permit is issued has received and passed the safety inspection required by Section [~~41-6-158~~] 53-8-205 within the previous six months;

(ii) the [~~proof of~~] safety inspection certificate was issued in the name of a licensed and bonded dealer; and

(iii) a copy of the [~~proof of~~] safety inspection certificate is given to the customer; and

(b) the motor vehicle passed the emission inspection test required by Section 41-6-163.6.

(2) Notwithstanding Subsection (1)(a), a dealer may issue a temporary permit without [~~proof of~~] a safety inspection certificate if the motor vehicle complies with the safety inspection as provided in Section 41-1a-205.

(3) Notwithstanding Subsection (1)(b), a dealer may issue a temporary permit without proof of an emission inspection if:

(a) the motor vehicle is exempt from emission inspection as provided in Section 41-6-163.6;

(b) the purchaser is a resident of a county that does not require emission inspections; or

(c) the motor vehicle is otherwise exempt from emission inspections.

(4) Notwithstanding Subsection (1), a dealer may sell a motor vehicle as is without having it safety or emission inspected provided that no temporary permit is issued.

Section 30. Section Amended.

Section 41-6-35.5, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1988, is amended to read:

41-6-35.5. Vehicle accidents — Investigation and report of operator security — Agency action if no security — Surrender of plates — Penalties.

(1) When a peace officer investigating an accident involving a motor vehicle cites the operator of a motor vehicle involved for the alleged violation of any provision of this title, the cited operator shall at the peace officer's request provide evidence of the owner's or operator's security required by Section 41-12a-301.

(2) The peace officer shall record on a form approved by the department:

(a) the information provided by the operator[~~, and also indicate if~~];

(b) whether the operator provided insufficient or no information[~~. The officer shall also note on the form~~]; and

(c) if he finds reasonable cause to believe that any information given is not correct.

(3) The peace officer shall deposit all completed forms with his agency, which shall forward the forms to the department no later than ten days after receipt.

(4) The department shall within ten days of receipt of the forms from the agency take action as follows:

(a) If the operator provided no information under Subsection (1), the department shall take direct action under Subsection [~~41-2-128~~] 53-3-221 (12).

(b) (i) If the peace officer noted or the department determines that there is reasonable cause to believe that the information given under Subsection (1) is not correct, the department shall contact directly the insurance company or other provider of security as described in Subsection (7) and request verification[~~, which the department may require to be in writing, within 30 days of receipt of the request,~~] of the accuracy of the information submitted as of the date of the traffic offense for which the citation was issued.

(ii) The department may require the verification under Subsection (i) to be in writing.

(iii) The insurance company or other provider of security shall return the verification to the department within 30 days of receipt of the request.

(c) If the department does not receive verification within 35 days after mailing the request, or within the 35 days receives notice that the information was

not correct, the department shall take action under Subsection [41-2-128] 53-3-221 (12).

(5) (a) The owner of a vehicle with unexpired license plates for which security is not provided as required under this chapter, shall return the plates for the vehicle to the Motor [Vehicles] Vehicle Division unless specifically permitted by statute to retain them.

(b) If the owner fails to return the plates as required, they shall be confiscated under Section [41-2-134] 53-3-226.

(6) The department may make rules for the enforcement of this section.

(7) In this section, "evidence of owner's or operator's security" means:

(a) the name of the insurance company [which] that issued the insurance policy under Subsection 41-12a-103(9)(a), and the number of the insurance policy;

(b) the name of the surety [which] that issued the surety bond under Subsection 41-12a-103 (9) (b), and the number of the insurance policy;

(c) the number of the certificate of deposit issued by the state treasurer under Section 41-12a-406; or

(d) the number of the certificate of self-funded coverage issued by the department under Section 41-12a-407.

(8) A person is guilty of a class B misdemeanor, and shall be fined not less than $100, who:

(a) when requested to provide security information under Subsection (1) provides false information;

(b) falsely represents to the department that security required under this chapter is in effect; or

(c) sells a vehicle to avoid the penalties of this section as applicable either to himself or a third party.

Section 31. Section Amended.

Section 41-6-37, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1987, is amended to read:

41-6-37. Accident reports — Forms — Contents — Penalties for failure to make report.

(1) (a) The department shall prepare and upon request supply to [police departments] law enforcement agencies, justices of the peace, sheriffs, garages, and other appropriate agencies or individuals, forms for accident reports as required in this article, suitable for the persons required to make the reports and the purposes to be served.

(b) The written reports to be made by persons involved in accidents as requested by investigating officers shall require sufficiently detailed information to disclose the cause, conditions then existing, and the persons and vehicles involved in the traffic accident.

(2) Every accident report requested under Section 41-6-35 shall be made in writing and on the appropriate form approved by the department. It shall contain all of the information required [which] that is available.

(3) (a) The department shall suspend the license or permit to operate a vehicle and any nonresident operating privileges of any person failing to report an accident as requested under Section 41-6-35 until the report has been filed.

(b) The department may extend the suspension, not to exceed 30 days.

(c) Any person convicted of failing to make a report under Section 41-6-35 is punishable under Section [41-6-164] 41-6-12.

Section 32. Section Amended.

Section 41-6-44, Utah Code Annotated 1953, as last amended by Chapter 147, Laws of Utah 1991, is amended to read:

41-6-44. Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license.

(1) (a) [It is unlawful and punishable as provided in this section for any] A person [to] may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control[,]; or [if the person]

(ii) is under the influence of alcohol [or], any drug, or the combined influence of alcohol and any drug to a degree [which] that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first time of a violation of Subsection (1) is guilty of a class B misdemeanor. But if the person has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner, he is guilty of a class A misdemeanor.

(b) In this section, the standard of negligence is that of simple negligence, the failure to exercise that degree of care [which] that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory

jail sentence of not less than 48 consecutive hours nor more than 240 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 24 hours nor more than 50 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol rehabilitation facility.

(5) (a) Upon a second conviction for a violation committed within six years of a prior violation under this section or under a local ordinance similar to this section adopted in compliance with Section 41-6-43 the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours nor more than 720 hours.

(b) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 80 hours nor more than 240 hours.

(c) In addition to the jail sentence or community-service work program, the court shall order the person to participate in an assessment and educational series at a licensed alcohol rehabilitation facility. The court may, in its discretion, order the person to obtain treatment at an alcohol rehabilitation facility.

(6) (a) A third conviction for a violation committed within six years of two prior violations under this section or under a local ordinance similar to this section adopted in compliance with Section 41-6-43 is a:

(i) class B misdemeanor except as provided in Subsections [(6)](a)(ii) and (7); and

(ii) class A misdemeanor if both of the prior convictions are for violations committed after April 23, 1990.

(b) (i) Under Subsection [(6)](a)(i) the court shall as part of any sentence impose a mandatory jail sentence of not less than 720 nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol rehabilitation facility.

(c) (i) Under Subsection [(6)](a)(ii) the court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(ii) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of a chemical dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol rehabilitation facility.

(7) (a) A fourth or subsequent conviction for a violation committed within six years of the prior violations under this section is a third degree felony if at least three prior convictions are for violations committed after April 23, 1990. The prior convictions may be under this section or under a local ordinance similar to this section adopted in compliance with Section 41-6-43.

(b) The court shall as part of any sentence impose a fine of not less than $1,000 and impose a mandatory jail sentence of not less than 720 hours nor more than 2,160 hours.

(c) The court may, as an alternative to jail, require the person to work in a community-service work program for not less than 240 nor more than 720 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of a chemical dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment.

(d) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol rehabilitation facility.

(8) (a) [No] The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation of this section or a local ordinance similar to this section adopted in compliance with Subsection 41-6-43 (1) may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, if it is a second or subsequent conviction for a violation committed within six years of a prior violation, until the convicted person has furnished evidence satisfactory to the department that all fines and fees, including fees for restitution and rehabilitation costs, assessed against the person have been paid.

(9) (a) (i) The provisions in Subsections (4), (5), (6), and (7) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol rehabilitation facility; ob-

tain, mandatorily, treatment at an alcohol rehabilitation facility; or do any combination of those things, apply to a conviction for a violation of Section 41-6-45 that qualifies as a prior conviction under Subsection (10).

(ii) The court shall render the same order regarding education or treatment at an alcohol rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-45 that qualifies as a prior conviction under Subsection (10), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections [~~41-6-44~~] (4), (5), (6), and (7).

(b) For purposes of determining whether a conviction under Section 41-6-45 which qualified as a prior conviction under Subsection (10), is a first, second, or subsequent conviction under this subsection, a previous conviction under either this section or Section 41-6-45 is considered a prior conviction.

(c) Any alcohol rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(10)(a)(i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45 or of an ordinance enacted under Section 41-6-43 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol [~~or~~], drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts which shows whether there was consumption of alcohol [~~or~~], drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-45 as follows. If the court accepts the defendant's plea of guilty or no contest to a charge of violating Section 41-6-45, and the prosecutor states for the record that there was consumption of alcohol [~~or~~], drugs, or a combination of both, by the defendant in connection with the violation, the resulting conviction is a prior conviction for the purposes of Subsections (5), (6), and (7).

(c) The court shall notify the department of each conviction of Section 41-6-45 [which] that is a prior offense for the purposes of Subsections (5), (6), and (7).

(11) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(12) The Driver License Division of the Department of Public Safety shall suspend for 90 days the operator's license of any person convicted for the first time under Subsection (1), and shall revoke for one year the license of any person convicted of any subsequent offense under Subsection (1) if the violation is committed within a period of six years from the date of the prior violation. The [department] Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section [~~41-2-130~~] 53-3-223, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

Section 33. Section Amended.

Section 41-6-44.4, Utah Code Annotated 1953, as enacted by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.4. Person under 21 may not operate vehicle with detectable alcohol in body — Chemical test procedures — Temporary license — Hearing and decision — Suspension of license or operating privilege — Fees — Judicial review.

(1)(a) As used in this section:

(i) "Local substance abuse authority" has the same meaning as provided in Section 62A-8-101.

(ii) "Measurable alcohol" does not include naturally occurring alcohol;

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6-44(2).

(c) A person whose blood, breath, or urine alcohol concentration is .08 grams or greater while operating or in actual physical control of a vehicle violates Section 41-6-44.

[~~(1)~~](2)(a) A person [less] younger than 21 years of age whose blood, breath, or urine alcohol concentration is measurable up to .08 grams may not operate or be in actual physical control of a vehicle [~~while there is any measurable or detectable alcohol, other than naturally occurring alcohol, in his body with a blood, breath, or urine alcohol concentration of less than .08 grams as calculated under Subsection 41-6-44(2)~~].

(b)(i) A person with a valid operator license who violates Subsection (a), in addition to any other applicable penalties arising out of the incident, shall have his operator license denied or suspended as provided in Subsection (ii).

(ii)(A) For a first offense under Subsection [~~(i)~~](a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the [~~31st~~] 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection [~~(i)~~](a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a period of one year beginning on the [~~31st~~] 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the [department] Driver License Division may not issue the person an operator license or learner's permit.

[~~(2)~~] (3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection [~~(1)~~] (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection [~~(1)~~] (2)(a) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection [~~(1)~~] (2)(a), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection [~~(1)~~] (2)(a), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection [~~(1)~~] (2).

[~~(3)~~] (4) When the officer serves immediate notice on behalf of the Driver License Division, he shall:

(a) take the Utah license certificate or permit, if any, of the operator;

(b) issue a temporary license certificate effective for only [30] 29 days if the driver had a valid operator's license; and

(c) supply to the operator, on a form to be approved by the Driver License Division, basic information regarding how to obtain a prompt hearing before the Driver License Division.

[~~(4)~~] (5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection [~~(3)~~] (4)(b).

[~~(5)~~] (6) The peace officer serving the notice shall send to the Driver License Division within five days after the date of arrest and service of the notice:

(a) the person's license certificate, if any;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection [~~(1)~~] (2).

[~~(6)~~] (7) (a) (i) Upon written request, the Driver License Division shall grant to the person an opportunity to be heard within [30] 29 days after the date of arrest under Section 31A-12-209.

(ii) The request shall be made within ten days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of Subsection [~~(1)~~] (2)(a);

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) In connection with a hearing the Driver License Division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(e) One or more members of the Driver License Division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the Driver License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

(g) After the hearing, the Driver License Division shall order whether the person:

(i) with a valid license to operate a motor vehicle will have his license denied or not or suspended or not; or

(ii) without a valid operator license will be refused a license under Subsection [~~(1)~~] (2)(c).

(h) If the person for whom the hearing is held fails to appear before the Driver License Division as required in the notice, the division shall order whether the person shall have his license denied, suspended, or not denied or suspended, or whether an operator license will be refused or not refused.

[~~(7)~~] (8) (a) Following denial or suspension the Driver License Division shall assess against a person, in addition to any fee imposed under Subsection [~~41-2-112(15)~~] 53-3-205(14), a fee under Section [~~41-2-103~~] 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License Division hearing or court decision that the suspension was not proper.

(b) A person whose operator license has been denied, suspended, or postponed by the Driver License Division under this section may file a petition with-

in 30 days after the suspension for a hearing on the matter which, if held, is governed by Section [41-2-131] 53-3-224.

[(8)] (9) After reinstatement of an operator license for a first offense under this section, a report authorized under Section [41-2-119] 53-3-104 may not contain evidence of the denial or suspension of the person's operator license under this section if he has not been convicted of any other offense for which the denial or suspension may be extended.

[(9)] (10) The provisions of Sections 41-12a-411 and 41-12a-412 do not apply to a denial or suspension imposed for a first offense under this section if the denial or suspension is based solely on a violation of Subsection [(1)] (2)(a).

[(10)] (11) (a) In addition to the penalties in Subsection [(1)] (2), a person who violates Subsection [(1)] (2)(a) shall be referred by the Driver License Division [of the Department of Public Safety] to the local substance abuse authority[, as defined in Section 62A-8-101,] for an assessment and recommendation for appropriate action.

(b) (i) Reinstatement of the person's [driver] operator license or the right to obtain [a] an operator license is contingent upon successful completion of the action recommended by the local substance abuse authority.

(ii) The local substance abuse authority's recommended action shall be determined by an assessment of the person's alcohol abuse and may include:

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

(iii) Successful completion of the recommended action shall be determined by standards established by the Division of Substance Abuse.

(c) At the conclusion of the penalty period imposed under Subsection [(1)] (2), the local substance abuse authority shall notify the Driver License Division of the person's status regarding completion of the recommended action.

(d) The local substance abuse authorities shall cooperate with the Driver License Division in:

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

(iii) notifying the Driver License Division about the person's status regarding completion of the recommended action.

(e) (i) The local substance abuse authority is responsible for:

(A) the cost of the assessment of the person's alcohol abuse; and

(B) for making a referral to an appropriate program on the basis of the findings of the assessment.

(ii) (A) The person who violated Subsection [(1)] (2)(a) is responsible for all costs and fees associated with the recommended program to which the person is referred.

(B) The costs and fees under Subsection (A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services.

Section 34. Section Amended.

Section 41-6-44.8, Utah Code Annotated 1953, as last amended by Chapter 147, Laws of Utah 1991, is amended to read:

41-6-44.8. Municipal attorneys for specified offenses may prosecute for certain DUI offenses and driving while license suspended or revoked.

The following class A misdemeanors may be prosecuted by attorneys of cities and towns, as well as by prosecutors authorized elsewhere in this code to prosecute these alleged violations:

(1) alleged class A misdemeanor violations of Subsection 41-6-44 (6)(a)(ii); and

(2) alleged violations of Section [41-2-136] 53-3-227, which consist of the person operating a vehicle while his operator's license is suspended or revoked for a violation of Section 41-6-44, a local ordinance which complies with the requirements of Section 41-6-43, Section 41-6-44.10, Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of those sections or ordinances.

Section 35. Section Amended.

Section 41-6-44.10, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1992, is amended to read:

41-6-44.10. Implied consent to chemical tests for alcohol or drug — Number of tests — Refusal — Warning, report — Hearing, revocation of license — Appeal — Person incapable of refusal — Results of test available — Who may give test — Evidence.

(1) (a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44.

(b) The peace officer determines which of the tests are administered and how many of them are administered, except the officer shall request that either the blood or urine test be administered under Section 76-5-207. If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered. The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle. Following this warning, unless the person immediately requests that the chemical test or tests as offered by a peace officer be administered, no test may be given.

(b) A peace officer shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle. When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only [30] 29 days; and

(iii) supply to the operator, on a form approved by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if approved as to form by the Driver License Division, serve also as the temporary license.

(d) The peace officer shall submit a signed report, within five days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44 or 41-6-44.4 or while under the influence of alcohol [or], any drug, or combination of alcohol and any drug under Section 41-6-44 and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e) (i) A person who has been notified of the Driver License Division's intention to revoke his license under this section is entitled to a hearing.

(ii) A request for the hearing shall be made in writing within ten days after the date of the arrest. [~~Within 20 days after receiving a written request, the division shall notify the person of his opportunity to be heard as early as practicable.~~]

(iii) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(iv) If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in [~~Utah shall be~~] the state is revoked for a period of one year beginning on the [~~31st~~] 30th day after the date of arrest.

(f) (i) If a hearing is requested by the person and conducted by the Driver License Division, and the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the Driver License Division as required in the notice, the Driver License Division shall revoke his license or permit to operate a motor vehicle in Utah for one year, beginning on the date the hearing is held.

(ii) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection [~~41-2-112(15)~~] 53-3-205(14), a fee under Section [~~41-2-103~~] 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

(iii) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this subsection that the revocation was improper.

(g) (i) Any person whose license has been revoked by the Driver License Division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the person resides.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to the taking of a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer

has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol [~~or~~], any drug, or combination of alcohol and any drug.

Section 36. Section Amended.

Section 41-6-163.6, Utah Code Annotated 1953, as last amended by Chapters 95, 111, and 276, Laws of Utah 1992, is amended to read:

41-6-163.6. Emissions inspection — County program.

(1) The legislative body of each county required under federal law to utilize an emissions inspection and maintenance program for motor vehicles shall:

(a) [~~after December 31, 1983,~~] require that a certificate of emissions inspection [~~or~~], a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented as a condition of registration or renewal of registration; and

(b) [~~after June 30, 1992,~~] require that all motor vehicles owned by or being used by all departments, instrumentalities, agencies, and employees of the federal government, the state and any of its agencies, and all political subdivisions of the state including school districts and registered or principally operated in that county comply with [~~the provisions of~~] this section.

(2) The legislative body of a county identified in Subsection (1) shall make rules, no stricter than federal requirements, to facilitate compliance with federal requirements regarding emissions standards, test procedures, inspections stations, repair requirements and dollar limits for correction of deficiencies, and certificates of emissions inspections. The rules may allow for a phase-in of the program by geographical area.

(3) [All agricultural] Agricultural implements of husbandry and any motor vehicle that qualifies for registration as a farm truck under Section 41-1a-1206 and has a gross vehicle weight rating of 12,001 pounds or more are exempt from this section.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt any pickup truck, as defined in Section 41-1a-102, having a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section if the registered owner of the pickup truck signs and submits to the legislative body an affidavit stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as green belt property under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits an affidavit under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(c) The legislative body of a county granting exemptions under this subsection shall report to the Health and Environment Interim Committee before November 1, 1993, regarding the number of exemptions granted between July 1, 1992, and July 1, 1993, and any recommendations regarding the operation of this subsection.

(5) (a) Each college or university located in a county subject to this section shall[~~: (i)~~] require its students and employees who park any motor vehicle on its campus or property that is not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body[~~; and~~].

[~~(ii) implement this subsection regarding both students and employees prior to the first day of class of the fall quarter or semester of 1992.~~]

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this subsection.

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The emissions inspection shall be annual and, if Section [~~41-6-158~~] 53-8-205 regarding [~~automobile~~] safety inspections is in effect, within the same time limit applicable to [~~an~~] a safety inspection under Section [~~41-6-158~~] 53-8-205.

(7) (a) Counties identified in Subsection (1) shall collect information about and monitor the program.

(b) The counties shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by that designated committee to identify program needs, including funding needs.

Section 37. Section Amended.

Section 41-6-182, Utah Code Annotated 1953, as last amended by Chapter 156, Laws of Utah 1990, is amended to read:

41-6-182. Driver and front seat passengers.

(1) In this section "motor vehicle" has the same meaning as provided in Section 41-6-148.20.

[~~(1)~~] (2) Except as provided in Section 41-6-148.20 for a child using a child restraint device, the driver and front seat passengers of a motor vehicle[~~, as defined in Section 41-6-148.20,~~] operated on a [~~street or~~] highway [~~in this state~~] shall wear a properly adjusted and fastened safety belt system[~~, which~~] that meets standards set by the commissioner of the Department of Public Safety.

[~~(2)~~] (3) Except as provided in Section 41-6-148.20 for a child using a child restraint device, the driver of a motor vehicle shall secure, or cause to be secured, a properly adjusted and fastened safety seat belt system on any passenger in the front seat who is younger than 18 years of age.

Section 38. Section Amended.

Section 41-6-185, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

41-6-185. Penalty for violation.

(1) A person who violates Section 41-6-182 shall be fined $10.

(2) Points for a motor vehicle reportable violation, as defined under Section [~~41-2-102~~] 53-3-102, may not be assessed against any person for a violation of Section 41-6-182.

Section 39. Section Amended.

Section 41-6-189, Utah Code Annotated 1953, as enacted by Chapter 229, Laws of Utah 1992, is amended to read:

41-6-189. Tow truck business requirements.

A person who operates a tow truck business shall:

(1) comply with equipment requirements under Section 41-6-190;

(2) register with the Public Service Commission and obtain a permit number by filing a certificate of insurance, as required under Section 54-6-42.5;

(3) display his Public Service Commission permit number, and other information on each tow truck, as required under Section 54-6-49;

(4) ensure that all his tow truck drivers are properly:

(a) trained to operate tow truck equipment; and

(b) licensed, as required under Title [~~41~~] 53, Chapter [~~2~~] 3, Uniform [~~Operator~~] Driver License Act; and

(5) obtain and display a current certificate of inspection for each tow truck, as required under Section 41-6-190.

Section 40. Section Amended.

Section 41-12a-103, Utah Code Annotated 1953, as last amended by Chapter 203, Laws of Utah 1991, is amended to read:

41-12a-103. Definitions.

As used in this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Judgment" means any judgment [~~which~~] that is final by:

(a) expiration without appeal of the time within which an appeal might have been perfected[~~,~~]; or [~~by~~]

(b) final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action for damages:

(i) arising out of the ownership, maintenance, or use of any motor vehicle, [~~for damages,~~] including damages for care and loss of services[~~,~~] because of bodily injury to or death of any person, or because of injury to or destruction of property including the loss of use [~~thereof,~~] of the property; or [~~upon a cause of action~~]

(ii) on [~~an~~] a settlement agreement [~~of settlement for such damages~~].

(3) "License" or "license certificate" have the same meanings as under Section [~~41-2-102~~] 53-3-102.

(4) (a) "Motor vehicle" means every self-propelled vehicle [~~which~~] that is designed for use upon a highway, including trailers and semitrailers designed for use with [such] other motorized vehicles[~~, except~~].

(b) "Motor vehicle" does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers, and every vehicle [which] that is propelled by electric power obtained from overhead wires but not operated upon rails.

(5) "Nonresident" means every person who is not a resident of Utah.

(6) "Nonresident's operating privilege" means the privilege conferred upon a person who is not a resident of Utah by the laws of Utah pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in Utah.

(7) "Operator" means every person who is in actual physical control of a motor vehicle.

(8) "Owner" means:

(a) a person who holds legal title to a motor vehicle[~~, is~~];

(b) a lessee in possession[~~, or~~];

(c) a conditional vendee or lessee if a motor vehicle is the subject of a conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession in the conditional vendee or lessee[~~;~~]; or

(d) a mortgagor if a motor vehicle is the subject of a mortgage with the mortgagor entitled to possession[~~, then the conditional vendee, lessee, or mortgagor is considered to be the owner for the purposes of this chapter~~].

(9) "Owner's or operator's security," "owner's security," or "operator's security" means any of the following:

(a) an insurance policy or combination of policies conforming to Section 31A-22-302, which is issued by an insurer authorized to do business in Utah;

(b) a surety bond issued by an insurer authorized to do a surety business in Utah in which the surety is subject to the minimum coverage limits and other requirements of policies conforming to Section 31A-22-302, which names the department as a creditor under the bond for the use of persons entitled to the proceeds of the bond;

(c) a deposit with the state treasurer of cash or securities complying with Section 41-12a-406;

(d) maintaining a certificate of self-funded coverage under Section 41-12a-407;

(e) a policy conforming to Section 31A-22-302 issued by the Risk Management Fund created in Section 63-1-47.

(10) "Registration" means the issuance of the certificates and registration plates issued under the laws of Utah pertaining to the registration of motor vehicles.

(11) "Self-insurance" has the same meaning as provided in Section 31A-1-301.

Section 41. Section Amended.

Section 41-22-10.9, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1989, is amended to read:

41-22-10.9. License or safety certificate required for operation — Penalty.

(1) [~~No~~] A person may not operate an off-highway vehicle on any land, trail, street, or highway designated as open to off-highway vehicle use or in the manner prescribed by Section 41-22-10.3 unless the person possesses:

(a) a valid motor vehicle operator's license, as provided in Title [~~41~~] 53, Chapter [~~2~~] 3, Uniform Driver License Act; or

(b) the appropriate safety certificate issued by the division under this chapter.

(2) (a) Any person convicted of a violation of this section is guilty of an infraction and shall be fined not more than $50 per offense.

(b) It is a defense to a charge under this section, if the person charged produces in court a license or an appropriate safety certificate issued to him and valid at the time of his citation or arrest.

(3) The requirements of this section [~~shall~~] apply only to Utah residents.

Section 42. Section Amended.

Section 49-4-203, Utah Code Annotated 1953, as last amended by Chapters 225 and 285, Laws of Utah 1990, is amended to read:

49-4-203. Eligibility for membership in the system.

All employees who perform covered public safety services for any employing unit, except those withdrawing from coverage as provided by this chapter, shall become members of the retirement system as follows:

(1) Any employee who is employed to perform public safety services for an employer covered by this chapter on or after July 1, 1969, shall become a member of the system effective on the date of employment.

(2) (a) Any employee engaged in performing public safety services for a department or political subdivision on the date it becomes a participant in the system under this chapter shall become a member of the system as of the date of coverage. Each new public safety employee of the covered unit shall thereafter become a member of the system effective on the date of employment.

(b) In cities, counties, or other employing units of government [~~which~~] that have public safety and fire fighter personnel where cross-training and duty is required, the employing unit may enroll those dual purpose personnel in the retirement system in which the greatest amount of duty time is contemplated and actually worked. The personnel shall be full-time public safety or fire fighter employees of the employing unit.

(3) (a) The board may by rule establish other peace officer groups for purposes of:

(i) recommending eligibility for coverage under this system; and

(ii) recommending contribution rates.

(b) Each employing unit covered by this system shall annually submit to the retirement office a schedule indicating the positions to be covered under this system in accordance with Subsection 49-4-103 (6). The retirement office may require documentation to justify the inclusion of any position under this system. If there is a dispute between the retirement office and an employing unit or employee over any position to be covered, the disputed position shall be submitted to the [~~council on~~] Peace Officer Standards and Training Council established

under Section [~~67-15-11~~] 53-6-106 for determination.

(4) Employees who have performed public safety service and who then transfer or are promoted to administration positions not covered by this system shall continue to earn public safety service credit under this chapter as long as they remain employed in the same department.

Section 43. Section Amended.

Section 49-4a-203, Utah Code Annotated 1953, as last amended by Chapters 225 and 285, Laws of Utah 1990, is amended to read:

49-4a-203. Eligibility for membership in the system.

(1) Any person entering full-time employment in a state public safety position after the effective date of this chapter shall automatically become a member of the noncontributory retirement system.

(2) Any person in full-time employment in a state public safety position prior to the effective date of this system may either become a member of this noncontributory system or remain a member of the Public Safety Retirement System established under Title 49, Chapter 4, Public Safety Retirement Act, by following the procedures established by the board pursuant to this chapter.

(3)(a) Membership in the noncontributory system is optional for political subdivisions, except that once a political subdivision elects to participate in the noncontributory system that election is final and binding upon the political subdivision.

(b) Persons entering public safety employment with political subdivisions [~~which~~] that elect to participate in the noncontributory system after the effective date of this chapter shall automatically become members of the noncontributory retirement system.

(c) Any person in full-time employment with the political subdivision prior to that election to participate in this system may either become a member of the noncontributory retirement system or remain a member of the Public Safety Retirement System established under Title 49, Chapter 4, by following the procedures established by the board pursuant to this chapter.

(4) In cities, counties, or other employing units of government [which] that have public safety and fire fighter personnel where cross-training and duty is required, the employing unit may enroll those dual purpose personnel in the retirement system in which the greatest amount of duty time is contemplated and actually worked in accordance with Subsection (3). The personnel shall be full-time public safety or fire fighter employees of the employing unit. New public safety employing units after July 1, 1989, are covered under this chapter.

(5)(a) The board may by rule establish other peace officer groups for purposes of:

(i) recommending eligibility for coverage under this system; and

(ii) recommending contribution rates.

(b) Each employing unit covered by this system shall annually submit to the retirement office a schedule indicating the positions to be covered under this system in accordance with Subsection 49-4a-103 (5). The retirement office may require documentation to justify the inclusion of any position under this system. If there is a dispute between the retirement office and an employing unit or employee over any position to be covered, the disputed position shall be submitted to the [~~Council on~~] Peace Officer Standards and Training Council established under Section [~~67-15-11~~] 53-6-106 for determination.

(6) Employees who have performed public safety service and who then transfer or are promoted to administration positions not covered by this system shall continue to earn public safety service credit under this chapter as long as they remain employed in the same department.

Section 44. Section Enacted.

Section 53-1-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 1. Administration

Part 1. Department Administration

53-1-101. Title.

This title is known as the "Public Safety Code."

Section 45. Section Enacted.

Section 53-1-102, Utah Code Annotated 1953, is enacted to read:

53-1-102. Definitions.

(1) As used in this title:

(a) "Commissioner" means the commissioner of public safety appointed under Section 53-1-107.

(b) "Department" means the Department of Public Safety created in Section 53-1-103.

(c) "Law enforcement agency" means an entity of the federal government, a state, or a political subdivision of a state, including a state institution of higher education, that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(d) "Law enforcement officer" means any officer certified in accordance with Title 77, Chapter 1a, Peace Officer Designation.

(e) "Motor vehicle" means every self-propelled vehicle and every vehicle propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheel chairs and vehicles moved solely by human power.

(f) "Peace officer" has the same meaning as provided in Section 77-1a-1.

(g) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(h) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(2) The definitions provided in Subsection (1) are to be applied throughout this title in addition to definitions that are applicable to specific chapters or parts.

Section 46. Section Renumbered and Amended.

Section 53-1-103, Utah Code Annotated 1953, which is renumbered from Section 41-13-1, Utah Code Annotated 1953, is amended to read:

[~~41-13-1~~] 53-1-103. **Creation of department.**

(1) There is [hereby] created [~~a department of the~~] within state government [~~which shall be known and designated as~~] the Department of Public Safety[; ~~which shall consist of a commissioner of public safety and of such officers and employees as may be required~~].

(2) The department has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities specified in this title.

Section 47. Section Enacted.

Section 53-1-104, Utah Code Annotated 1953, is enacted to read:

53-1-104. Boards, councils, divisions, and offices.

(1) The following are the policymaking boards within the department:

(a) the Driver License Medical Advisory Board, created in Section 53-3-303;

(b) the Detection of Deception Board, created in Section 53-5-303;

(c) the Security Licensing Board, created in Section 53-5-403;

(d) the Concealed Weapon Review Board, created in Section 53-5-703;

(e) the Utah Fire Prevention Board, created in Section 53-7-203; and

(f) the Liquified Petroleum Gas Board, created in Section 53-7-304.

(2) The following are the councils within the department:

(a) the Peace Officer Standards and Training Council, created in Section 53-6-106; and

(b) the Motor Vehicle Safety Inspection Advisory Council, created in Section 53-8-203.

(3) The following are the divisions within the department:

(a) the Administrative Services Division, created in Section 53-1-203;

(b) the Management Information Services Division, created in Section 53-1-303;

(c) the Comprehensive Emergency Management Division, created in Section 53-2-103;

(d) the Driver License Division, created in Section 53-3-103;

(e) the Investigations Division, created in Section 53-4-103;

(f) the Law Enforcement and Technical Services Division, created in Section 53-5-103;

(g) the Peace Officers Standards and Training Division, created in Section 53-6-103;

(h) the State Fire Marshal Division, created in Section 53-7-103; and

(i) the Utah Highway Patrol Division, created in Section 53-8-103.

(4) The Office of Executive Protection is created in Section 53-1-112.

Section 48. Section Enacted.

Section 53-1-105, Utah Code Annotated 1953, is enacted to read:

53-1-105. Rulemaking — Adjudicative proceedings — Meetings.

The commissioner and the department and its boards, councils, divisions, and offices shall comply with the procedures and requirements of:

(1) Title 63, Chapter 46a, Utah Administrative Rulemaking Act, in their rulemaking;

(2) Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings; and

(3) Title 52, Chapter 4, Open and Public Meetings, in their meetings.

Section 49. Section Enacted.

Section 53-1-106, Utah Code Annotated 1953, is enacted to read:

53-1-106. Department duties — Powers.

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules and Regulations, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6-102; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6-115;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19-210;

(c) aid in enforcement efforts to combat drug trafficking using funds appropriated under Section 58-37-20;

(d) as part of the annual budget hearings, provide the Transportation and Public Safety Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under Section 58-37-20;

(e) meet with the Department of Administrative Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations, as required by Section 63-1-56;

(f) provide assistance to the Crime Victims' Reparations Board and Reparations Office in conducting research or monitoring victims' programs, as required by Section 63-63-5;

(g) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association, as required by Section 63-63-11; and

(h) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63-5-5.

(2)(a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63-38-3.

Section 50. Section Renumbered and Amended.

Section 53-1-107, Utah Code Annotated 1953, which is renumbered from Section 41-13-2, Utah Code Annotated 1953, as last amended by Chapter 114, Laws of Utah 1991, is amended to read:

[~~41-13-2~~] 53-1-107. Commissioner of public safety — Appointment — Qualifications — Salary.

(1) The chief executive officer of the department [~~of Public Safety~~] is the commissioner [~~of public safety~~].

(2)(a) Every fourth year after the year [~~1951, following the convening of the general session of the Legislature in that year~~] 1989, the governor shall appoint a commissioner [~~of public safety~~] with the advice and consent of the Senate.

(b) The commissioner shall serve for a period of four years from July 1 of the year of his appointment.

(3) The commissioner shall:

(a) be an individual of recognized executive and administrative capacity[~~. The individual shall~~];

(b) be selected solely with regard to his qualifications and fitness to discharge the duties of the commissioner's office[~~. The individual selected shall~~];

(c) be of high moral character[~~;~~];

(d) be of good standing in the community in which he lives[~~. The individual shall~~]; and

(e) have been a resident of this state for a period of at least five years immediately prior to his appointment.

(4) The commissioner shall devote full time to the duties of the office. [~~The commissioner shall serve for a period of four years from July 1 of the year of his appointment.~~]

(5) The governor shall establish the commissioner's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Section 51. Section Enacted.

Section 53-1-108, Utah Code Annotated 1953, is enacted to read:

53-1-108. Commissioner's powers and duties.

(1) In addition to the responsibilities contained in this title, the commissioner shall:

(a) administer and enforce this title and Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(b) appoint deputies, inspectors, examiners, clerical workers, and other employees as required to properly discharge the duties of the department;

(c) make rules:

(i) governing emergency use of signal lights on private vehicles;

(ii) allowing privately owned vehicles to be designated for part-time emergency use, as provided in Section 41-6-1.5; and

(iii) specifying approved maximum altered heights for vehicles, as required by Section 41-6-148.31;

(d) set standards for safety belt systems, as required by Section 41-6-182;

(e) serve as the chairman of the Disaster Emergency Advisory Council, as required by Section 63-5-4; and

(f) designate vehicles as "authorized emergency vehicles," as required by Section 41-6-1.

(2) The commissioner may:

(a) subject to the approval of the governor, establish division headquarters at various places in the state;

(b) issue to a special agent a certificate of authority to act as a peace officer and revoke that authority for cause, as authorized in Section 56-1-21.5;

(c) create specialized units within the commissioner's office for conducting internal affairs and aircraft operations as necessary to protect the public safety;

(d) cooperate with any recognized agency in the education of the public in safety and crime prevention and participate in public or private partnerships, subject to Subsection (3);

(e) cooperate in applying for and distributing highway safety program funds; and

(f) receive and distribute federal funding to further the objectives of highway safety in compliance with the Federal Assistance Management Program Act.

(3)(a) Money may not be expended under Subsection (2)(d) for public safety education unless it is specifically appropriated by the Legislature for that purpose.

(b) Any recognized agency receiving state money for public safety shall file with the auditor of the state an itemized statement of all its receipts and expenditures.

Section 52. Section Renumbered and Amended.

Section 53-1-109, Utah Code Annotated 1953, which is renumbered from Section 63-1-39, Utah Code Annotated 1953, as last amended by Chapter 227, Laws of Utah 1988, is amended to read:

[~~63-1-39~~] 53-1-109. Security for capitol complex — Traffic and parking rules enforcement for Division of Facilities Construction and Management — Security personnel.

(1) The [~~Department of Public Safety~~] commissioner, in cooperation with the director of the Division of Facilities Construction and Management, shall:

(a) provide for the security of grounds and buildings of the capitol complex; and

(b) enforce traffic provisions under Title 41, Chapter 6, Traffic Rules and Regulations, and parking rules, as adopted by the Division of Facilities Construction and Management, for all grounds and buildings under the jurisdiction of the Division of Facilities Construction and Management.

(2) Security personnel[~~, as considered necessary by the commissioner of public safety under~~] required in Subsection (1), shall be special function officers [~~under~~] as defined in Section 77-1a-4, or security guards [~~under Title 41, Chapter 13a~~] as defined in Chapter 5, Part 4, Security Personnel Licensing and Regulation Act.

Section 53. Section Renumbered and Amended.

Section 53-1-110, Utah Code Annotated 1953, which is renumbered from Section 41-13-10, Utah Code Annotated 1953, as enacted by Chapter 102, Laws of Utah 1967, is amended to read:

[~~41-13-10~~] 53-1-110. Compilation of highway, traffic, and driver licensing laws — Printing and distribution — Fees.

(1)(a) The [~~director of public safety~~] commissioner shall[~~, as soon as practicable after each regular session of the legislature,~~] compile an edition of the general highway, traffic, and driver licensing laws of the state as soon as practicable after each regular session of the Legislature. [~~Such~~]

(b) The edition shall include [~~such~~] laws [~~as may have been~~] enacted or amended by the most recent session of the Legislature.

(2)(a) The [~~Department~~] Division of Finance [~~is authorized and directed to~~] shall print a sufficient quantity of [~~such~~] the compiled highway, traffic, and driver licensing laws [sufficient] to distribute copies to all state, county, and local enforcement agencies, courts, legislators, and other agencies as necessary.

(b) A fee may be assessed for each copy of [such] the compilation issued by the [department] Division of Finance. The fee shall be established by the Division of Finance in accordance with Section 63-38-3.

Section 54. Section Renumbered and Amended.

Section 53-1-111, Utah Code Annotated 1953, which is renumbered from Section 63-87-1, Utah Code Annotated 1953, as enacted by Chapter 81, Laws of Utah 1992, is amended to read:

[~~63-87-1~~] 53-1-111. Crime prevention month — Department of Public Safety to coordinate.

(1) The month of October [~~shall be~~] is designated as "Crime Prevention Month."

(2) The department [~~of Public Safety~~] shall coordinate all activities, special programs, and promotional information to heighten public awareness and involvement in the prevention of crime in each community.

Section 55. Section Renumbered and Amended.

Section 53-1-112, Utah Code Annotated 1953, which is renumbered from Section 41-13-12, Utah Code Annotated 1953, as enacted by Chapter 329, Laws of Utah 1983, is amended to read:

[~~41-13-12~~] 53-1-112. Office of Executive Protection — Creation.

There is created within the department [~~of public safety an~~] the Office of Executive Protection.

Section 56. Section Renumbered and Amended.

Section 53-1-113, Utah Code Annotated 1953, which is renumbered from Section 41-13-13, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1989, is amended to read:

[~~41-13-13~~] 53-1-113. Office of Executive Protection — Personnel.

(1) The commissioner [~~of public safety~~] shall select personnel for the Office of Executive Protection primarily from the ranks of the [~~state~~] Highway Patrol without competitive examination.

(2) Selection of personnel from other than these ranks may be made at the commissioner's discretion, provided the persons selected are [~~certified~~] peace officers.

Section 57. Section Renumbered and Amended.

Section 53-1-114, Utah Code Annotated 1953, which is renumbered from Section 41-13-14, Utah Code Annotated 1953, as enacted by Chapter 329, Laws of Utah 1983, is amended to read:

[~~41-13-14~~] 53-1-114. Office of Executive Protection — Security and protection for governor and family — Protection to other

officials — Closure of governor's premises or office — Violation of order of closure.

(1) The Office of Executive Protection shall provide all necessary security and protection for the governor and the governor's immediate family.

(2)(a) Subject to the direction of the commissioner [~~of public safety~~], the Office of Executive Protection may provide protection to other public officials.

(b) That protection may not extend for more than 15 days without review and approval by majority vote of the president of the Senate, the speaker of the House, and the commissioner [~~of public safety~~].

(c) Review and approval by the same majority vote shall be required at the end of each 15-day period.

(3) (a) Members of the Office of Executive Protection may order the closure of or restriction of access to the governor's premises or office when in their discretion that action becomes necessary to insure the safety of persons within. An order of closure or restriction shall not remain in effect for more than three consecutive days without approval of the commissioner [~~of public safety~~].

[~~(a)~~] (b) The order shall be posted by placing a copy of it at the entrance to the premises of the governor's residence or at the entrance to the governor's office. The order shall specify the extent of closure or restriction.

[~~(b) Any~~] (c) A person who intentionally or knowingly enters or remains within the premises of the governor's residence or the governor's office in violation of an order of closure or of restricted access [~~shall be~~] is guilty of a class B misdemeanor.

Section 58. Section Renumbered and Amended.

Section 53-1-115, Utah Code Annotated 1953, which is renumbered from Section 41-13-15, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~41-13-15~~] 53-1-115. Office of Executive Protection — Closure of property to protect governor — Violation of order of closure.

(1) (a) The Office of Executive Protection may order closure or restriction of access to any public property when in the discretion of the [~~director~~] commissioner closure becomes necessary in the discharge of the duty to protect the governor and other persons as provided in Section [~~41-13-14~~] 53-1-114.

(b) The order for closure or restriction shall be posted by placing a copy of it at the primary entrance to the public property.

(c) The order shall specify the extent of the closure or restriction.

(2) Any person who intentionally or knowingly enters or remains within public property in violation of an order of closure or restricted access [~~shall be~~] is guilty of a class C misdemeanor.

Section 59. Section Enacted.

Section 53-1-116, Utah Code Annotated 1953, is enacted to read:

53-1-116. Violations.

A violation of this title is a class C misdemeanor, unless otherwise provided.

Section 60. Section Enacted.

Section 53-1-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Administrative Services

53-1-201. Short title.

This part is known as "Administrative Services."

Section 61. Section Enacted.

Section 53-1-202, Utah Code Annotated 1953, is enacted to read:

53-1-202. Definitions.

As used in this part:

(1) "Director" means the division director appointed under Section 53-1-203.

(2) "Division" means the Administrative Services Division created in Section 53-1-203.

Section 62. Section Enacted.

Section 53-1-203, Utah Code Annotated 1953, is enacted to read:

53-1-203. Creation of Administrative Services Division — Appointment of director — Qualifications — Term — Compensation.

(1) There is created within the department the Administrative Services Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 63. Section Enacted.

Section 53-1-204, Utah Code Annotated 1953, is enacted to read:

53-1-204. Division duties.

The division shall:

(1) provide administrative and staff support to the commissioner;

(2) ensure that all departmental administrative processes are in compliance with state law, rules, and procedures;

(3) administer all human resource related matters throughout the department;

(4) make deposits, pay all claims and obligations of the department, and conduct all treasury transactions;

(5) prepare the department budget, review department expenditures, prepare financial reports, and offer general assistance with financial matters to the department;

(6) coordinate and review department purchases and monitor department purchasing practices to ensure compliance with state procurement rules;

(7) coordinate the purchase, operation, maintenance, records, and final disposal of the department's vehicle fleet;

(8) make capital facility plans for the department, maintain a capital equipment inventory system, coordinate risk management records, and organize waste paper recycling; and

(9) make rules for the department authorized by this title.

Section 64. Section Enacted.

Section 53-1-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Management Information

53-1-301. Short title.

This part is known as "Management Information Services."

Section 65. Section Enacted.

Section 53-1-302, Utah Code Annotated 1953, is enacted to read:

53-1-302. Definitions.

As used in this part:

(1) "Director" means the division director appointed under Section 53-1-303.

(2) "Division" means the Management Information Services Division created in Section 53-1-303.

Section 66. Section Enacted.

Section 53-1-303, Utah Code Annotated 1953, is enacted to read:

53-1-303. Creation of Management Information Services Division — Appointment of director — Qualifications — Term — Compensation.

(1) There is created within the department the Management Information Services Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 67. Section Enacted.

Section 53-1-304, Utah Code Annotated 1953, is enacted to read:

53-1-304. Division duties.

The division shall:

(1) provide technical support for the department's various computer systems, including computer software, hardware, and networking support;

(2) provide access to the National Crime Information Center, National Law Enforcement Telecommunication System, which provides electronic mail messaging capabilities to law enforcement agencies throughout the nation, and to National Commercial Driver License Information;

(3) create information systems for public safety information;

(4) provide programming support as required by the department;

(5) design systems and programs to maximize the efficiency of the department;

(6) provide law enforcement officers and criminal justice agencies access to public safety information that will assist in protecting the public; and

(7) other duties as assigned by the commissioner.

Section 68. Section Enacted.

Section 53-2-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 2. Comprehensive Emergency Management Act

53-2-101. Short title.

This chapter is known as the "Comprehensive Emergency Management Act."

Section 69. Section Enacted.

Section 53-2-102, Utah Code Annotated 1953, is enacted to read:

53-2-102. Definitions.

As used in this chapter:

(1) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(2) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomena, or technological hazard.

(3) "Director" means the division director appointed under Section 53-2-103.

(4) "Division" means the Comprehensive Emergency Management Division created in Section 53-2-103.

(5) "Expenses" means actual labor costs of government and volunteer personnel, including workers compensation benefits, fringe benefits, administrative overhead, cost of equipment, cost of equipment operation, cost of materials, and the cost of any contract labor and materials.

(6) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment and requires immediate action to mitigate the threat.

(7) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

(8) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, or epidemic.

(9) "State of emergency" means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, and safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

(10) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

Section 70. Section Enacted.

Section 53-2-103, Utah Code Annotated 1953, is enacted to read:

53-2-103. Comprehensive Emergency Management Division — Creation — Director — Appointment — Term — Compensation.

(1) There is created within the department the Comprehensive Emergency Management Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 71. Section Renumbered and Amended.

Section 53-2-104, Utah Code Annotated 1953, which is renumbered from Section 63-5-3, Utah Code Annotated 1953, as enacted by Chapter 254, Laws of Utah 1981, is amended to read:

[~~63-5-3~~] 53-2-104. Division duties — Powers.

[A] (1) The division [~~of comprehensive emergency management is established within the department of public safety which~~] shall [~~be responsive~~]:

(a) respond to the policies of the governor and the Legislature [~~and~~];

(b) perform functions relating to comprehensive emergency management matters as directed by the commissioner [~~of public safety. The division shall~~];

(c) prepare, implement, and maintain programs and plans to provide for:

[~~(1) Prevention~~] (i) prevention and minimization of injury and damage caused by disasters;

[~~(2) Prompt~~] (ii) prompt and effective response to and recovery from disasters;

[~~(3) Identification~~] (iii) identification of areas particularly vulnerable to disasters;

[~~(4) Coordination~~] (iv) coordination of hazard mitigation and other preventive and preparedness measures designed to eliminate or reduce disasters;

[~~(5) Assistance~~] (v) assistance to local officials in designing local emergency action plans;

[~~(6) Coordination~~] (vi) coordination of federal, state, and local emergency activities;

[~~(7) Coordination~~] (vii) coordination of emergency operations plans with emergency plans of the federal government;

[~~(8) Coordination~~] (viii) coordination of search and rescue activities;

[~~(9) Coordination~~] (ix) coordination of rapid and efficient communications in times of emergency; and

[~~(10) All~~] (x) other measures necessary, incidental, or appropriate to [~~the provisions of~~] this [~~act~~] chapter.

(2) The division may consult with the Legislative Management Committee, the Judicial Council, and legislative and judicial staff offices to assist them in preparing emergency succession plans and procedures under Title 63, Chapter 5b, Emergency Interim Succession Act.

Section 72. Section Renumbered and Amended.

Section 53-2-105, Utah Code Annotated 1953, which is renumbered from Section 63-5-6, Utah Code Annotated 1953, as enacted by Chapter 250, Laws of Utah 1989, is amended to read:

[~~63-5-6~~] 53-2-105. Hazardous materials emergency — Recovery of expenses.

[~~(1) As used in this section:~~]

[~~(a) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment, and requires immediate action to mitigate the threat.~~]

[~~(b) "Expenses" means actual labor costs of government and volunteer personnel including workers compensation benefits, fringe benefits, administrative overhead, costs of equipment, costs of equipment operations, cost of materials, and the cost of any contract labor and materials.~~]

[~~(2)~~] (1) (a) The director [~~of the division of Comprehensive Emergency Management~~] may recover from those persons whose negligent actions caused the hazardous materials emergency, expenses incurred by state agencies directly associated with a response to a hazardous materials emergency taken under authority of this [~~chapter~~] part, Title 63, Chapter 5, Emergency Management, or Title 63, Chapter 5a, Disaster Response and Recovery[~~, that is authorized by the director of the division of Comprehensive Emergency Management~~].

(b) The payment of expenses under this subsection does not constitute an admission of liability or negligence in any legal action for damages.

(c) The director may obtain assistance from the attorney general or a county attorney of the affected jurisdiction to assist the director in recovering expenses and legal fees.

(d) Any recovered costs shall be deposited in the General Fund as dedicated credits to be used by the division [~~of Comprehensive Emergency Management~~] to reimburse state and local government agencies for the costs they have incurred.

[~~(3)~~] (2) (a) If the cost directly associated with emergency response exceeds all available funds of the division [~~of Comprehensive Emergency Management~~] within a given fiscal year, the division, with approval from the governor, may incur a deficit in its line item budget.

(b) The Legislature shall provide a supplemental appropriation in the following year to cover the deficit.

(c) The division shall deposit all costs associated with any emergency response that are collected in subsequent fiscal years into the General Fund.

[~~(4)~~] (3) Any political subdivision may enact local ordinances pursuant to existing statutory or constitutional authority to provide for the recovery of expenses incurred by the political subdivision.

Section 73. Section Renumbered and Amended.

Section 53-2-106, Utah Code Annotated 1953, which is renumbered from Section 63-5a-10, Utah Code Annotated 1953, as last amended by Chapter 166, Laws of Utah 1989, is amended to read:

[~~63-5a-10~~] 53-2-106. Expenditures authorized by "state of emergency" declaration.

(1) (a) The director [~~of the division of Comprehensive Emergency Management~~] may use funds authorized [~~in this act~~] under Title 63, Chapter 5a, Disaster Response and Recovery, to provide:

(i) transportation to and from the disaster scene;

(ii) accommodations at the disaster scene for prolonged incidents; and

(iii) emergency purchase of response equipment and supplies in direct support of a disaster.

(b) The commissioner [~~of public safety~~] may authorize the use of funds accrued under [~~this act~~] Title 63, Chapter 5a, only if the governor declares a state of emergency as provided in [~~this chapter~~] Title 63, Chapter 5a, Disaster Response and Recovery.

(2) [~~None of these~~] These funds may not be allocated to a political subdivision unless the political subdivision has demonstrated that it is beyond its capability to respond to the disaster and that no other resources are available in sufficient amount to meet the disaster.

Section 74. Section Renumbered and Amended.

Section 53-3-101, Utah Code Annotated 1953, which is renumbered from Section 41-2-101, Utah Code Annotated 1953, as last amended by Chapter 137, Laws of Utah 1987, is amended to read:

CHAPTER 3. Uniform Driver License Act

Part 1. Driver License Division Administration

[~~41-2-101~~] 53-3-101. Short title.

This chapter is known as the "Uniform [~~Operator~~] Driver License Act."

Section 75. Section Renumbered and Amended.

Section 53-3-102, Utah Code Annotated 1953, which is renumbered from Section 41-2-102, Utah Code Annotated 1953, as last amended by Chapter 80, Laws of Utah 1992, is amended to read:

[~~41-2-102~~] 53-3-102. Definitions.

As used in this chapter:

(1) "Cancellation" means the termination by [~~action of~~] the division of a license issued through error or fraud or for which [~~necessary~~] consent under Section 53-3-211 has been withdrawn.

(2) "Class D license" means the class of license issued [~~for~~] to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this [~~title~~] chapter.

(3) "Class M license" means the class of license issued [~~for~~] to drive a motorcycle as defined under this chapter.

(4) "Commercial driver license" or [~~(~~]"CDL[~~)~~]" means a license issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with [~~Title 41, Chapter 2,~~] Part [~~7~~] 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle.

(5) (a) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property if the vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport more than 15 passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of [~~Title 41, Chapter 2,~~] Part [~~7~~] 4:

(i) equipment owned and operated by the United States Department of Defense when [~~operated~~] driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and [~~operated~~] driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a contract or common motor carrier;

(iii) firefighting and emergency vehicles; and

(iv) recreational vehicles that are not used in commerce and are [~~operated~~] driven solely as family or personal conveyances for recreational purposes.

[~~(6) "Commissioner" means the commissioner of the Department of Public Safety.~~]

[~~(7)~~] (6) "Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs; [~~or~~]

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

[~~(8)~~] (7) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part IV, Proof of Owner's or Operator's Security, do not apply.

(8) "Director" means the division director appointed under Section 53-3-103.

(9) "Disqualification" means either:

(a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of a person's privileges to drive a commercial motor vehicle;

(b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to [operate] drive a commercial motor vehicle under 49 C.F.R. Part 391; or

(c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.

(10) "Division" means the Driver License Division of the department [~~of Public Safety~~] created in Section 53-3-103.

(11) "Drive" means:

(a) to operate or be in physical control of a motor vehicle upon a highway; and

(b) in Subsections [~~41-2-715~~] 53-3-414 (1) through (3), Subsection [~~41-2-715~~] 53-3-414 (5), and Sections [~~41-2-716~~] 53-3-417 and [~~41-2-717~~] 53-3-418, the operation or physical control of a motor vehicle at any place within the state.

(12) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

[~~(12)~~] (13) "Extension" means a renewal completed exclusively by mail.

[~~(13)~~] (14) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

[~~(14)~~] (15) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for [vehicular] traffic.

[~~(15)~~] (16) "License" means the privilege to [operate] drive a motor vehicle.

[~~(16)~~] (17) "License certificate" means the evidence of the privilege issued under this chapter to [operate] drive a motor vehicle.

[~~(17) "Motor vehicle" means every self-propelled vehicle and every vehicle propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheel chairs and vehicles moved solely by human power.~~]

(18) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

(19) "Nonresident" means a person who:

(a) is not a resident of this state; and [who]

(b) (i) has not [~~sojourned or~~] engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months [~~and also every person who~~]; or

(ii) is temporarily assigned by his employer to work in Utah.

[~~(20) "Operate" means to be in actual physical control of a motor vehicle.~~]

[~~(21) "Operator" means any person who is in actual physical control of a vehicle.~~]

[~~(22)~~] (20) (a) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle. [~~The term~~]

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

[~~(23) "Person" means every natural person, firm, partnership, association, or corporation.~~]

[~~(25)~~] (21) "Renewal" means to validate a license certificate so that it expires at a later date.

[~~(24)~~] (22) "Reportable violation" means an offense required to be reported to the [~~Driver License~~] division as determined by the division and includes those offenses against which points are assessed under Section [~~41-2-128~~] 53-3-221.

[~~(26)~~] (23) "Revocation" means the termination by action of the division of a licensee's privilego to [~~operate~~] drive a motor vehicle.

[~~(27)~~] (24) "School bus" means every publicly or privately owned motor vehicle designed for transporting ten or more passengers and operated for the transportation of children to or from school or school activities.

[~~(28)~~] (25) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to [~~operate~~] drive a motor vehicle.

[~~(29)~~] (26) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

[~~(30) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.~~]

Section 76. Section Enacted.

Section 53-3-103, Utah Code Annotated 1953, is enacted to read:

53-3-103. Driver License Division — Creation — Director — Appointment — Term — Compensation.

(1) There is created within the department the Driver License Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 77. Section Renumbered and Amended.

Section 53-3-104, Utah Code Annotated 1953, which is renumbered from Section 41-2-118, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-118~~] 53-3-104. Division duties.

(1) The division shall:

(a) make rules:

(i) for examining applicants for a license, as necessary for the safety and welfare of the traveling public;

(ii) regarding the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit; and

(iii) for exemptions from licensing requirements as authorized in this chapter;

(b) examine each applicant according to the class of license applied for;

(c) license motor vehicle drivers;

(d) file every application for a license received by it and shall maintain indices containing:

[~~(a)~~] (i) all applications denied and the reason each was denied;

[~~(b)~~] (ii) all applications granted; and

[~~(c)~~] (iii) the name of every licensee whose license has been suspended, disqualified, or revoked by the division and the reasons for the action[~~.~~];

(e) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with this chapter;

[~~(2) The division shall also~~] (f) file all accident reports and abstracts of court records of convictions received by it under state law[~~.~~];

[~~(3) The department shall~~] (g) maintain [~~convenient records or make suitable notations so that an individual~~] a record of each licensee showing his convictions and the traffic accidents in which he has been involved where a conviction has resulted [~~are readily available for consideration by the division~~];

(h) consider the record of a licensee upon an application for renewal of a license and at other appropriate times[~~.~~];

(i) search the license files, compile, and furnish a report on the driving record of any person licensed in the state when requested by any person;

(j) develop and implement a record system as required by Section 41-6-48.5;

(k) in accordance with Section 53A-13-208, establish:

(i) procedures and standards to certify teachers of driver education classes to administer written and driving tests;

(ii) minimal standards for the driver education class tests; and

(iii) procedures to enable school districts to administer or process any tests for students to receive a class D operator's license; and

(l) provide administrative support to the Driver License Medical Advisory Board created in Section 53-3-303.

(2) The division may:

(a) collect fees under Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person; and

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63-38-3 for each document authenticated.

(3) Each certified copy of a driving record furnished under Subsection (1)(i) is admissible in any court proceeding in the same manner as the original.

Section 78. Section Renumbered and Amended.

Section 53-3-105, Utah Code Annotated 1953, which is renumbered from Section 41-2-103, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-103~~] 53-3-105. Fees for licenses, scheduling, and identification card.

The following fees apply under this chapter:

(1) An original class D license application under Section [~~41-2-112~~] 53-3-205 is $15.

(2) An original class M license application under Section [~~41-2-112~~] 53-3-205 is $15.

(3) An original provisional license application for a class D license under Section [~~41-2-112~~] 53-3-205 is $20.

(4) An original provisional license application for a class M license under Section [~~41-2-112~~] 53-3-205 is $20.

(5) An original application for a motorcycle or taxicab endorsement under Section [~~41-2-112~~] 53-3-205 is $5.

(6) A renewal of a class D license under Section [~~41-2-125~~] 53-3-214 is $15 unless Subsection (11) applies.

(7) A renewal of a class M license under Section [~~41-2-125~~] 53-3-214 is $15.

(8) A renewal of a provisional license application for a class D license under Section [~~41-2-125~~] 53-3-214 is $15.

(9) A renewal of a provisional license application for a class M license under Section [~~41-2-125~~] 53-3-214 is $15.

(10) A renewal of a motorcycle or taxicab endorsement under Section [~~41-2-125~~] 53-3-214 is $5.

(11) A renewal of a class D license for a person 65 and older under Section [~~41-2-125~~] 53-3-214 is $5.

(12) An extension of a class D license under Section [~~41-2-125~~] 53-3-214 is $12 unless Subsection (17) applies.

(13) An extension of a class M license under Section [~~41-2-125~~] 53-3-214 is $12.

(14) An extension of a provisional license application for a class D license under Section [~~41-2-125~~] 53-3-214 is $12.

(15) An extension of a provisional license application for a class M license under Section [~~41-2-125~~] 53-3-214 is $12.

(16) An extension of a motorcycle or taxicab endorsement under Section [~~41-2-125~~] 53-3-214 is $5.

(17) An extension of a class D license for a person 65 and older under Section [~~41-2-125~~] 53-3-214 is $3.

(18) An original or renewal application for a commercial class A, B, or C license or an original or renewal of a provisional commercial class A or B license under Part [~~7~~] 4 of this chapter is:

(a) $30 for the written test; and

(b) $50 for the skills test.

(19) Each original CDL endorsement for passengers, hazardous material, double or triple trailers, or tankers is $5.

(20) An original CDL endorsement for a school bus under Part [~~7~~] 4 of this chapter is $5.

(21) A renewal of a CDL endorsement under Part [~~7~~] 4 of this chapter is $5.

(22) A retake of a CDL written or a CDL skills test provided for in Section [~~41-2-112~~] 53-3-205 is $15.

(23) A retake of a CDL endorsement test provided for in Section [~~41-2-112~~] 53-3-205 is $5.

(24) A duplicate class A, B, C, D, or M license certificate under Section [~~41-2-123~~] 53-3-215 is $10.

(25)(a) A license reinstatement application under Section [~~41-2-112~~] 53-3-205 is $25.

(b) A license reinstatement application under Section [~~41-2-112~~] 53-3-205 for an alcohol, drug, or combination of alcohol and any drug-related offense is $25 in addition to the fee under Subsection (a).

(26) An administrative fee for license reinstatement after an alcohol, drug, or combination of alcohol and any drug-related offense under Section [~~41-2-130~~] 53-3-223 or an alcohol, drug, or combination of alcohol and any drug-related offense under Section 41-6-44.10 is $25. This administrative fee is in addition to the fees under Subsection (25).

(27) An administrative fee for license reinstatement after an alcohol, drug, or combination of alcohol and drug-related offense under Part [7] 4 of this chapter is $25. This administrative fee is in addition to the fees under Subsection (25).

(28) An administrative fee for license reinstatement after an alcohol offense under Section 41-6-44.4 is $25. This administrative fee is in addition to the fees under Subsection (25).

[~~(28)~~] (29) An administrative fee for license reinstatement after confiscation under Section [~~41-2-134~~] 53-3-226 is $25.

[~~(29)~~] (30) (a) An administrative fee for providing the driving record of [~~an operator~~] a driver under Section [~~41-2-119~~] 53-3-104 or [~~41-2-719~~] 53-3-420 is $3.

(b) The division may not charge for a report furnished under Section 53-3-104 to a municipal, county, state, or federal agency.

[~~(30)~~] (31) A rescheduling fee under Section [~~41-2-112~~] 53-3-205 or [~~41-2-708~~] 53-3-407 is $25.

[~~(31)~~] (32) An identification card application under Section [~~41-2-403~~] 53-3-808 is $5.

Section 79. Section Renumbered and Amended.

Section 53-3-106, Utah Code Annotated 1953, which is renumbered from Section 41-2-120, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-120~~] 53-3-106. Disposition of revenues under this chapter in Transportation Fund — Expenses of department provided by appropriation.

(1) All fees collected under this chapter shall be transmitted monthly to the state treasurer for deposit in the Transportation Fund.

(2) The expenses of the department [~~of Public Safety~~] in carrying out this chapter shall be provided for by legislative appropriation from this fund. [~~The commissioner shall prepare and submit to the governor, to be included in his budget to the Legislature, a budget of the requirements for carrying out the provisions of this chapter for the fiscal year next following the convening of the Legislature.~~]

Section 80. Section Enacted.

Section 53-3-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Driver Licensing Act

53-3-201. Short title.

This part is known as the "Driver Licensing Act."

Section 81. Section Renumbered and Amended.

Section 53-3-202, Utah Code Annotated 1953, which is renumbered from Section 41-2-104, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-104~~] 53-3-202. Drivers must be licensed — Taxicab endorsement.

(1) [~~No person, except one expressly exempted under Section 41-2-107, 41-2-108, or 41-2-111, or Subsection 41-2-121(4), or Title 41, Chapter 22.~~] A person may [~~operate~~] not drive a motor vehicle on a highway in this state unless the person is:

(a) licensed as [~~an operator~~] a driver by the division under this chapter;

(b) driving an official United States Government class D motor vehicle with a valid United States Government driver permit or license for that type of vehicle;

(c) driving a road roller, road machinery, or any farm tractor or implement of husbandry temporarily drawn, moved, or propelled on the highways;

(d) a nonresident who is at least 16 years of age and younger than 18 years of age who has in his immediate possession a valid license certificate issued to him in his home state or country and is driving as a class D or M driver;

(e) a nonresident who is at least 18 years of age and who has in his immediate possession a valid license certificate issued to him in his home state or country if driving in the class or classes identified on the home state license certificate, except those persons referred to in Part 6 of this chapter;

(f) driving under a temporary learner or instruction permit in accordance with Section 53-3-210;

(g) driving with a temporary license certificate issued in accordance with Section 53-3-207; or

(h) exempt under Title 41, Chapter 22, Off-highway Vehicles.

(2) [~~No~~] A person[~~, except those exempted under Section 41-2-107,~~] may [~~operate~~] not drive or, while within the passenger compartment of a motor vehicle, exercise any degree or form of physical control of a motor vehicle being towed by a motor vehicle upon a highway unless the person:

(a) holds a valid license issued under this chapter for the type or class of motor vehicle being towed; or

(b) is exempted under either Subsection (1)(b) or (1)(c).

(3) [~~(a)~~] A person may not [~~operate~~] drive a motor vehicle as a taxicab on a highway of this state unless the person has a taxicab endorsement issued by the division on his [~~driver~~] license certificate.

[~~(b) This subsection applies to all Utah licenses originally issued, renewed, or extended on or after July 1, 1989.~~]

Section 82. Section Renumbered and Amended.

Section 53-3-203, Utah Code Annotated 1953, which is renumbered from Section 41-2-105, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-105~~] 53-3-203. Authorizing or permitting driving in violation of chapter — Renting of motor vehicles — License requirements — Employees must be licensed to drive motor vehicles.

(1) A person may not authorize or knowingly permit a motor vehicle owned by him or under his control to be [operated] driven by a person in violation of this chapter.

(2) (a) A person may not rent a motor vehicle to another person unless the [latter] person who will be the driver is licensed in this state, or in the case of a nonresident, licensed under the laws of the state or country of his residence.

(b) A person may not rent a motor vehicle to another person until he has inspected the license certificate of the [latter] person who will be the driver and verified the signature on the license certificate by comparison with the signature of [~~that person~~] the person who will be the driver written in his presence.

[~~(3)~~] (c) A person renting a motor vehicle to another shall keep a record of the:

(i) registration number of the rented motor vehicle[~~, the~~];

(ii) name and address of the person to whom the motor vehicle is rented[~~, the~~];

(iii) number of the license certificate of the [~~latter person,~~] renter; and [the]

(iv) date and place the license certificate was issued.

(d) The record [~~shall be~~] is open to inspection by any peace officer or officer or employee of the division.

(3) A person may not employ a person to drive a motor vehicle who is not licensed as required under this chapter.

Section 83. Section Renumbered and Amended.

Section 53-3-204, Utah Code Annotated 1953, which is renumbered from Section 41-2-109, Utah Code Annotated 1953, as last amended by Chapters 78 and 80, Laws of Utah 1992, is amended to read:

[~~41-2-109~~] 53-3-204. Persons who may not be licensed.

(1) (a) [~~A license~~] The division may not [~~be granted to~~] license a person younger than 16 years of age or [to] a person who has not completed a course in driver training approved by the commissioner.

(b) [~~These prohibitions do~~] Subsection (a) does not apply to a person:

(i) who has been [~~issued a license~~] licensed before July 1, 1967[~~, nor to a person~~]; or

(ii) who is 16 years of age or older making application for a license who has been [~~issued a valid operator license~~] licensed in another state or country.

(2) The division may not issue a license certificate to a person:

(a) whose license has been suspended [or], denied, cancelled, or disqualified during the period of suspension [~~or~~], denial, cancellation, or disqualification;

(b) whose privilege has been revoked, except [under] as provided in Section [~~41-2-132~~] 53-3-225;

(c) who has previously been adjudged mentally incompetent and who has not at the time of application been restored to competency as provided by law;

(d) who is required by this chapter to take an examination unless the person successfully passes the examination; or

(e) whose driving privileges have been denied or suspended under:

(i) Section 78-3a-39.5 by an order of the juvenile court; or

(ii) Section 41-6-44.4.

(3) The division may [~~issue~~] grant a class D or M license to a person whose commercial license is disqualified under Part [~~7~~] 4 of this chapter [but] if the person is not otherwise sanctioned under this chapter.

Section 84. Section Renumbered and Amended.

Section 53-3-205, Utah Code Annotated 1953, which is renumbered from Section 41-2-112, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-112~~] 53-3-205. Application for license or endorsement — Fee required — Tests — Expiration dates of licenses and endorsements — Information required — Previous licenses surrendered — Driving record transferred from other states — Reinstatement — Fee required.

(1) An application for any original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section [~~41-2-103~~] 53-3-105.

(2) An application and fee for an original class D license [entitles] entitle the applicant to:

(a) not more than three attempts to pass both the written and skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed after the written test is passed; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for an original class M license [entitles] entitle the applicant to:

(a) not more than three attempts to pass both the written and skills tests for a class M license within six months of the date of the application;

(b) a learner permit if needed after the written test is passed; and

(c) an original class M license and license certificate after all tests are passed.

(4) An application and fee for a motorcycle or taxicab endorsement [~~entitles~~] entitle the applicant to:

(a) not more than three attempts to pass both the written and skills tests within six months of the date of the application;

(b) a motorcycle learner permit if needed after the motorcycle written test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(5) An application and fees for a commercial class A, B, or C license [~~entitles~~] entitle the applicant to:

(a) not more than two attempts to pass a written test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the written test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(6) An application and fee for a CDL endorsement [~~entitles~~] entitle the applicant to:

(a) not more than two attempts to pass a written test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

(7) If a CDL applicant does not pass a written test, skills test, or an endorsement test within the number of attempts provided in Subsection (5) or (6), each test may be taken two additional times within the six months for the fee provided in Section [~~41-2-103~~] 53-3-105.

(8) An original license, an extension[~~,~~] or a renewal [~~license~~], and any endorsement to the license [~~issued~~] granted before October 1, 1991, expires on the birth date of the applicant in the fourth year following the year the license certificate is issued.

(9) (a) An original license [~~issued~~] granted after September 30, 1991, expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) A renewal [~~license~~] or an extension to a license [~~issued~~] granted after September 30, 1991, expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) A duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was [~~issued~~] granted.

[~~(10) Notwithstanding Subsections (8) and (9), until April 1, 1992, a driver with a valid Utah operator license obtained prior to October 1, 1989, who surrenders the license to obtain a commercial driver license shall have an expiration date on his commercial driver license that is four years after the expiration date on the license surrendered.~~]

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless the license is suspended, disqualified, denied, or has been cancelled or revoked by the division, or the licensee updates the information or photograph on the license certificate.

[~~(11)~~] (10) In addition to the information required by Title 63, Chapter 46b, Administrative Procedures Act, for requests for agency action, each application shall:

(a) state the full legal name, date of birth, sex, and residence address of the applicant;

(b) briefly describe the applicant;

(c) state whether the applicant has previously been licensed to [~~operate~~] drive a motor vehicle and, if so, when and by what state or country;

(d) state whether the applicant has ever had any [~~operator~~] license suspended, cancelled, revoked, disqualified, or denied in the last six years, or whether the applicant has ever had [~~an operator~~] any license application refused, and if so, the date of and reason for the suspension, revocation, disqualification, denial, or refusal;

(e) provide all other information the division requires; and

(f) be signed and verified before a person authorized to administer oaths.

[~~(12)~~] (11) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current [~~operator~~] license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof [~~such as~~], including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

[~~(13)~~] (12) When an applicant receives a license in another class, all previous license certificates shall be surrendered and canceled. However, a disqualified commercial license may not be canceled unless it expires before the new license certificate is issued.

[~~(14)~~] (13) (a) When an application is received from a person previously licensed in another state to [~~operate~~] drive a motor vehicle, the division shall request a copy of the [~~operator's~~] driver's record from the other state.

(b) When received, the [operator's] driver's record becomes part of the [operator's] driver's record in this state with the same effect as though entered originally on the [operator's] driver's record in this state.

[(15)] (14) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section [41-2-103] 53-3-105.

[(16)] (15) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section [41-2-103] 53-3-105.

Section 85. Section Renumbered and Amended.

Section 53-3-206, Utah Code Annotated 1953, which is renumbered from Section 41-2-117, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

[41-2-117] 53-3-206. Examination of applicant's physical and mental fitness to drive a motor vehicle.

(1) The division shall examine every applicant for a license, including a test of[:(a)] the applicant's:

(a) eyesight either:

(i) by the division; or

(ii) by allowing the applicant to furnish to the division a statement from a physician licensed under Title 58, Chapter 12, Part 5, Utah Medical Practice Act, or an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

(b) [his] ability to read and understand highway signs regulating, warning, and directing traffic;

(c) [his] ability to read and understand simple English used in highway traffic and directional signs;

(d) [his] knowledge of the state traffic laws;

(e) other physical and mental abilities the division finds necessary to determine the applicant's fitness to [operate] drive a motor vehicle safely [upon] on the highways; and

[(f) whether any facts exist which would bar issuing a license under Section 41-2-109; and]

[(g) his] (f) ability to exercise ordinary and responsible control [in the operation of] driving a motor vehicle, as determined by actual demonstration or other indicator.

(2) The division shall determine whether any facts exist that would bar granting a license under Section 53-3-204.

(3) The division shall examine each applicant according to the class of license applied for.

[(2)] (4) An applicant for a [commercial driver license] CDL shall meet all additional requirements of Part [7] 4 of this chapter.

Section 86. Section Renumbered and Amended.

Section 53-3-207, Utah Code Annotated 1953, which is renumbered from Section 41-2-121, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

[41-2-121] 53-3-207. License certificates issued to drivers by class of motor vehicle — Contents — Anatomical gifts indication — Temporary licenses — Minors' licenses and permits.

(1) (a) The division shall issue to every person privileged to [operate] drive a motor vehicle, a license certificate indicating the type or class of motor vehicle the licensee may [operate] drive.

(b) A person may not [operate] drive a class of motor vehicle unless licensed in that class.

(2) (a) Every license certificate shall bear:

(i) the Social Security number and any distinguishing number assigned to the licensee by the division;

(ii) the name, date of birth, and residence address of the licensee;

(iii) a brief description of the licensee for the purpose of identification;

(iv) any restrictions imposed on the license under Section 53-3-208;

[(iv)] (v) a photograph of the licensee; and

[(v)] (vi) a photograph or other facsimile of the licensee's signature.

(b) (i) The license certificate shall be of an impervious material, resistant to wear, damage, and alteration.

(ii) The size, form, and color of the license certificate shall be as prescribed by the commissioner.

(iii) The commissioner may also prescribe the issuance of a special type of limited license certificate under Subsection [41-2-127] 53-3-220 (4), and may authorize the issuance of a renewed or duplicate license certificate without a picture if the applicant is not then living in the state.

(3) (a) [With every] When a license [issued] is granted or renewed, the division shall, upon request of the licensee, provide a method of identification on the license certificate, which indicates the licensee's intent to make an anatomical gift under Title 26, Chapter 28, [the] Uniform Anatomical Gift Act. The statement shall be signed in the presence of at least one witness, who shall sign the statement in the presence of the licensee.

(b) The division or any of its employees are not liable for any loss, detriment, or injury, directly or indirectly, which results from false or inaccurate information regarding the anatomical gift notification.

(4) (a) The division, upon determining after an examination that an applicant is mentally and physically qualified to be granted a license, may issue to

an applicant a receipt for the fee, which serves as a temporary license certificate allowing him to [operate] drive a motor vehicle while the division is completing its investigation to determine whether he is entitled to be licensed.

(b) The receipt shall be in his immediate possession while [operating] driving a motor vehicle, and it is invalid when the applicant's license certificate has been issued or when, for good cause, the privilege has been refused.

(c) The division shall indicate on the receipt a date after which it is not valid as a license certificate.

(5) The division shall distinguish learner permits, temporary permits, and [licenses] license certificates issued to any person younger than 21 years of age by use of the plainly printed word "minor" or "under 21" or the use of a special color not used for other license certificates.

(6) The division shall issue temporary [licenses] license certificates of the same nature, except as to duration, as the [licenses which] license certificates that they temporarily replace, as are necessary to implement applicable provisions of Section [41-2-130] 53-3-223.

Section 87. Section Renumbered and Amended.

Section 53-3-208, Utah Code Annotated 1953, which is renumbered from Section 41-2-113, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[41-2-113] 53-3-208. Restrictions.

(1) (a) When [issuing] granting a license, the division may [upon] for good cause impose restrictions, suitable to the licensee's driving ability [with respect to], for the type of motor vehicle or special mechanical control devices required on a motor vehicle [which] that the licensee may [operate] drive.

(b) The division may impose other restrictions on the licensee as it determines appropriate to assure [the] safe [operation] driving of a motor vehicle by the licensee.

(2) The division may either grant a special restricted license or may set forth restrictions upon the regular license certificate.

(3) (a) The division may suspend or revoke any license [issued under this chapter] upon receiving satisfactory evidence of any violation of the restrictions imposed on the license.

(b) Each licensee is entitled to a hearing for a suspension or revocation under this chapter.

(4) It is a class C misdemeanor for a person to [operate] drive a motor vehicle in violation of the restrictions imposed on his license[;] under this section.

Section 88. Section Renumbered and Amended.

Section 53-3-209, Utah Code Annotated 1953, which is renumbered from Section 41-2-114, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1989, is amended to read:

[41-2-114] 53-3-209. Provisional licenses only for persons under 21 — Separate point system — Denial and suspension procedures.

(1) The division may [issue] only grant a provisional license to a person younger than 21 years of age.

(2) (a) The division shall make rules for the establishment and administration of a separate point system for persons [issued] granted provisional licenses to facilitate counseling, penalization, or both earlier than for persons 21 years of age or older. [This section is in addition to the provisions of Section 41-2-111.]

[(2) Under the rules made under Subsection (1) the division] (b) The rules shall establish point thresholds at which each of the following actions are taken:

[(a)] (i) a warning letter;

[(b)] (ii) a request to appear for a hearing;

[(c)] (iii) a denial of the driving privilege for first or second actions where the point total established under Section [41-2-128] 53-3-221 does not exceed the point threshold under which a person 21 years or older may be suspended; [or] and

[(d)] (iv) a suspension of the driving privilege.

[(3) A provision] (c) The rules shall [be made for the] require:

(i) an extension of the denial or suspension period for further violations within the three-year period[.]; and

[(4) Failure to appear for a hearing under this section is cause for] (ii) denial or suspension of the driving privilege for failure to appear for a hearing required under this section.

Section 89. Section Renumbered and Amended.

Section 53-3-210, Utah Code Annotated 1953, which is renumbered from Section 41-2-111, Utah Code Annotated 1953, as last amended by Chapter 8, Laws of Utah 1991, is amended to read:

[41-2-111] 53-3-210. Temporary learner permit — Instruction permit — Commercial driver instruction permit.

(1) (a) The division upon receiving an application for a class D or M license from a person 16 years of age or older may [in its discretion] issue a temporary learner permit after the person has successfully passed all parts of the examination not involving [the actual operation of] actually driving a motor vehicle.

(b) (i) The temporary learner permit allows the applicant[, while having the permit in his immediate possession,] to [operate] drive a motor vehicle upon the highways for six months from the date of the application in conformance with the restrictions indicated on the permit [as determined by rules of

the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act].

(ii) The applicant must have the permit in his immediate possession while driving a motor vehicle.

(2)(a) The division, upon receiving an application, may issue an instruction permit effective for one year to an applicant who is enrolled in a driver education program that includes practice driving, if the program is approved by the State Office of Education, even though the applicant has not reached the legal age to be eligible for a license.

(b) The instruction permit entitles the applicant, while having the permit in his immediate possession, to [operate] drive a motor vehicle, only if an approved instructor is occupying a seat beside the applicant or [under] in accordance with the requirements of Subsection 53A-13-208 (4).

(3) The division may issue a commercial driver instruction permit under Part [7] 4 of this chapter.

Section 90. Section Renumbered and Amended.

Section 53-3-211, Utah Code Annotated 1953, which is renumbered from Section 41-2-115, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[41-2-115] 53-3-211. Application of minors — Liability of person signing application — Cancellation of co-signing adult's liability.

(1) In this section "minor" means any person younger than 18 years of age.

(2) (a) The application of [any person younger than 18 years of age] a minor for a learner permit or provisional license shall be signed by the parent or guardian of the applicant and verified before a person authorized to administer oaths [by the parent or guardian of the applicant].

(b) If no person has custody, then a responsible adult[,] who is willing to assume the obligation imposed under this chapter [upon a person signing the application of a minor,] may sign the application.

[(2)] (3)(a) Any negligence or willful misconduct of a minor [younger than 18 years of age] when [operating] driving a motor vehicle upon a highway is imputed to the person who has signed the application of the minor [for a permit or license] under Subsection (2). [This]

(b) Except as provided under Subsection (4), the person who has signed the application under Subsection (2), is jointly and severally liable with the minor for any damages caused by the minor's negligence or willful misconduct[, except as provided under Subsection (3)].

(c) This liability provision is [an exception] in addition to [any conflicting] the liability provisions in [the code] Section 53-3-212.

[(3)] (4)(a) If a minor deposits, or there is deposited on his behalf, proof of financial responsibility [in respect to the operation of] for driving a motor vehicle [he owns, or with respect to the operation of any motor vehicle if he does not own one,] in form and in amounts as required under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, the division may accept the application of the minor when signed before a person authorized to administer oaths by a parent [or], guardian of the minor, or a responsible adult.

(b) While the proof is maintained, [that person] the parent, guardian, or responsible adult is not subject to the liability imposed under Subsection [(2)] (3).

[(4)] (5)(a) A person who has signed the application of a minor [for a license] under Subsection (2) may file with the division a verified written request that the license of the minor be cancelled.

(b) The division shall then cancel the license of the minor, and the person who signed the application of the minor under Subsection (2) is relieved from the liability imposed under this chapter regarding any subsequent negligence or willful misconduct of the minor in [operating] driving a motor vehicle.

[(5)] (6)(a) The division upon receipt of satisfactory evidence of the death of the person who signed the application of a minor [for a license] under Subsection (2) shall cancel the license and may not issue a new license until a new application, signed and verified, is made under this chapter.

(b) This subsection does not apply to [a minor] an application of a person who has become 18 years of age.

Section 91. Section Renumbered and Amended.

Section 53-3-212, Utah Code Annotated 1953, which is renumbered from Section 41-2-116, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[41-2-116] 53-3-212. Owner giving permission and minor liable for damages caused by minor driving a motor vehicle.

(1) The owner of a motor vehicle causing or knowingly permitting a [minor] person younger than 18 years of age to [operate] drive the motor vehicle [upon] on a highway, or a person who gives or furnishes a motor vehicle to the minor, are each jointly and severally liable with the minor for any damages caused by the negligence of the minor in [operating] driving the motor vehicle.

(2) This liability provision is [an exception] in addition to [any conflicting] the liability provisions in [the code regarding liability] Section 53-3-211.

Section 92. Section Renumbered and Amended.

Section 53-3-213, Utah Code Annotated 1953, which is renumbered from Section 41-2-110, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[41-2-110] 53-3-213. Class of license — Age and experience requirements to drive school bus or certain other carriers —

Misdemeanor to drive unauthorized class of motor vehicle — Waiver of driving examination by third party certification.

[~~(1) The division shall enact rules establishing a classified operator license system and shall examine each applicant according to the class of license applied for. The division may enact rules for examining applicants as necessary for the safety and welfare of the traveling public. The division shall indicate on the license certificate the class of license issued.~~]

[~~(2)~~] (1) (a) A person [~~younger than~~] must be at least 21 years of age [~~may not operate~~]:

(i) to drive any school bus[~~, nor may he operate~~];

(ii) to drive any commercial motor vehicle outside this state; or

(iii) while transporting passengers for hire or hazardous materials.

(b) [~~The~~] Subject to the requirements of Subsection (a), the division may grant a commercial driver license [~~as limited under Subsection (2)(a)~~] to any applicant who is at least 18 years of age and has had at least one year of previous driving experience.

(c) It is a class C misdemeanor for any person to [~~operate~~] drive a class of motor vehicle for which he is not licensed.

[~~(3)~~] (2) (a) At the discretion of the commissioner and under standards established by the division, persons employed as commercial drivers may submit a third party certification as provided in Part [~~7~~] 4 of this chapter in lieu of the driving segment of the examination.

(b) The division shall maintain necessary records and set standards to certify companies desiring to qualify under [~~this section~~] Subsection (a).

Section 93. Section Renumbered and Amended.

Section 53-3-214, Utah Code Annotated 1953, which is renumbered from Section 41-2-125, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-125~~] 53-3-214. Renewal — Fees required — Extension without examination — Licensees in armed forces.

(1) (a) The holder of a valid license may [~~apply for renewal of~~] renew his license and any endorsement to the license by [~~making application~~] applying:

(i) at any time within six months before the license expires; or

(ii) more than six months prior to the expiration date if the applicant furnishes proof that he will be absent from the state during the six-month period prior to the expiration of the license.

(b) The application for a renewal of, extension of, or any endorsement to a license shall be accompanied by a fee under Section [~~41-2-103~~] 53-3-105.

(2) (a) Except as provided under Subsections (2)(b) and (3), upon application for renewal of a license, provisional license, and any endorsement to a license, the division shall reexamine each applicant as if for an original license and endorsement to the license, if applicable.

(b) The division may waive any or all portions of the test designed to demonstrate the applicant's ability to exercise ordinary and reasonable control [~~in the operation of~~] driving a motor vehicle.

(3) (a) Except as provided under Subsection (b), the division shall extend a license, any endorsement to the license, a provisional license, and any endorsement to a provisional license for five years without examination for licensees whose driving records for the five years immediately preceding the determination of eligibility for extension show:

(i) no suspensions;

(ii) no revocations;

(iii) no conviction for reckless driving under Section 41-6-45; and

(iv) no more than four reportable violations in the preceding five years.

(b) (i) After the expiration of a license, a new license certificate and any endorsement to a license certificate may not be issued until the person has again passed the tests under Section [~~41-2-117~~] 53-3-206 and paid the required fee.

(ii) A person 65 years of age or older shall take and pass the eye examination specified in Section [~~41-2-117~~] 53-3-206.

(iii) An extension may not be granted to any person who is identified by the division as having a medical impairment that may represent a hazard to public safety.

(iv) An extension may not be granted to any person holding a [~~commercial driver license~~] CDL issued under Part [~~7~~] 4 of this chapter.

(c) The division shall allow extensions:

(i) by mail at the appropriate extension fee rate under Section [~~41-2-103~~] 53-3-105; [~~and~~]

(ii) [~~for~~] only [~~one extension~~] if the applicant qualifies under this section; and

(iii) for only one extension.

[~~(4) Utah licenses and any endorsements to the license held by persons ordered to active duty and stationed outside Utah in any of the armed forces of the United States shall be honored as valid until 90 days after the person has been discharged or has left the service, unless the license is suspended or revoked by the division, or the licensee updates the information or photograph on the license certificate.~~]

Section 94. Section Renumbered and Amended.

Section 53-3-215, Utah Code Annotated 1953, which is renumbered from Section 41-2-123, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-123~~] 53-3-215. Duplicate license certificate — Duplicate commercial driver license — Fee.

(1) If a license certificate issued under [~~the provisions of~~] this chapter is lost, stolen, or destroyed, the person to whom [it] the license certificate was issued may obtain a duplicate upon furnishing proof satisfactory to the division that the license certificate has been lost, stolen, or destroyed and upon payment of a duplicate fee under Section [~~41-2-103~~] 53-3-105.

[~~(2) When a person whose commercial driver license has been disqualified is eligible to again obtain that license, he may apply for a duplicate of that license if it has not expired. The cost of a duplicate is in addition to all other fees owed. The person must complete a new application, produce a valid DOT medical fitness card, and at a minimum pass a vision screening test. The new license expires on the same date as the disqualified license and covers only those driving privileges for which he has taken and passed tests.~~]

[~~(3)~~] (2) When the division is advised that a license certificate has been lost, stolen, or destroyed, [it] the license certificate is then void.

Section 95. Section Renumbered and Amended.

Section 53-3-216, Utah Code Annotated 1953, which is renumbered from Section 41-2-122, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-122~~] 53-3-216. Change of address — Duty of licensee to notify division within ten days — Method of giving notice by division.

(1) [When] If a person, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to him, the person shall within ten days of moving notify the division in writing of his new address and [of] the number of any license certificate held by him.

(2) (a) [When] If the division is authorized or required to give any notice under this chapter or other law regulating [~~the operation of~~] driving motor vehicles, [~~unless a different method of giving notice is otherwise prescribed;~~] the notice shall, unless otherwise prescribed, be given [either] by:

(i) personal delivery to the person to be notified; or [by]

(ii) deposit in the United States mail [~~of the notice in an envelope~~] with postage prepaid, addressed to the person at his address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

[~~(b)~~] (c) Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the division or affidavit of any person older than 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of [~~the~~] giving [~~of it~~] the notice.

Section 96. Section Renumbered and Amended.

Section 53-3-217, Utah Code Annotated 1953, which is renumbered from Section 41-2-124, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-124~~] 53-3-217. License to be carried when driving motor vehicle — Production in court.

(1) The licensee shall have his license certificate in his immediate possession at all times when [~~operating~~] driving a motor vehicle and shall display it upon demand of a justice of peace, a peace officer, or a field deputy or inspector of the division.

(2) It is a defense to a charge under this section that the person charged produces in court a license certificate issued to him and valid at the time of his citation or arrest.

Section 97. Section Renumbered and Amended.

Section 53-3-218, Utah Code Annotated 1953, which is renumbered from Section 41-2-126, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-126~~] 53-3-218. Court to report convictions and may recommend suspension of license — Severity of speeding violation defined — Conviction defined.

(1) [~~When~~] (a) If a person is convicted of any offense for which this [~~title~~] chapter or Title 41, Motor Vehicles, requires the revocation, suspension, or disqualification of the person's license, the court in which the conviction takes place shall require the surrender to it of all license certificates held by the person convicted.

(b) The court shall forward them together with the record of conviction to the division within ten days.

(2) A court having jurisdiction over offenses committed under this [title] chapter or any other law of this state, or under any city ordinance regulating [~~the operation of~~] driving motor vehicles on highways, shall forward to the division within ten days, an abstract of the court record of the conviction of any person in the court for a reportable traffic violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(3) The abstract shall be made upon a form approved and furnished by the division and shall include:

(a) the name and address of the party charged[;]:

(b) the number of his license[;] certificate, if any;

(c) the registration number of the motor vehicle involved[;]:

(d) whether the motor vehicle was a commercial motor vehicle[;];

(e) whether the motor vehicle carried hazardous materials[;];

(f) the nature of the offense[;];

(g) the date of the hearing[;];

(h) the plea[;];

(i) the judgment or whether bail was forfeited[;]; and

(j) the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum[.]" [~~The severity of a speeding violation shall be graded as "minimum" for exceeding the posted speed limit by up to 9 miles per hour; as "intermediate" for exceeding the posted speed limit by from 10 to 19 miles per hour; and as "maximum" for exceeding the posted speed limit by 20 or more miles per hour~~] as established in accordance with Subsection 53-3-221(4).

(4) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate his [~~operator's~~] license and return his license certificate immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

(5) In this section "conviction" means conviction by the court of first impression. [~~A forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which has not been vacated, is equivalent to a conviction.~~]

Section 98. Section Renumbered and Amended.

Section 53-3-219, Utah Code Annotated 1953, which is renumbered from Section 41-2-126.5, Utah Code Annotated 1953, as enacted by Chapter 188, Laws of Utah 1989, is amended to read:

[~~41-2-126.5~~] 53-3-219. Suspension of juvenile driving privileges.

(1) The division shall immediately suspend all driving privileges of any person upon receipt of an order suspending driving privileges under Section 78-3a-39.5.

(a) Upon receipt of the first order suspending a person's driving privileges, the [~~department~~] division shall impose a suspension for six months or until the person suspended becomes 17 years of age, whichever is longer.

(b) Upon receipt of a second or subsequent order suspending a person's driving privileges, the [~~department~~] division shall impose a suspension for one year or until the person becomes 18 years of age, whichever is longer.

(2) (a) After reinstatement of the license under Subsection (1) (a), a report authorized under Section [~~41-2-119~~] 53-3-104 may not contain evidence of the suspension of [~~the~~] a juvenile's license under this section if he has not been convicted of any other offense for which the suspension under Subsection (1) (a) may be extended.

[~~(3)~~] (b) A person whose license is suspended solely by an order made in accordance with Section 78-3a-39.5 is exempt from Sections 41-12a-411 and 41-12a-412 [~~apply only to suspensions under this section that are based on offenses for which a suspension may be imposed other than under this section~~].

Section 99. Section Renumbered and Amended.

Section 53-3-220, Utah Code Annotated 1953, which is renumbered from Section 41-2-127, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-127~~] 53-3-220. Offenses requiring mandatory revocation, suspension, or disqualification of license — Offense requiring an extension of period — Hearing — Limited driving privileges.

(1) The division shall immediately revoke or, when this [~~title~~] chapter or Title 41, Chapter 6, Traffic Rules and Regulations, specifically provides for suspension or disqualification, suspend or disqualify the license of a person upon receiving a record of his conviction for any of the following offenses:

(a) manslaughter or negligent homicide resulting from [~~the operation of~~] driving a motor vehicle, or automobile homicide under Section 76-5-207;

(b) [~~operating~~] driving or being in actual physical control of a motor vehicle while under the influence of alcohol, [~~or~~] any drug, or combination of them to a degree [~~which~~] that renders the person incapable of safely driving a motor vehicle as prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43 (1);

(c) [~~operating~~] driving or being in actual physical control of a motor vehicle while having a blood or breath alcohol content prohibited in Section 41-6-44 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6-43 (1);

(d) perjury or the making of a false affidavit to the division under this [~~title~~] chapter, Title 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or regulating [~~their operation~~] driving on highways;

(e) any offense punishable as a felony under the motor vehicle laws of this state or any other felony in [~~the commission of~~] which a motor vehicle is used;

(f) failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another;

(g) two charges of reckless driving committed within a period of 12 months; but if upon a first conviction of reckless driving the judge or justice recommends suspension of the convicted person's license, the division may after a hearing suspend the license for a period of three months;

(h) failure to bring a motor vehicle to a stop at the command of a peace officer [under] as required in Section 41-6-13.5; and

(i) any offense specified in Part [7] 4 of this chapter that requires disqualification.

(2) The division shall extend the period of the first denial, disqualification, or suspension for an additional like period, or if the privilege is revoked, it shall refuse to act upon the application of the person whose privilege is revoked for a new license for an additional year after the person would otherwise be entitled to apply for a new license, upon receiving:

(a) a record of the conviction of any person [upon] on a charge of [operating] driving a motor vehicle while the person's license is denied, suspended, or revoked;

(b) a record of a conviction of the person for any violation of the motor vehicle law in which the person was involved as [an operator] a driver;

(c) a report of an arrest of the person for any violation of the motor vehicle law in which the person was involved as [an operator] a driver; or

(d) a report of an accident in which the person was involved as [an operator] a driver.

(3) [~~Except for information received under Subsections (2)(a) and (b),~~ when] When the division receives [information] a report under Subsection (2)(c) or (d) that a person is driving while his license is denied, suspended, disqualified, or revoked, the person is entitled to a hearing regarding the extension of the time of denial, suspension, disqualification, or revocation originally imposed under Section [~~41-2-128~~] 53-3-221.

(4)(a) The division may extend to a person the limited privilege of [operating] driving a motor vehicle to and from his place of employment or within other specified limits on recommendation of the trial judge in any case where a person is convicted of any of the offenses referred to in Subsections (1) and (2) except:

(i) automobile homicide under Subsection (1)(a);

(ii) those offenses referred to in Subsections (1)(b) and (c); and

(iii) those offenses referred to in Subsection (2) when the original suspension or revocation was imposed because of a violation of Section 41-6-44, a local ordinance which complies with the requirements of Subsection 41-6-43 (1), Section 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of these sections or ordinances.

(b) This discretionary privilege is limited to when undue hardship would result from a failure to grant the privilege and may be granted only once to any individual during any single period of suspension, [or] revocation, or extension of that suspension or revocation.

(c) A limited [commercial driver license] CDL may not be granted to an individual disqualified under Part [7] 4 of this chapter or whose license has been revoked, suspended, cancelled, or denied under this chapter.

Section 100. Section Renumbered and Amended.

Section 53-3-221, Utah Code Annotated 1953, which is renumbered from Section 41-2-128, Utah Code Annotated 1953, as last amended by Chapters 190 and 241, Laws of Utah 1991, is amended to read:

[41-2-128] 53-3-221. Offenses which may result in denial, suspension, disqualification, or revocation of license without hearing — Point system for traffic violations — Additional grounds for suspension — Reporting of traffic violation procedures.

(1) By following the emergency procedures [set forth] in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately deny, suspend, [or] disqualify, or revoke the license of any person without hearing and without receiving a record of the person's conviction of crime when the division has been notified or has reason to believe the person:

(a) has committed any offenses for which mandatory suspension or revocation of a license is required upon conviction under Section [~~41-2-127~~] 53-3-220;

(b) has, by reckless or unlawful [operation] driving of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person, or serious property damage;

(c) is incompetent to [operate] drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for the person to [operate] drive a motor vehicle upon the highways;

(d) has committed a serious violation of the motor vehicle laws of this state;

(e) has permitted an unlawful use of the license as defined in Section [41-2-133] 53-3-229; or

(f) has been convicted of serious offenses against traffic laws governing the movement of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

(2) (a) The division may suspend the license of a person under Subsection (1) when the person has failed to comply with the terms stated on a traffic citation issued in this state, except this [provision] subsection does not apply to highway weight limit violations or violations of law governing the transportation of hazardous materials.

(b) This [provision] subsection applies to parking and standing violations only if a court has issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy the terms of the citation.

(c)(i) This [provision] subsection may not be exercised unless notice of the pending suspension of the driving privilege has been mailed at least ten days previously to the person at the address provided to the division.

(ii) After clearance by the division, a report authorized by Section [~~41-2-119~~] 53-3-104 may not contain any evidence of a suspension that occurred as a result of failure to comply with the terms stated on a traffic citation.

(3)(a) The division may suspend the license of a person under Subsection (1) when the division has been notified by a court that the person has an outstanding unpaid fine, an outstanding [~~uncompleted~~] incomplete restitution requirement, or an outstanding warrant levied by order of a court.

(b) The suspension remains in effect until the division is notified by the court that the order has been satisfied.

(c) After clearance by the division, a report authorized by Section [~~41-2-119~~] 53-3-104 may not contain any evidence of the suspension.

[~~(b) This section applies to all fines, warrants, or restitution requirements as described in Subsection (a) which are outstanding on or after February 16, 1984.~~]

(4) [~~In applying the standard provided in this subsection, the~~] The division shall [~~establish and administer~~] make rules establishing a point system as provided for in this subsection.

(a)(i) The division shall assign a number of points to each type of moving traffic violation as a measure of its seriousness.

(ii) The points shall be based upon actual relationships between types of traffic violations and motor vehicle traffic accidents.

(b) Every person convicted of a traffic violation shall have assessed against his driving record the number of points [~~which~~] that the division has assigned to the type of violation of which the person has been convicted, except that the number of points assessed shall be decreased by 10% if on the abstract of the court record of the conviction the court has graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the court has graded the severity of violation as maximum.

(c)(i) A separate procedure for assessing points for speeding offenses shall be established by the division based upon the severity of the offense.

(ii) The severity of a speeding violation shall be graded as:

(A) "minimum" for exceeding the posted speed limit by up to nine miles per hour;

(B) "intermediate" for exceeding the posted speed limit by from ten to 19 miles per hour; and

(C) "maximum" for exceeding the posted speed limit by 20 or more miles per hour.

(iii) Consideration shall be made for assessment of no points on minimum speeding violations, except for [those] speeding violations in school zones.

(d)(i) Points assessed against a person's driving record shall be deleted for violations occurring before a time limit set by the division.

(ii) The time limit may not exceed three years.

(iii) The division may also delete points to reward violation-free driving for periods of time set by the division.

(e)(i) By publication in two newspapers having general circulation throughout the state, the division shall give notice of the number of points it has assigned to each type of traffic violation, the time limit set by the division for the deletion of points, and the point level at which the division will generally take action to deny or suspend under this section.

(ii) The division may not change any of the information provided above regarding points without first giving new notice in the same manner.

(5)(a)(i) Upon denying or suspending the license of a person under this section, the division shall immediately notify the licensee in writing and afford him an opportunity for a hearing in the county where the licensee resides.

(ii) The hearing shall be documented, and the division or its authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee.

(iii) One or more members of the division may conduct the hearing, and any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.

(iv) After the hearing the division shall either rescind its order of denial or suspension, extend the denial or suspension of the license, or revoke the license.

(b) The denial or suspension of the license remains in effect pending qualifications determined by the division regarding a person:

(i) whose license has been denied or suspended following reexamination;

(ii) who is incompetent to [~~operate~~] drive a motor vehicle;

(iii) who is afflicted with mental or physical infirmities [~~which~~] that might make him dangerous on the highways; or

(iv) who may not have the necessary knowledge or skill to [~~operate~~] drive a motor vehicle safely.

(6)(a) The division may suspend or revoke the license of any resident of this state upon receiving notice of the conviction of that person in another state of an offense committed there that, if committed in this state, would be grounds for the suspension or revocation of a license.

(b) The division may, upon receiving a record of the conviction in this state of a nonresident [~~operator~~] driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a certified copy of the record to the motor vehicle administrator in the state where the person convicted is a resident.

(7) (a) The division may suspend or revoke the license of any nonresident to [~~operate~~] drive a motor vehicle in this state for any cause for which the license of a resident [~~operator~~] driver may be suspended or revoked.

(b) Any nonresident who [~~operates~~] drives a motor vehicle upon a highway when his license has been suspended or revoked by the division is guilty of a class C misdemeanor.

(8) (a) The division may not deny or suspend the license of any person for a period of more than one year except:

(i) for failure to comply with the terms of a traffic citation under Subsection (2)[~~,~~];

(ii) upon receipt of a second or subsequent order suspending juvenile driving privileges under Section [~~41-2-126.5, Subsections 41-2-127~~] 53-3-219;

(iii) when extending a denial or suspension upon receiving certain records or reports under Subsection 53-3-220 (2) [~~and (3),~~]; and

(iv) for failure to give and maintain owner's or operator's security under Section 41-12a-412.

(b) The division may suspend the license of a person under Subsection (2) until he shows satisfactory evidence of compliance with the terms of the traffic citation.

(c) Upon denying, suspending, or revoking a license, the division shall require that all license certificates held by the person be surrendered to the division.

(d) At the end of the period of denial or suspension, the certificate surrendered shall be returned to the licensee.

(9) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately suspend the license of any person without hearing and without receiving a record of his conviction for a crime when the division has reason to believe that the person's license was [~~issued~~] granted by the division through error or fraud or that the necessary consent for the license has been withdrawn or is terminated.

(b) The procedure upon suspension is the same as under Subsection (5), except that after the hearing the division shall either rescind its order of suspension or cancel the license.

(10) (a) The division, having good cause to believe that a licensed [operator] driver is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to an examination.

(b) Upon the conclusion of the examination the division may suspend or revoke the person's license, permit him to retain the license, or [issue] grant a license subject to a restriction [by] imposed in accordance with Section [~~41-2-113~~] 53-3-208.

(c) Refusal or neglect of the licensee to submit to an examination is grounds for suspension or revocation of his license.

(11) A report authorized by Section [~~41-2-119~~] 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in this state if the conviction was for a speed of less than 71 miles per hour and did not result in an accident, unless authorized in writing by the individual whose report is being requested.

(12) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately suspend the license of a person if it has reason to believe that the person is the owner of a motor vehicle for which [a] security is required under Title 41, Chapter 12a, Motor Vehicle Financial Responsibility, and has [~~operated~~] driven the motor vehicle or permitted it to be [~~operated~~] driven within this state without the security being in effect.

(b) Sections 41-12a-411 and 41-12a-412 regarding the surrender of license plates and registration of motor vehicles and the requirement of proof of financial responsibility apply to persons whose driving privileges are suspended under this subsection.

(c) If the division exercises the right of immediate suspension granted under this subsection, the notice and hearing provisions of Subsection (5) apply.

(d) A person whose license suspension has been sustained or whose license has been revoked by the division under this subsection may file a request for agency action requesting a hearing.

(13) Any suspension or revocation of a person's license under this section also disqualifies any license issued to that person under Part [~~7~~] 4 of this chapter.

Section 101. Section Renumbered and Amended.

Section 53-3-222, Utah Code Annotated 1953, which is renumbered from Section 41-2-129, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-129~~] 53-3-222. Purpose of revocation or suspension for driving under the influence.

The Legislature finds that a primary purpose of [~~the provisions in~~] this title [~~that relate~~] relating to suspension or revocation of a person's license or privilege to [operate] drive a motor vehicle for driving with a blood alcohol content above a certain level or while under the influence of alcohol [~~or~~], any drug, or a combination of alcohol and any drug, or for refusing to take a chemical test as provided in Section 41-6-44.10, is protecting persons on highways by quickly removing from the highways those persons who have shown they are safety hazards [by

driving with a blood or breath alcohol content above a certain level or while under the influence of alcohol or any drug or combination of alcohol and any drug or by refusing to take a chemical test that complies with the requirements of Section 41-6-44.10].

Section 102. Section Renumbered and Amended.

Section 53-3-223, Utah Code Annotated 1953, which is renumbered from Section 41-2-130, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1992, is amended to read:

[41-2-130] 53-3-223. Chemical test for driving under the influence — Temporary license — Hearing and decision — Suspension and fee — Judicial review.

(1) (a) [When] If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) In this section, a reference to Section 41-6-44 includes any similar local ordinance adopted in compliance with Subsection 41-6-43 (1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6-44 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to [operate] drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6-44, or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6-44, the officer directing administration of the test or making the determination shall serve on the person, on behalf of the division, immediate notice of the division's intention to suspend the person's license to [operate] drive a motor vehicle.

(4) (a) When the officer serves immediate notice on behalf of the division he shall:

(i) take the Utah license certificate or permit, if any, of the [operator] driver;

(ii) issue a temporary license certificate effective for only 29 days; and

(iii) supply to the [operator] driver, on a form to be approved by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by the officer may, if approved as to form by the division, serve also as the temporary license certificate.

(5) The peace officer serving the notice shall send to the division within five days after the date of arrest and service of the notice:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Section 41-6-44.

(6) (a) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request shall be made within ten days of the date of the arrest.

(b) A hearing, if held, shall be before the division in the county in which the arrest occurred, unless the division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was [operating] driving a motor vehicle in violation of Section 41-6-44;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) In connection with a hearing the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(e) One or more members of the division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.

(g) After the hearing, the division shall order whether the person's license to [operate] drive a motor vehicle [be] is suspended or not.

(h) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(7) (a) A first suspension, whether ordered or not challenged under this subsection, is for a period of 90 days, beginning on the 30th day after the date of the arrest.

(b) A second or subsequent suspension under this subsection is for a period of one year, beginning on the 30th day after the date of arrest.

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection [41-2-112(15)] 53-3-205(14) for driving under the influence, a fee under Section [41-2-103] 53-3-105 to cover administrative costs, which shall be paid

before the person's driving privilege is reinstated[; ~~to cover administrative costs~~]. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

(b) A person whose license has been suspended by the division under this subsection may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section [~~41-2-131~~] 53-3-224.

Section 103. Section Renumbered and Amended.

Section 53-3-224, Utah Code Annotated 1953, which is renumbered from Section 41-2-131, Utah Code Annotated 1953, as last amended by Chapter 161 and renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-131~~] 53-3-224. Filing a petition for hearing — Judicial review of license cancellation, revocation, or suspension — Scope of review.

(1) A person denied a license or whose license has been cancelled, suspended, or revoked by the division may seek judicial review of the division's order.

(2)(a) Venue for judicial review of informal adjudicative proceedings is in the district court in the county where the person resides.

(b) Persons not residing in the state shall file in Salt Lake County or the county where the offense occurred, which resulted in the cancellation, suspension, or revocation.

Section 104. Section Renumbered and Amended.

Section 53-3-225, Utah Code Annotated 1953, which is renumbered from Section 41-2-132, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-132~~] 53-3-225. New license after revocation.

(1) (a) A person whose license has been revoked under this chapter may not apply for or receive any new license until the expiration of one year from the date the former license was revoked, or longer as provided in [~~Sections 41-2-127~~] Section 53-3-220, for driving a motor vehicle while the person's license is revoked, or involvement as a driver in an accident or violation of the motor vehicle laws, and [~~41-2-128~~] Section 53-3-221, for failing to comply with the terms of a traffic citation.

(b) A revoked license may not be renewed.

(c) Application for a new license shall be filed [under] in accordance with Section [~~41-2-112~~] 53-3-205.

(d) The new license is subject to all provisions of an original license.

(e) The division may not grant the license until an investigation of the character, driving abilities, and habits of the [operator] driver has been made to indicate whether it is safe to grant him a license.

(2) Any resident or nonresident whose license to [operate] drive a motor vehicle in this state has been suspended or revoked under this chapter may not [operate] drive a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or other source during suspension or after revocation until a new license is obtained under this chapter.

Section 105. Section Renumbered and Amended.

Section 53-3-226, Utah Code Annotated 1953, which is renumbered from Section 41-2-134, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-134~~] 53-3-226. Grounds for confiscation of licenses, plates, and other articles issued by state — Additional fee for reinstatement.

(1) (a) The division, any peace officer acting in his official capacity, or a person authorized under Subsection (2) may take possession of any certificate of title, registration card, decal, permit, license certificate, [or] registration plate, or any other article issued by the state:

(i) upon expiration, denial, suspension, disqualification, revocation, alteration, or cancellation of it;

(ii) that is fictitious;

(iii) that has been unlawfully or erroneously issued; or

(iv) that is unlawfully or erroneously displayed.

(b) A receipt shall be issued [which] that describes each confiscated item.

(2) The division may enter into contractual agreements with constables or other law enforcement agencies to facilitate confiscation of items listed in Subsection (1) [when] if a person fails or refuses to surrender any of those documents to the division upon demand.

(3) The division shall assess against a person making an application referred to in Subsection [~~41-2-112~~] 53-3-205 (14), in addition to any fee imposed under Subsection [~~41-2-112~~] 53-3-205 (14), a fee under Section [~~41-2-103~~] 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover the costs required to serve orders related to the purposes of Subsection (2).

Section 106. Section Renumbered and Amended.

Section 53-3-227, Utah Code Annotated 1953, which is renumbered from Section 41-2-136, Utah Code Annotated 1953, as last amended by Chapter 80, Laws of Utah 1992, is amended to read:

[41-2-136] 53-3-227. Driving a motor vehicle prohibited while license denied, suspended, disqualified, or revoked — Penalties.

(1) A person whose license has been denied, suspended, disqualified, or revoked under this chapter

or under the laws of the state in which his license was issued and who [~~operates~~] drives any motor vehicle upon the highways of this state while that license is denied, suspended, disqualified, or revoked shall be punished as provided in this section.

(2) A person convicted of a violation of Subsection (1), other than a violation specified in Subsection (3), is guilty of a class C misdemeanor.

(3) (a) A person is guilty of a class B misdemeanor whose conviction under Subsection (1) is based on his [~~operating~~] driving a motor vehicle while his license is suspended, disqualified, or revoked for:

(i) a refusal to submit to a chemical test under Section 41-6-44.10;

(ii) a violation of Section 41-6-44;

(iii) a violation of a local ordinance that complies with the requirements of Section 41-6-43;

(iv) a violation of Section 76-5-207;

(v) a criminal action that the person plead guilty to as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances under this subsection;

(vi) a revocation or suspension which has been extended under Subsection [~~41-2-127~~] 53-3-220 (2); or

(vii) where disqualification is the result of driving a commercial motor vehicle while the person's CDL is disqualified, suspended, canceled, or revoked under Subsection [~~41-2-715~~] 53-3-414 (1).

(b) A person is guilty of a class B misdemeanor whose conviction under Subsection (1) is based upon his [~~operating~~] driving a motor vehicle while his license is suspended, disqualified, or revoked in his state of licensure for violations corresponding to the violations listed in Subsection (a).

(c) A fine imposed under this subsection shall be at least the maximum fine for a class C misdemeanor under Section 76-3-301.

Section 107. Section Renumbered and Amended.

Section 53-3-228, Utah Code Annotated 1953, which is renumbered from Section 41-2-135, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-135~~] 53-3-228. Making false affidavit is perjury.

A person who makes any false affidavit or knowingly swears or affirms falsely, to any matter or thing required under this chapter to be sworn to or affirmed, is guilty of perjury.

Section 108. Section Renumbered and Amended.

Section 53-3-229, Utah Code Annotated 1953, which is renumbered from Section 41-2-133, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~41-2-133~~] 53-3-229. Prohibited uses of license certificate — Penalty.

It is a class C misdemeanor for a person to:

(1) display [~~or~~], cause or permit to be displayed, or to have in possession any license certificate knowing it is fictitious or has been canceled, denied, revoked, suspended, disqualified, or altered;

(2) lend or knowingly permit the use of a license certificate issued to him, by a person not entitled to it;

(3) display or to represent as his own a license certificate not issued to him;

(4) fail or refuse to surrender to the division upon demand any license [~~which~~] certificate that has been denied, suspended, disqualified, canceled, or revoked;

(5) use a false name or give a false address in any application for a license or any renewal or duplicate of the license certificate, or to knowingly make a false statement, or to knowingly conceal a material fact or otherwise commit a fraud in the application; or

(6) permit any other prohibited use of a license certificate issued to him.

Section 109. Section Renumbered and Amended.

Section 53-3-230, Utah Code Annotated 1953, which is renumbered from Section 41-2-137, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~41-2-137~~] 53-3-230. Violation of part — Misdemeanor.

A violation of this [~~chapter~~] part is a class C misdemeanor, unless otherwise specified.

Section 110. Section Enacted.

Section 53-3-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Impaired Persons Licensing

53-3-301. Short title.

This part is known as the "Impaired Persons Licensing Act."

Section 111. Section Enacted.

Section 53-3-302, Utah Code Annotated 1953, is enacted to read:

53-3-302. Definitions.

As used in this part:

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Health Care Professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(3) (a) "Impaired person" means a person who has a mental, emotional, or nonstable physical disabil-

ity or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highways.

(b) "Impaired person" does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

Section 112. Section Renumbered and Amended.

Section 53-3-303, Utah Code Annotated 1953, which is renumbered from Section 41-2-202, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-202~~] 53-3-303. Driver License Medical Advisory Board — Membership — Guidelines for licensing impaired persons — Recommendations to division.

[~~(1)(a) In this section "board" means the Driver License Medical Advisory Board.~~]

[~~(b) The commissioner may create a~~] (1) There is created within the division the Driver License Medical Advisory Board.

(2)(a) The board is [~~composed~~] comprised of three regular members appointed by the executive director of the Department of Health [~~and~~].

(b) The board shall be assisted by expert panel members nominated by [~~them~~] the board as necessary and as approved by the executive director of the Department of Health. [~~The regular members of the board serve as its executive committee and may act for the full board. They shall be assisted by~~]

(c) The expert panel members [~~in recommending~~] shall recommend medical standards in the areas of the panel members' special competence for determining the physical, mental, and emotional capabilities of applicants for licenses and [~~holders of licenses~~] licensees.

[~~(c)~~] (3) In reviewing individual cases, a panel acting with the authority of the board consists of at least two members, of which at least one is a regular board member.

(4) The director of the division or his designee serves as secretary to the board and its panels.

(5) Members of the [~~executive committee~~] board and expert panel members nominated by them shall be [~~physicians licensed to practice medicine in all of its branches in this state~~] health care professionals. [They]

(6) Board members and expert panel members shall receive per diem and expenses as determined by the director of the Division of Finance for each meeting of the board or one of its panels, to be paid as an operating expense by the division.

(7) The board shall meet from time to time when called by the director of the division.

[~~(2)~~] (8)(a) The board shall recommend written guidelines and standards for determining the physical, mental, and emotional capabilities of applicants for licenses and for [~~holders of the licenses~~] licensees.

(b) The guidelines and standards are applicable to all [~~individuals who hold current~~] Utah [~~licenses~~] licensees and for all individuals who hold learner permits and are participating in driving activities in all forms of driver education.

(c) The guidelines and standards shall be published by the division[~~, and are subject to the Utah Administrative Rulemaking Act~~].

[~~(3) When~~] (9) If the division has reason to believe that an applicant or licensee is an impaired person, it may:

(a) act upon the matter based upon the published guidelines and standards; or

(b) convene a panel to consider the matter and submit written findings and a recommendation; the division shall consider the recommendation along with other evidence in determining whether a license should be suspended, revoked, denied, disqualified, canceled, or restricted.

[~~(4) When~~] (10)(a) If the division has acted under Subsection [~~(3)~~] (9) to suspend, revoke, deny, disqualify, cancel, or restrict the driving privilege[~~,~~] without the convening of a panel, the affected applicant or licensee may within ten days of receiving notice of the action request in writing a review of the division's action by a panel.

(b) The panel shall review the matters and make written findings and conclusions.

(c) The division shall affirm or modify its previous action.

[~~(5)~~] (11)(a) Actions of the division are subject to judicial review as provided in this part.

(b) The guidelines, standards, findings, conclusions, and recommendations of the board or of a panel are admissible as evidence in any judicial review.

[~~(6)~~] (12) Members of the board and its panels incur no liability for recommendations, findings, conclusions, or for other acts performed in good faith and incidental to membership on the board or a panel.

[~~(7)~~] (13) The division shall provide forms for the use of [~~physicians~~] health care professionals in depicting the medical history of any physical, mental, or emotional impairment affecting the applicant's or licensee's ability to [~~operate~~] drive a motor vehicle.

[~~(8)~~] (14)(a)(i) Individuals who apply for or hold a license and have, or develop, or suspect that they have developed a physical, mental, or emotional impairment [~~which~~] that may affect driving safety are responsible for reporting this to the division or its agent.

(ii) If there is uncertainty, the individual is expected to seek competent medical evaluation and advice as to the significance of the impairment as it relates to driving safety, and to refrain from driving until a clarification is made.

(b) [Physicians] Health care professionals who care for patients with physical, mental, or emotional impairments [which] that may affect their driving safety, whether defined by published guidelines and standards or not, are responsible for making available to their patients without reservation their recommendations and appropriate information related to driving safety and responsibilities.

(c) A [physician] health care professional or other person who becomes aware of a physical, mental, or emotional impairment [which] that appears to present an imminent threat to driving safety and reports this information to the division in good faith has immunity from any damages claimed as a result of making the report.

Section 113. Section Renumbered and Amended.

Section 53-3-304, Utah Code Annotated 1953, which is renumbered from Section 41-2-201, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[41-2-201] 53-3-304. Licensing of impaired persons — Medical review — Restricted license — Procedures.

[(1) (a) As used in this section and Section 41-2-202, "impaired person" means a person who is afflicted with or suffering from a mental, emotional, or nonstable physical impairment or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while operating it upon the highways.]

[(b) "Impaired person" does not include a person having a nonprogressive or stable physical impairment which is objectively observable and which may be evaluated by a functional driving examination.]

[(2) When] (1) (a) If the division has reason to believe that an applicant for a license [may be] is an impaired person, the division may[, at its discretion,] require [the applicant to complete] one or both of the following:

[(a)] (i) a physical examination of the applicant by a [physician or surgeon licensed to practice medicine in this state] health care professional and the submittal by the [examining physician or surgeon] health care professional of a signed medical report indicating the results of the physical examination[; the format of the report shall be devised by the division with the advice of the division's Driver License Medical Advisory Board and shall elicit the necessary medical information to determine whether it would be a public safety hazard to permit the applicant to operate a motor vehicle upon the highways];

[(b)] (ii) a follow-up medical review of the applicant by a [physician or surgeon] health care professional and completion of [the above-described] a medical report at intervals established by the division under standards recommended by the [Driver License Medical Advisory Board] board.

(b) The format of the medical report required under Subsection (a) shall be devised by the division with the advice of the board and shall elicit the necessary medical information to determine whether it would be a public safety hazard to permit the applicant to drive a motor vehicle on the highways.

[(3)] (2) (a) The division may [issue] grant a restricted license to an impaired person who is otherwise qualified to obtain a license.

(b) The license continues in effect until its expiration date so long as the licensee complies with the requirements set forth by the division.

(c) The license renewal is subject to [renewal under] the conditions of this section.

(d) Any physical, mental, or emotional impairment of the applicant [which] that in the opinion of the division does not affect the applicant's ability to exercise reasonable and ordinary control at all times in [operating] driving a motor vehicle upon the highway, does not prevent [the issuance of] granting a license to the applicant.

[(4)] (3) (a) [When] If an examination is required under this section, the division is not bound by the recommendation of the examining [physician] health care professional but shall give fair consideration to the recommendation in acting upon the application. The criterion is whether upon all the evidence it is safe to permit the applicant to [operate] drive a motor vehicle.

(b) In deciding whether to [issue] grant or deny a license, the division may be guided by the opinion of experts in the fields of diagnosing and treating mental, physical, or emotional disabilities and may take into consideration any other factors [which] that bear on the issue of public safety.

[(5)] (4) Information provided under this section relating to physical, mental, or emotional impairment is [confidential] classified under Title 63, Chapter 2, Government Records Access and Management Act.

Section 114. Section Renumbered and Amended.

Section 53-3-401, Utah Code Annotated 1953, which is renumbered from Section 41-2-701, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

Part 4. Uniform Commercial Driver License Act

[41-2-701] 53-3-401. Short title.

This part is known as the "Uniform Commercial Driver License Act."

Section 115. Section Renumbered and Amended.

Section 53-3-402, Utah Code Annotated 1953, which is renumbered from Section 41-2-703, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[41-2-703] 53-3-402. Definitions.

As used in this part:

(1) "Alcohol" means any substance containing any form of alcohol, including[~~, but not limited to,~~] ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means the number of grams of alcohol per:

(a) 100 milliliters of blood;

(b) 210 liters of breath; or

(c) 67 milliliters of urine.

[~~(4)~~] (3) "Commercial driver instruction permit" or [~~(~~] "CDIP[~~)~~]" means a permit issued under Section [~~41-2-709~~] 53-3-408.

[~~(3)~~] (4) "Commercial driver license information system" or [~~(~~] "CDLIS[~~)~~]" means the information system established under Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, as a clearinghouse for information related to the licensing and identification of commercial motor vehicle [operators] drivers.

(5) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6), and includes all substances listed on the current Schedules I through V of 21 C.F.R., Part 1308 as they may be revised from time to time.

[~~(6) "Conviction" means:~~]

[~~(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;~~]

[~~(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;~~]

[~~(c) a plea of guilty or nolo contendere accepted by the court;~~]

[~~(d) the payment of a fine or court costs; or~~]

[~~(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.~~]

[~~(7) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle in any location open to the general public for purposes of vehicular traffic or who is required to hold a CDL under this part or federal law.~~]

[~~(8) "Driver license" means a license issued by a state or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle.~~]

[~~(9)~~] (6) "Employee" means any [operator] driver of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers[~~;~~]; and independent, owner-operator contractors while in the course of [operating] driving a commercial motor vehicle who are either directly employed by or under lease to an employer.

[~~(10)~~] (7) "Employer" means any individual or person including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns an individual to drive a commercial motor vehicle.

[~~(11)~~] (8) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term of more than one year.

[~~(12)~~] (9) "Foreign jurisdiction" means any jurisdiction other than the United States or a state of the United States.

[~~(13)~~] (10) "Gross vehicle weight rating" or [~~(~~] "GVWR[~~)~~]" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle or GVWR of a combination or articulated vehicle, and includes the GVWR of the power unit plus the total weight of all towed units and the loads on those units.

[~~(14)~~] (11) "Hazardous material" has the same meaning as defined under Section 103, 49 App. U.S.C. 1801 et seq., Hazardous Materials Transportation Act.

[~~(15)~~] (12) "NDR" means the National Driver Register.

[~~(16)~~] (13) "Nonresident CDL" means a commercial driver license issued by a state to an individual who resides in a foreign jurisdiction.

[~~(17)~~] (14) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

[~~(18) "School bus" means every publicly or privately owned motor vehicle designed for transporting ten or more passengers and operated for the transportation of children to or from school or school activities.~~]

[~~(19)~~] (15) "Serious traffic violation" means a conviction of any of the following:

(a) speeding 15 or more miles per hour above the posted speed limit;

(b) reckless driving as defined by state or local law;

(c) improper or erratic traffic lane changes;

(d) following the vehicle ahead too closely;

(e) any other motor vehicle traffic law which arises in connection with a fatal traffic accident; [or]

(f) all other violations under Section [~~41-2-127~~] 53-3-220 for which mandatory suspension or revocation are required.

[~~(20)~~] (16) "State" means a state of the United States, the District of Columbia, [or] any province or territory of Canada, or Mexico.

[~~(21)~~] (17) "United States" means the 50 states and the District of Columbia.

Section 116. Section Renumbered and Amended.

Section 53-3-403, Utah Code Annotated 1953, which is renumbered from Section 41-2-702, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-702~~] 53-3-403. **Superseding clause.**

[~~(1) The legislative purpose of this part is to implement Title XII of Public Law 99-570, the Federal Commercial Motor Vehicle Safety Act of 1986, and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:~~]

[~~(a) permitting commercial operators of motor vehicles to hold only one commercial driver license;~~]

[~~(b) lowering the alcohol concentration level at which a commercial operator is disqualified;~~]

[~~(c) disqualifying commercial operators upon conviction of certain criminal offenses and serious traffic-related offenses; and~~]

[~~(d) strengthening licensing and testing standards for commercial vehicle operator licenses.~~]

[~~(2) It is the intent of the Legislature that this part is remedial and shall be liberally construed to promote the public health, safety, and welfare.~~]

[~~(3)~~] This part supersedes the general licensing provisions of state law contained in Parts 1 and 2 of this chapter.

Section 117. Section Renumbered and Amended.

Section 53-3-404, Utah Code Annotated 1953, which is renumbered from Section 41-2-707, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-707~~] 53-3-404. Requirements to drive commercial motor vehicle.

(1) A person may not drive a commercial motor vehicle [~~after March 31, 1992~~], unless the person has been issued and is in immediate possession of:

(a) a CDL valid for the commercial motor vehicle he is driving; or

(b) a valid CDIP, and is accompanied by a person holding a valid CDL for the commercial motor vehicle being driven.

(2) A person may not drive a commercial motor vehicle [~~while~~] if his privilege to drive a commercial motor vehicle is:

(a) suspended, revoked, or canceled;

(b) subject to a disqualification; or

(c) subject to an out-of-service order.

Section 118. Section Renumbered and Amended.

Section 53-3-405, Utah Code Annotated 1953, which is renumbered from Section 41-2-720, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-720~~] 53-3-405. Authority to drive commercial motor vehicle in Utah.

(1) A person who holds or is required to hold a CDL may drive a commercial motor vehicle in this state if:

(a) the person has a [~~commercial driver license~~] CDL issued by any state [~~or province or territory of Canada~~] in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses;

(b) the person's license is not suspended, revoked, canceled, or disqualified; and

(c) he is not disqualified from driving a commercial motor vehicle.

(2) This section supersedes any provision to the contrary.

Section 119. Section Renumbered and Amended.

Section 53-3-406, Utah Code Annotated 1953, which is renumbered from Section 41-2-704, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-704~~] 53-3-406. Commercial motor vehicle driver — Only one license.

[~~(1)~~] Any person who drives a commercial motor vehicle may only have [~~no more than~~] one [~~driver~~] license[~~, except under Subsection (2)~~].

[~~(2) A person who drives a commercial vehicle may have more than one driver license during the ten-day period beginning on the date the person is issued a driver license.~~]

Section 120. Section Renumbered and Amended.

Section 53-3-407, Utah Code Annotated 1953, which is renumbered from Section 41-2-708, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-708~~] 53-3-407. Qualifications for commercial driver license — Fee — Third parties may administer skills test.

(1) A CDL may be issued only to a person who:

(a) is a resident of this state or qualifies as a nonresident under Section [~~41-2-710~~] 53-3-409;

(b) has passed a test of knowledge and skills for driving a commercial motor vehicle, that complies with minimum standards established by federal regulation in 49 C.F.R., Part 383, Subparts G and H; and

(c) has complied with all requirements of [~~the CMVSA-86~~] 49 C.F.R., Part 383 and other applicable state laws and federal regulations.

(2) Tests required under this section shall be prescribed and administered by the division.

(3) The division shall authorize a person, an agency of this or another state, an employer, a private driver training facility or other private institution, or a department, agency, or entity of local government to administer the skills test required under this section if:

(a) the test is the same test as prescribed by the division, and is administered in the same manner; and

(b) the party authorized under this section to administer the test has entered into an agreement with the state that complies with the requirements of 49 C.F.R., Part 383.75.

(4) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section [~~41-2-103~~] 53-3-105.

(5) A person authorized under this section to administer the skills test is not criminally or civilly liable for the administration of the test unless he administers the test in a grossly negligent manner.

(6) The division shall waive the skills test required under this section if it determines that the applicant meets the requirements of 49 C.F.R., Part 383.77.

Section 121. Section Renumbered and Amended.

Section 53-3-408, Utah Code Annotated 1953, which is renumbered from Section 41-2-709, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-709~~] 53-3-408. Qualifications for commercial driver instruction permit.

(1) A CDIP may be issued to a person who:

(a) holds a valid [~~driver~~] license;

(b) has at least one year of driving experience; and

(c) has passed the vision and written test for the class of license for which he is applying.

(2) A CDIP may be:

(a) issued only for a period not to exceed six months; and

(b) renewed or issued again only once within a two-year period.

(3) The holder of a CDIP may drive a commercial motor vehicle on a highway only when accompanied by a person who:

(a) holds a CDL valid for the type of commercial motor vehicle driven; and

(b) occupies a seat beside the individual for the purpose of giving the driver instruction regarding the driving of the commercial motor vehicle.

(4) A CDL or CDIP may not be issued to a person:

(a) subject to disqualification from driving a commercial motor vehicle; or

(b) whose [~~driver~~] license is suspended, revoked, or canceled in any state.

(5) A CDL or CDIP may not be issued to a person until the person has surrendered all [~~driver licenses~~] license certificates he holds to the division for cancellation [~~except as provided in Section 41-2-704~~].

Section 122. Section Renumbered and Amended.

Section 53-3-409, Utah Code Annotated 1953, which is renumbered from Section 41-2-710, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-710~~] 53-3-409. Nonresident CDL — Qualifications.

(1) The division may issue a nonresident CDL to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards in 49 C.F.R., Part 383.

(2) An applicant for a nonresident CDL shall surrender any nonresident CDL he holds to the issuing state for cancellation.

(3) The word "nonresident" shall be printed clearly on the face of a nonresident CDL issued by the division.

(4) The holder of a nonresident CDL is subject to the same rules, regulations, and laws as a resident CDL holder.

Section 123. Section Renumbered and Amended.

Section 53-3-410, Utah Code Annotated 1953, which is renumbered from Section 41-2-711, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-711~~] 53-3-410. Applicant information required for CDIP and CDL — State resident to have state CDL.

(1) The application for a CDL or CDIP shall include the following information regarding the applicant:

(a) full legal name and current mailing and residential address;

(b) physical description, including sex, height, weight, and eye color;

(c) date of birth;

(d) Social Security number, unless the application is for a nonresident license; and

(e) his signature.

(2) An application under this section shall also include all certifications required by 49 C.F.R., Part 383.71.

(3) When the holder of a license under this part changes his name, mailing address, or residence, he shall make application for a duplicate license within 30 days of the change.

(4) A person who has been a resident of this state for 30 consecutive days may not drive a commercial motor vehicle under the authority of a commercial driver license issued by another jurisdiction.

Section 124. Section Renumbered and Amended.

Section 53-3-411, Utah Code Annotated 1953, which is renumbered from Section 41-2-712, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-712~~] 53-3-411. Description of CDL — Information to be included.

(1) The CDL certificate shall be printed with the identifying words "Commercial Driver License" or "CDL."

(2) To the maximum extent practicable, the [license] CDL certificate shall be resistant to alteration.

(3) The CDL certificate shall include[, but is not limited to the following]:

(a) the legal name and principal place of residence of the holder;

(b) the holder's photograph in color;

(c) a physical description of the holder, including sex and height;

(d) the holder's date of birth;

(e) the holder's Utah [driver] license certificate number;

(f) the holder's Social Security number, unless the [license] CDL is for a nonresident;

(g) the holder's signature;

(h) the class or type of commercial motor vehicle or vehicles the holder is authorized to drive;

(i) any endorsements or restrictions to which the holder is subject;

(j) the name of the issuing state; and

(k) the dates between which the CDL is valid.

Section 125. Section Renumbered and Amended.

Section 53-3-412, Utah Code Annotated 1953, which is renumbered from Section 41-2-713, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[41-2-713] 53-3-412. CDL classifications, endorsements, and restrictions.

A CDL may be [issued] granted with the following classifications, endorsements, and restrictions:

(1) Classifications:

(a) Class A: any combination of vehicles with a [gross vehicle weight rating (]GVWR[)] of 26,001 pounds or more, if the GVWR of the one or more vehicles being towed is in excess of 10,000 pounds;

(b) Class B: any single motor vehicle with a GVWR of 26,001 pounds or more, including that motor vehicle when towing a vehicle with a GVWR of 10,000 pounds or less; and

(c) Class C: any single motor vehicle with a GVWR of less than 26,001 pounds or that motor vehicle when towing a vehicle with a GVWR of 10,000 pounds or less [and comprised of a] when the vehicle is designed or used:

(i) to transport more than 15 passengers, including the driver;

(ii) as a school bus, and weighing less than 26,001 pounds GVWR; or

(iii) to transport hazardous materials that requires the vehicle to be placarded under 49 C.F.R., Part 172, Subpart F.

(2) Endorsements and restrictions:

(a) "H" authorizes the driver to [operate] drive a commercial motor vehicle transporting hazardous materials.

(b) "K" restricts the driver to driving intrastate [operation of a class A or B] any commercial motor vehicle as defined by Title 49, C.F.R., Parts 383 and 390.

(c) "L" restricts the driver to [operate] drive a commercial motor vehicle not equipped with air brakes.

(d) "N" authorizes the driver to [operate] drive a tank vehicle.

(e) "P" authorizes the driver to [operate] drive a motor vehicle carrying more than 15 passengers including the driver.

(f) "S" authorizes the driver to [operate] drive a school bus or a motor vehicle carrying more than 15 passengers including the driver.

(g) "T" authorizes the driver to [operate] drive a commercial motor vehicle with a double or triple trailer.

(h) "X" authorizes the driver to [operate] drive a tank vehicle and transport hazardous materials.

Section 126. Section Renumbered and Amended.

Section 53-3-413, Utah Code Annotated 1953, which is renumbered from Section 41-2-714, Utah Code Annotated 1953, as last amended by Chapter 109, Laws of Utah 1992, is amended to read:

[41-2-714] 53-3-413. Issuance of CDL by division — Driving record — Expiration date — Renewal — Hazardous materials provision.

(1) Before the division may [issue] grant a CDL, the division shall obtain the driving record information regarding the applicant through the CDLIS, the NDR, and from each state where the applicant has been licensed.

(2) Within ten days after issuing a CDL, the division shall notify the CDLIS and provide all information required to ensure identification of the CDL holder.

(3) [Except as provided in Subsection 41-2-112(10), the] The expiration date for a CDL:

(a) issued before May 1, 1992, is the birth date of the holder in the fourth year following the year of issuance of the CDL; and

(b) issued after April 30, 1992, is the birth date of the holder in the fifth year following the year of issuance of the CDL.

(4)(a) The applicant for a renewal of a CDL shall complete the application form required by Section [41-2-711] 53-3-410 and provide updated information and required certification.

(b) To retain a hazardous materials endorsement upon CDL renewal, the applicant must take and pass the written test for hazardous materials endorsement in addition to any other testing required by the division.

Section 127. Section Renumbered and Amended.

Section 53-3-414, Utah Code Annotated 1953, which is renumbered from Section 41-2-715, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-715~~] 53-3-414. CDL disqualification or suspension — Grounds and duration — Procedure.

(1) A person who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first offense of:

(a) driving a commercial motor vehicle while under the influence of alcohol, drugs, a controlled substance, or more than one of these;

(b) driving a commercial motor vehicle while the concentration of alcohol in his blood, breath, or urine is .04 grams or more;

(c) leaving the scene of an accident involving a commercial motor vehicle he was driving;

(d) using a commercial motor vehicle in the commission of a felony [~~as defined in this part~~];

(e) refusal to submit to a test to determine the concentration of alcohol in his blood, breath, or urine; or

(f) driving a commercial motor vehicle while the person's commercial driver license is disqualified, suspended, canceled, or revoked.

(2) If any of the violations under Subsection (1) occur while the driver is transporting a hazardous material required to be placarded, the driver is disqualified for not less than three years.

(3) (a) Except as provided under Subsection (4), a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if convicted of two or more of any of the offenses under Subsection (1) arising from two or more separate incidents.

(b) Subsection [~~(3)~~] (a) applies only to those offenses committed after July 1, 1989.

(4) (a) Any driver disqualified for life from driving a commercial motor vehicle under this section, who has both voluntarily enrolled in and successfully completed an appropriate rehabilitation program [which] that meets the standards of the division, may apply to the division for reinstatement of his CDL.

(b) The applicant is not eligible for reinstatement [~~unless~~ and] until he has served a minimum disqualification period of ten years and has fully met the standards for reinstatement of commercial motor vehicle driving privileges [as] established by rule of the division [~~in accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act~~].

(c) If a reinstated driver is subsequently convicted of another disqualifying offense under this section, he [~~shall be~~] is permanently disqualified for life and [~~shall be~~] is ineligible to again apply for a reduction of the lifetime disqualification.

(5) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if he uses a commercial motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(6) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days from driving a commercial motor vehicle if he is convicted of two serious traffic violations and is disqualified for not less than 120 days if he is convicted of three serious traffic violations that:

(a) occur within three years of each other;

(b) arise from separate incidents; and

(c) involve the use or operation of a commercial motor vehicle.

(7) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days if the division determines, in its check of his driver license status, application, and record prior to issuing a CDL or at any time after the CDL is issued, that the driver has falsified information required to apply for a CDL in this state.

(8) (a) The division shall update its records and notify the CDLIS within ten days of suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

(b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL, the division shall notify the licensing authority of the issuing state or other jurisdiction and the CDLIS within ten days after the action is taken.

(c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this state, the division shall notify the CDLIS within ten days after the action is taken.

(9) (a) The division may immediately suspend or disqualify the CDL of a driver without a hearing or receiving a record of the driver's conviction when the division has reason to believe that the [license]:

(i) CDL was issued by the division through error or fraud[~~, or that the~~];

(ii) applicant provided incorrect or incomplete information to the division; or

(iii) driver no longer meets the fitness standards required to obtain a CDL.

(b) Suspension of a CDL under this subsection shall be in accordance with Section [~~41-2-128~~] 53-3-221.

(c) If a hearing is held under [~~this section~~] Section 53-3-221, the division shall then rescind the suspension order or cancel the [license] CDL.

Section 128. Section Renumbered and Amended.

Section 53-3-415, Utah Code Annotated 1953, which is renumbered from Section 41-2-706, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-706~~] 53-3-415. Limitations on employment of commercial motor vehicle drivers.

(1) An employer shall require [~~all applicants~~] each applicant for employment as a commercial motor vehicle driver to provide the information [~~as~~] required in Section [~~41-2-705~~] 53-3-416 regarding the applicant's employment history.

(2) An employer may not knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period when the driver has:

(a) a [~~driver license~~] CDL that is suspended, revoked, or canceled by any state;

(b) lost the privilege to drive a commercial motor vehicle in a state;

(c) been disqualified from driving a commercial motor vehicle; or

(d) more than one [~~driver~~] license[~~, except under Section 41-2-704~~].

Section 129. Section Renumbered and Amended.

Section 53-3-416, Utah Code Annotated 1953, which is renumbered from Section 41-2-705, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-705~~] 53-3-416. Driving record and other information to be provided to employer.

(1) Each person who drives a commercial motor vehicle who has a [~~commercial driver license~~] CDL issued by this state and who is convicted of violating, in any type of motor vehicle, a state or local law relating to motor vehicle traffic, other than a parking violation, in this or any other state or jurisdiction, shall notify both the division and his current employer of the conviction within 30 days of the date of conviction.

(2) A driver shall notify his current employer before the end of the business day following the day he receives notice that:

(a) his [~~license~~] CDL is suspended, revoked, or canceled by any state;

(b) he loses the privilege to drive a commercial motor vehicle in any state or other jurisdiction for any period; or

(c) he is disqualified from driving a commercial motor vehicle for any period.

(3) A person who applies to be a commercial motor vehicle driver shall at the time of application provide to the employer the following information for the ten years prior to the date of application:

(a) a list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle as any part of his employment;

(b) the dates between which the applicant drove for each employer listed under Subsection (a); and

(c) the reason the applicant's employment with each employer listed was terminated.

(4) (a) An applicant shall certify that all information provided under this section is true and complete to the best of his knowledge.

(b) An employer receiving information under this section may require that an applicant provide additional information.

Section 130. Section Renumbered and Amended.

Section 53-3-417, Utah Code Annotated 1953, which is renumbered from Section 41-2-716, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-716~~] 53-3-417. Measurable alcohol amount consumed — Penalty — Refusal to take test for alcohol.

(1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle while there is any measurable or detectable alcohol in his body.

(2) The division or a law enforcement officer shall place a person out-of-service for 24 consecutive hours who:

(a) violates Subsection (1); or

(b) refuses a request to submit to a test to determine the alcohol concentration of his blood, breath, or urine.

Section 131. Section Renumbered and Amended.

Section 53-3-418, Utah Code Annotated 1953, which is renumbered from Section 41-2-717, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1990, is amended to read:

[~~41-2-717~~] 53-3-418. Prohibited alcohol level for drivers — Procedures, including hearing.

(1) [~~It is unlawful and punishable under Section 41-2-715 for a~~] A person who holds or is required to hold a CDL [~~to~~] may not drive a commercial motor vehicle in this state if the person:

(a) has a blood, breath, or urine alcohol concentration of .04 grams or greater as shown by a chemical test given within two hours after the alleged driving of the commercial motor vehicle; or

(b) is under the influence of alcohol [~~or~~], any drug, or the combined influence of alcohol and any drug to any degree that renders the person incapable of safely [~~operating~~] driving a commercial motor vehicle.

(2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this

state is considered to have given his consent to a test or tests of his blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in his physical system.

(3) [~~When~~] If a peace officer has reasonable cause to believe that a person may be violating this section, the peace officer may request the person to submit to a chemical test to be administered in compliance with Section 41-6-44.3.

(4) When a peace officer requests a person to submit to a test under this section, he shall advise the person that test results indicating .04 grams or greater alcohol concentration or refusal to submit to any test requested will result in the person's disqualification under Section [~~41-2-715~~] 53-3-414 from [~~operating~~] driving a commercial motor vehicle.

(5) If test results under this section indicate .04 grams or greater of alcohol concentration or the person refuses to submit to any test requested under this section, the officer shall on behalf of the division serve the person with immediate notice of the division's intention to disqualify the person's privilege to [~~operate~~] drive a commercial motor vehicle.

(6) When the officer serves notice under Subsection (5) he shall:

(a) take any Utah license certificate or permit held by the driver;

(b) issue to the driver a temporary license certificate effective for [~~30~~] 29 days;

(c) provide the driver, on a form approved by the division, basic information regarding how to obtain a prompt hearing before the division; and

(d) issue a 24-hour out-of-service order.

(7) A notice of disqualification issued under Subsection (6) may serve also as the temporary license certificate under that subsection, if the form is approved by the division.

(8) The peace officer serving the notice of disqualification shall, within five days after the date of service, send to the division the person's license certificate, a copy of the served notice, and a report signed by the officer that indicates the results of any chemical test administered or that the person refused a test.

(9) (a) The person has the right to a hearing regarding the disqualification [~~within 30 days after the notice was issued~~].

(b) The request for the hearing shall be submitted to the division in writing and shall be made within ten days of the date the notice was issued. If requested, the hearing shall be conducted within 29 days after the notice was issued.

(10) (a) A hearing held under this section shall be held before the division and in the county where the notice was issued, unless the division agrees to hold the hearing in another county.

(b) The hearing shall be documented and shall determine:

(i) whether the peace officer had reasonable grounds to believe the person had been [~~operating~~] driving a motor vehicle in violation of this section;

(ii) whether the person refused to submit to any requested test; and

(iii) any test results obtained.

(c) In connection with a hearing the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and documents.

(d) One or more members of the division may conduct the hearing.

(e) A decision made after a hearing before any number of members of the division is as valid as if the hearing were held before the full membership of the division.

(f) After a hearing under this section the division shall indicate by order if the person's CDL is disqualified.

(g) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall indicate by order if the person's CDL is disqualified.

(11) If the division disqualifies a person under this section, the person may petition for a hearing under Section [~~41-2-131~~] 53-3-224. The petition shall be filed within 30 days after the division issues the disqualification.

(12) (a) A person who violates this section shall be punished in accordance with Section 53-3-414.

(b) In accordance with Section [~~41-2-715~~] 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.

(13) (a) In addition to the fees imposed under Section [~~41-2-112~~] 53-3-205 for reinstatement of a CDL, a fee under Section [~~41-2-103~~] 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.

(b) The [fee] fees under [~~Section 41-2-103~~] Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.

Section 132. Section Renumbered and Amended.

Section 53-3-419, Utah Code Annotated 1953, which is renumbered from Section 41-2-718, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-718~~] 53-3-419. Nonresident driver violations reported to resident state.

(1) When the division receives a report of the conviction of a nonresident holder of a CDL for a violation of a state law or local ordinance relating to traffic control, the division shall notify the driver licensing authority in the licensing state within ten days of receipt of the report.

(2) This section does not apply to parking violations.

Section 133. Section Renumbered and Amended.

Section 53-3-420, Utah Code Annotated 1953, which is renumbered from Section 41-2-719, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1989, is amended to read:

[~~41-2-719~~] 53-3-420. Driver's driving record available for certain purposes.

The division shall provide full information regarding the driving record of any holder of a CDL to:

(1) the driver license administrator of any other state requesting that information;

(2) any employer or prospective employer of a person to drive a commercial motor vehicle upon request and payment of a fee under Section [~~41-2-103~~] 53-3-105; and

(3) insurers of commercial motor vehicle drivers upon request and payment of a fee under Section [~~41-2-103~~] 53-3-105.

Section 134. Section Enacted.

Section 53-3-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Commercial Driver Training Schools

53-3-501. Short title.

This part is known as the "Commercial Driver Training Schools Act."

Section 135. Section Renumbered and Amended.

Section 53-3-502, Utah Code Annotated 1953, which is renumbered from Section 41-2-301, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1990, is amended to read:

[~~41-2-301~~] 53-3-502. Definitions.

As used in this part:

(1) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either practically or theoretically, or both, to [~~operate~~] drive motor vehicles, including motorcycles, and to prepare an applicant for an examination given by the state for a license or learner permit, and charging a consideration or tuition for those services.

(2) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for any school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to [~~operate~~] drive motor vehicles, including motorcycles, or preparing to take an examination for a license or learner permit, and any person who supervises the work of any other instructor.

Section 136. Section Renumbered and Amended.

Section 53-3-503, Utah Code Annotated 1953, which is renumbered from Section 41-2-307, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-307~~] 53-3-503. Exemption for college, university, and high school programs.

[~~The provisions of this~~] This part [do] does not apply to any person giving driver training lessons to schools or classes conducted by colleges, universities, and high schools for regularly enrolled full-time students as a part of the normal program for the institutions.

Section 137. Section Renumbered and Amended.

Section 53-3-504, Utah Code Annotated 1953, which is renumbered from Section 41-2-302, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-302~~] 53-3-504. Licenses required — Inspections.

[~~(1) The commissioner shall make rules as necessary concerning the administration and enforcement of this part and to protect the public.~~]

(1) A commercial driver training school may be established only if the school applies for and obtains a license from the division.

(2) A person may act as an instructor only if the person applies for and obtains a license from the division.

[~~(2)~~] (3) The [~~commissioner or his authorized representative~~] division shall inspect the school facilities and equipment of applicants and licensees and examine applicants for instructor's licenses.

[~~(3)~~] (4) The [~~commissioner~~] division shall administer and enforce [~~the provisions of~~] this part[~~, and may call upon the state superintendent of public instruction for assistance in formulating appropriate rules~~].

Section 138. Section Renumbered and Amended.

Section 53-3-505, Utah Code Annotated 1953, which is renumbered from Section 41-2-303, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1990, is amended to read:

[~~41-2-303~~] 53-3-505. School license required — Contents of rules.

[~~(1) A commercial driver training school may not be established unless the school applies for and obtains a license from the commissioner.~~]

[~~(2) Rules adopted by the~~] (1) The commissioner shall [state] make rules regarding the requirements for:

(a) a school license, including requirements concerning:

(i) locations[;];

(ii) equipment[;];

(iii) courses of instruction[;];

(iv) instructors[;];

(v) previous records of the school and instructors[;];

(vi) financial statements[;];

(vii) schedule of fees and charges[;];

(viii) character and reputation of the operators and instructors[;];

(ix) insurance as the commissioner determines necessary to protect the interests of the public[;]; and

(x) other provisions the commissioner may prescribe for the protection of the public[;]; and

(b) an instructor's license, including requirements concerning:

(i) moral character;

(ii) physical condition;

(iii) knowledge of the courses of instruction;

(iv) motor vehicle laws and safety principles and practices;

(v) previous personnel and employment records; and

(vi) other provisions the commissioner may prescribe for the protection of the public; and

(c) applications for licenses.

[~~(3)~~] (2) Rules [~~adopted~~] made by the commissioner shall require that a commercial driver training school offering motorcycle rider education meet or exceed the standards established by the Motorcycle Safety Foundation.

(3) Rules made by the commissioner shall require that an instructor of motorcycle rider education meet or exceed the standards for certification established by the Motorcycle Safety Foundation.

(4) The commissioner may call upon the state superintendent of public instruction for assistance in formulating appropriate rules.

Section 139. Section Renumbered and Amended.

Section 53-3-506, Utah Code Annotated 1953, which is renumbered from Section 41-2-305, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1989, is amended to read:

[~~41-2-305~~] 53-3-506. License expiration and renewal — Fee required — Disposition of revenue.

(1) (a) All commercial driver training school licenses and instructor licenses expire on the last day of the calendar year and may be renewed upon application to the commissioner as prescribed by rule.

(b) Each [applicant] application for an original or renewal school license or original or renewal instructor license shall be accompanied by a fee determined by the department [of Public Safety] under [Subsection] Section 63-38-3 [~~(2)~~].

(c) A license fee may not be refunded if the license is rejected, suspended, or revoked.

(2) The license fees collected under this part shall be placed in a fund designated as the "Commercial Driver Training Law Fund" and shall be used under the supervision and direction of the director of the Division of Finance for the administration of this part.

Section 140. Section Renumbered and Amended.

Section 53-3-507, Utah Code Annotated 1953, which is renumbered from Section 41-2-306, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-306~~] 53-3-507. Licenses — Cancellation, revocation, or refusal to issue or renew — Ineligibility for license.

(1) The department may cancel, revoke, or refuse to issue or renew a school or instructor license if it finds that the licensee or applicant has not complied with, or has violated [~~any of the provisions of~~] this part or any rule [~~adopted~~] made by the [~~commissioner~~] division.

(2) Any canceled or revoked license shall be returned to the [~~commissioner~~] division by the licensee, who is not eligible to apply for a license under this part until six months have elapsed since the date of the cancellation or revocation.

Section 141. Section Renumbered and Amended.

Section 53-3-508, Utah Code Annotated 1953, which is renumbered from Section 41-2-308, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-308~~] 53-3-508. Local boards of education may conduct class for adults.

Local boards of education, with the consent of the [~~commissioner~~] division, may conduct classes in driver education for adult members of the district in those areas of the state where no commercial driver training course is available, and may charge a fee not to exceed the cost of the training.

Section 142. Section Renumbered and Amended.

Section 53-3-509, Utah Code Annotated 1953, which is renumbered from Section 41-2-309, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~41-2-309~~] 53-3-509. Violations — Penalties.

[Violation] A violation of [~~any provision of~~] this part is a class C misdemeanor.

Section 143. Section Enacted.

Section 53-3-601, Utah Code Annotated 1953, is enacted to read:

Part 6. Driver's License Compact

53-3-601. Short title.

This part is known as the "Driver's License Compact."

Section 144. Section Enacted.

Section 53-3-602, Utah Code Annotated 1953, is enacted to read:

53-3-602. Definitions.

As used in this part:

(1) "Executive head" means the governor.

(2) "Licensing authority" means the department, the division, or both as the text may require.

Section 145. Section Renumbered and Amended.

Section 53-3-603, Utah Code Annotated 1953, which is renumbered from Section 41-2-501, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-501~~] 53-3-603. Ratification.

The Drivers' License Compact is [~~hereby unconditionally~~] ratified[~~, approved and confirmed~~] for [~~and by~~] the state [~~of Utah,~~] and is entered into with all other jurisdictions legally joining [~~therein~~] in the compact.

Section 146. Section Renumbered and Amended.

Section 53-3-604, Utah Code Annotated 1953, which is renumbered from Section 41-2-502, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-502~~] 53-3-604. Text of compact — Party states to report traffic violations and exchange driving record information in home state of driver.

[~~The text of the Drivers' License Compact is:~~]

DRIVERS' LICENSE COMPACT

ARTICLE I
Findings and Declaration of Policy

[~~(a)~~] (1) The party states find that:

[~~(1)~~] (a) The safety of their streets and highways is materially affected by the degree of compliance with state and local ordinances relating to the operation of motor vehicles.

[~~(2)~~] (b) Violation of [~~such~~] a law or ordinance relating to the operation of motor vehicles is evidence that the violator engages in conduct [~~which~~] that is likely to endanger the safety of persons and property.

[~~(3) The continuance in force of a~~] (c) A license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

[~~(b)~~] (2) It is the policy of each of the party states to:

[~~(1) Promote~~] (a) promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where [~~such~~] the operators drive motor vehicles[~~.~~]; and

[~~(2) Make~~] (b) make the reciprocal recognition of licenses to drive and eligibility [therefor] for licenses more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances, and administrative rules and regulations as a condition precedent to [~~the continuance of issuance of any~~] renewing a license [~~by reason of which the licensee is authorized~~] authorizing or [~~permitted to operate~~] permitting operation of a motor vehicle in any of the party states.

ARTICLE II
Definitions

As used in this compact:

[~~(a)~~] (1) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

[~~(b)~~] (2) "Home state" means the state [~~which~~] that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

[~~(c)~~] (3) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle [~~which~~] that is prohibited by state law, municipal ordinance, or administrative rule or regulation, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any [~~such~~] offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III
Reports of Conviction

(1) The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. [~~Such~~]

(2) The report shall clearly:

(a) identify the person convicted;

(b) describe the violation specifying the section of the statute, code, or ordinance violated;

(c) identify the court in which action was taken;

(d) indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond, or other security; and [~~shall~~]

(e) include any special findings made in connection [~~therewith~~] with the conviction.

ARTICLE IV
Effect of Conviction

[~~(a)~~] (1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if [~~such~~] the conduct had occurred in the home state, in the case of convictions for:

[~~(1) Manslaughter~~] (a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

[~~(2) Driving~~] (b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree [~~which~~] that renders the driver incapable of safely driving a motor vehicle;

[~~(3) Any~~] (c) any felony in the commission of which a motor vehicle is used; and

[~~(4) Failure~~] (d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

[~~(b)~~] (2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give [~~such~~] the same effect to the conduct as [~~is~~] provided by laws of the home state.

[~~(c)~~] (3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in [~~subdivision (a)~~] Subsection (1) of this article, [~~such~~] the party state shall construe the denominations and descriptions appearing in [~~subdivision (a) hereof~~] Subsection (1) as [~~being applicable~~] applying to and identifying those offenses or violations of a substantially similar nature and the laws of [~~such~~] the party state shall contain [~~such~~] provisions as [~~may be~~] necessary to ensure that full force and effect is given in this article.

ARTICLE V
Applications for New Licenses

(1) Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state.

(2) The licensing authority in the state where application is made shall not issue a license to drive to the applicant if the applicant:

[~~(1) The applicant~~] (a) has held [~~such~~] a license, but the [~~same~~] license has been suspended by reason, in whole or in part, of a violation and if [~~such~~] the suspension period has not terminated[~~.~~];

[~~(2) The applicant~~] (b) has held [~~such~~] a license, but the [~~same~~] license has been revoked by reason, in whole or in part, of a violation and if [~~such~~] the revocation has not terminated, except that after the expiration of one year from the date the license was revoked, [~~such~~] the person may make application for a new license if permitted by law[~~. The licensing~~], which the authority may refuse to issue [~~a license to any such applicant~~] if, after investigation, the licensing authority determines that it will not be safe to grant to [~~such~~] the person the privilege of driving a motor vehicle on the public highways[~~.~~]; or

[~~(3) The applicant~~] (c) is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders [~~such~~] the license.

ARTICLE VI
Applicability of Other Laws

Except as expressly required by [~~provisions of~~] this compact, nothing [~~contained herein shall be construed to affect~~] in this part affects the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, [~~nor to invalidate~~] or invalidates or [~~prevent~~] prevents any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII
Compact Administrator and Interchange of Information

[~~(a)~~] (1) (a) The head of the licensing authority of each party state [~~shall be~~] is the administrator of this compact for his state.

(b) The administrators, acting jointly [~~shall~~] have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

[~~(b)~~] (2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII
Entry into Force and Withdrawal

[~~(a)~~] (1) This compact shall enter into force and become effective as to any state when it has enacted the [~~same~~] compact into law.

[~~(b)~~] (2) Any party state may withdraw from this compact by enacting a statute repealing the [~~same~~] compact, but no [~~such~~] withdrawal [~~shall take~~] takes effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. [~~No~~]

(3) A withdrawal [~~shall~~] may not affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX
Construction and Severability

(1) This compact shall be liberally construed [~~so as~~] to effectuate the purposes [~~thereof~~] of the compact.

(2) The provisions of this compact [~~shall be~~] are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability [~~thereof~~] of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance [~~shall~~] is not [~~be~~] affected [~~thereby~~] by the holding.

(3) If this compact [~~shall be~~] is held contrary to the constitution of any party state [~~party thereto~~], the compact [~~shall remain~~] remains in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 147. Section Renumbered and Amended.

Section 53-3-605, Utah Code Annotated 1953, which is renumbered from Section 41-2-503, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-503~~] 53-3-605. Furnishing information and documents.

[~~As used in the compact, the term "licensing authority" with reference to this state, shall mean the department of public safety and/or its division of drivers' licenses, as the text may require. This~~] The department shall furnish to the appropriate authorities of other party states any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

Section 148. Section Renumbered and Amended.

Section 53-3-606, Utah Code Annotated 1953, which is renumbered from Section 41-2-504, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-504~~] 53-3-606. Expenses of compact administrator.

The compact administrator provided for in Article VII of the compact [~~shall~~] is not [~~be~~] entitled to any additional compensation on account of his service as [~~such~~] administrator, but [~~shall be~~] is entitled to expenses incurred in connection with his duties and responsibilities as [~~such~~] administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

Section 149. Section Renumbered and Amended.

Section 53-3-607, Utah Code Annotated 1953, which is renumbered from Section 41-2-506, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-506~~] 53-3-607. Court and agency reporting of actions to department.

Any court or other agency of this state, or a subdivision [~~thereof, which~~] of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive, shall report any [~~such~~] action suspending, revoking, or limiting a license to drive and the adjudication upon which it is based, to the department within ten days, on forms approved and furnished by the department.

Section 150. Section Enacted.

Section 53-3-701, Utah Code Annotated 1953, is enacted to read:

Part 7. Nonresident Violator Compact

53-3-701. Short title.

This part is known as the "Nonresident Violator Compact."

Section 151. Section Renumbered and Amended.

Section 53-3-702, Utah Code Annotated 1953, which is renumbered from Section 41-2-602, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-602~~] 53-3-702. Definitions.

As used in this part:

(1) "Citation" means a summons, ticket, or other official document issued by a [~~police~~] law enforcement officer for a traffic violation, containing an order [~~which~~] that requires the motorist to respond.

(2) "Collateral" means cash or other security deposited to secure an appearance for trial, following the issuance by a [~~police~~] law enforcement officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver license" means a license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

[~~(10) "Police officer" means an individual authorized by the party jurisdiction to issue a citation for a traffic violation.~~]

[~~(11)~~] (10) "Terms of the citation" means those options expressly stated upon the citation.

Section 152. Section Renumbered and Amended.

Section 53-3-703, Utah Code Annotated 1953, which is renumbered from Section 41-2-608, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-608~~] 53-3-703. Violations exempted from compact.

[~~The provisions of this~~] This compact [~~shall~~] does not apply to:

(1) parking or standing violations[~~,~~];

(2) highway weight limit violations[~~,~~]; and

(3) violations of law governing the transportation of hazardous materials.

Section 153. Section Renumbered and Amended.

Section 53-3-704, Utah Code Annotated 1953, which is renumbered from Section 41-2-601, Utah

Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-601~~] 53-3-704. Authority to enter compact.

The director of the [~~Driver License~~] division [~~is authorized and directed to~~] shall execute all documents and perform all other acts necessary to enter into and carry out [~~the provisions of~~] this [~~Nonresident Violator Compact~~] part.

Section 154. Section Renumbered and Amended.

Section 53-3-705, Utah Code Annotated 1953, which is renumbered from Section 41-2-603, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-603~~] 53-3-705. Procedures for issuing traffic citation.

The following is the procedure of the issuing jurisdiction:

(1) When issuing a citation for a traffic violation, a peace officer shall issue the citation to a motorist who possesses a driver license issued by a party jurisdiction and shall not, subject to the exceptions noted in Subsection (2), require the motorist to post collateral to secure appearance if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(2) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(3) (a) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued.

(b) The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(4) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content [as] contained in the compact manual.

(5) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(6) The licensing authority of the issuing jurisdiction [shall] may not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(7) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

Section 155. Section Renumbered and Amended.

Section 53-3-706, Utah Code Annotated 1953, which is renumbered from Section 41-2-604, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-604~~] 53-3-706. Procedure for home jurisdictions upon report of a licensee's failure to comply with out-of-state authority.

The following is the procedure for the home jurisdiction:

(1) (a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction may notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, and suspend the motorist's driver license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority.

(b) Due process safeguards will be accorded.

(2) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

Section 156. Section Renumbered and Amended.

Section 53-3-707, Utah Code Annotated 1953, which is renumbered from Section 41-2-605, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-605~~] 53-3-707. Rights of party jurisdictions not affected by compact.

Except as expressly required by [~~provisions of~~] the compact, nothing contained in this [~~act shall be construed to affect~~] part affects the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

Section 157. Section Renumbered and Amended.

Section 53-3-708, Utah Code Annotated 1953, which is renumbered from Section 41-2-606, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-606~~] 53-3-708. Compact administrator.

The director of the [~~Driver License~~] division [~~shall be~~] is the compact administrator for the state [~~of Utah~~].

Section 158. Section Renumbered and Amended.

Section 53-3-709, Utah Code Annotated 1953, which is renumbered from Section 41-2-609, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[41-2-609] 53-3-709. Amendment of compact.

(1)(a) This compact may be amended from time to time.

(b) Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(2) Adoption of an amendment [~~shall require~~] requires endorsement of all party jurisdictions and [~~shall become~~] becomes effective 30 days after the date of the last endorsement.

(3)(a) Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment [~~shall constitute~~] constitutes endorsement. [~~No~~]

(b) A report authorized by Section [~~41-2-119 shall~~] 53-3-104 may not contain any evidence of a suspension that occurred as a result of failure to comply with the requirements of this part.

Section 159. Section Enacted.

Section 53-3-801, Utah Code Annotated 1953, is enacted to read:

Part 8. Identification Cards

53-3-801. Short title.

This part is known as the "Identification Card Act."

Section 160. Section Renumbered and Amended.

Section 53-3-802, Utah Code Annotated 1953, which is renumbered from Section 41-2-401, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-401~~] 53-3-802. Definitions.

As used in this part:

(1) "Adult" means a person 21 years of age or older.

(2) "[~~Card~~] Identification card" means a card [~~of~~] for identification issued under this part.

(3) "Minor" means a person younger than 21 years of age.

Section 161. Section Renumbered and Amended.

Section 53-3-803, Utah Code Annotated 1953, which is renumbered from Section 41-2-402, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-402~~] 53-3-803. Application for identification card — Age requirements — Application on behalf of others.

(1) A person at least 16 years of age or older may apply to the [~~commissioner of public safety~~] division for [a] an identification card [~~of identification under this part~~].

(2) A person younger than 16 years of age may apply to the [~~commissioner of public safety~~] division for [a] an identification card [~~of identification under this part~~] with the consent of the applicant's parent or guardian [upon application].

(3)(a) If a person is unable to apply for the card due to his youth or incapacitation, the application may be made on behalf of that person by his parent or guardian. [~~The commissioner shall determine requirements of identification and consent of the applicant to be provided by the parent or guardian upon application.~~]

(b) A parent or guardian applying for an identification card on behalf of a child or incapacitated person shall provide:

(i) identification, as required by the commissioner; and

(ii) the consent of the incapacitated person, as required by the commissioner.

Section 162. Section Renumbered and Amended.

Section 53-3-804, Utah Code Annotated 1953, which is renumbered from Section 41-2-403, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-403~~] 53-3-804. Application for identification card — Required information.

(1) To apply for [~~a card of~~] an identification card, the applicant shall appear in person at any license examining station.

(2) The applicant shall provide the following information to the division:

[~~(1)~~] (a) true and full legal name and address;

[~~(2)~~] (b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

[~~(3)~~] (c) Social Security number;

[~~(4)~~] (d) place of birth;

[~~(5)~~] (e) height and weight;

[~~(6)~~] (f) color of eyes and hair;

[~~(7)~~] (g) signature;

[~~(8)~~] (h) photograph; and

[~~(9)~~] (i) organ donor indication, if desired.

Section 163. Section Renumbered and Amended.

Section 53-3-805, Utah Code Annotated 1953, which is renumbered from Section 41-2-404, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-404~~] 53-3-805. Identification card — Contents — Specifications.

(1) The [~~commissioner~~] division shall issue [~~a card of~~] an identification [~~which~~] card that:

(a) provides all the information contained in the application, other than place of birth[~~, and~~];

(b) contains a photograph of the applicant; and

(c) contains a facsimile of the applicant's signature.

(2)(a) The card shall be of an impervious material, resistant to wear, damage, and alteration.

(b) The size, form, and color of the card is prescribed by the commissioner.

(3) At the applicant's request, the card may include a statement that the applicant has a special medical problem or allergies to certain drugs, for the purpose of medical treatment.

(4) The card may also indicate the applicant's intent to make an anatomical gift, under the same procedure as provided for an operator license under [~~Subsection 41-2-121(3)~~] Section 53-3-207.

Section 164. Section Renumbered and Amended.

Section 53-3-806, Utah Code Annotated 1953, which is renumbered from Section 41-2-405, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-405~~] 53-3-806. Minor's card distinguishable.

The identification card issued to a minor shall be distinguished by the use of the plainly printed word "minor" or the use of a [~~special~~] color not used for the identification card issued to adults.

Section 165. Section Renumbered and Amended.

Section 53-3-807, Utah Code Annotated 1953, which is renumbered from Section 41-2-406, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991, is amended to read:

[~~41-2-406~~] 53-3-807. Expiration — Address and name change.

(1) The identification card expires on the birth date of the applicant in the fifth year following the issuance of the identification card, except as provided under Subsection (2).

(2) [A] (a) An identification card issued to a minor expires on his 21st birthday if that date occurs before the expiration date of the identification card under Subsection (1).

(b) The identification card may then be renewed as an adult card and expires as provided under Subsection (1).

(3) [~~When~~] If a person has applied for and received [a] an identification card and subsequently moves from the address shown on the application or on the card, the person shall within ten days notify the division in writing of his new address.

(4) [~~When~~] If a person has applied for and received [a] an identification card and subsequently changes his name under Title 42, Chapter 1, Change of Name, he:

(a) shall surrender the card to the division; and

(b) may apply for a new card in his new name by:

(i) furnishing proper documentation to the division as provided in Section [~~41-2-403~~] 53-3-804; and

(ii) paying the fee required under Section [~~41-2-103~~] 53-3-105.

Section 166. Section Renumbered and Amended.

Section 53-3-808, Utah Code Annotated 1953, which is renumbered from Section 41-2-407, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-407~~] 53-3-808. Fee required.

The commissioner shall charge and collect a fee under Section [~~41-2-103~~] 53-3-105 when [~~the~~] an application for an identification card is submitted. [~~All money collected under this part is administered under Section 41-2-120.~~]

Section 167. Section Renumbered and Amended.

Section 53-3-809, Utah Code Annotated 1953, which is renumbered from Section 41-2-408, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987, is amended to read:

[~~41-2-408~~] 53-3-809. Revocation of card for providing false information or altering card.

The commissioner shall revoke and repossess the identification card [~~of identification~~] of any person who has:

(1) furnished false or forged information or evidence in support of any application for any identification card; or [~~who has~~]

(2) altered any information or photograph on [a ~~card of~~] an identification card.

Section 168. Section Renumbered and Amended.

Section 53-3-810, Utah Code Annotated 1953, which is renumbered from Section 41-2-409, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~41-2-409~~] 53-3-810. Penalty — Violations.

It is a class C misdemeanor to:

(1) give false information on an application for the purpose of procuring [a] an identification card [~~of identification~~];

(2) knowingly possess or have under one's control an altered or fictitious identification card [~~of identification~~];

(3) alter any information or photograph contained on [~~a card of~~] an identification card;

(4) knowingly issue an adult [~~card of~~] identification card to any person younger than 21 years of age; or

(5) violate [~~any provision of~~] this part.

Section 169. Section Enacted.

Section 53-4-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 4. Investigations

Part 1. Investigations Division Administration

53-4-101. Short title.

This chapter is known as the "Investigations Act."

Section 170. Section Enacted.

Section 53-4-102, Utah Code Annotated 1953, is enacted to read:

53-4-102. Definitions.

As used in this chapter:

(1) "Alcoholic beverages" has the same meaning as provided in Section 32A-1-105.

(2) "Alcoholic products" has the same meaning as provided in Section 32A-1-105.

(3) "Commission" means the Alcoholic Beverage Control Commission.

(4) "Council" means the Citizen's Council on Alcoholic Beverage Control.

(5) "Director" means the director of the Investigations Division appointed under Section 53-4-103.

(6) "Division" means the Investigations Division created in Section 53-4-103.

Section 171. Section Enacted.

Section 53-4-103, Utah Code Annotated 1953, is enacted to read:

53-4-103. Investigations Division — Creation — Director — Appointment — Term — Compensation.

(1) There is created within the department the Investigations Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 172 Section Enacted.

Section 53-4-104, Utah Code Annotated 1953, is enacted to read:

53-4-104. Division duties.

The division shall:

(1) provide assistance and specialized law enforcement services to local law enforcement agencies;

(2) conduct financial investigations regarding suspicious cash transactions, fraud, and money laundering;

(3) investigate organized crime, extremist groups, and others promoting violence;

(4) investigate criminal activity of terrorist groups;

(5) enforce the Utah Criminal Code;

(6) cooperate and exchange information with other state agencies and with other law enforcement agencies of government, both within and outside of this state, to obtain information that may achieve more effective results in the prevention, detection, and control of crime and apprehension of criminals;

(7) as provided for in state and federal law, investigate and prosecute health care providers who commit fraud under the Medicaid program;

(8) as provided for in state and federal law, review and investigate complaints of the abuse and neglect of patients of health-care facilities that receive payments under the state medicaid program;

(9) create and maintain a statewide criminal intelligence system;

(10) provide specialized case support and investigate illegal drug production, cultivation, and sales;

(11) investigate, follow-up, and assist in highway drug interdiction cases;

(12) make rules to implement this chapter; and

(13) perform the functions specified in Part 2, Narcotics and Alcoholic Beverage Law Enforcement Act.

Section 173. Section Enacted.

Section 53-4-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Narcotics and Alcoholic Beverage Enforcement

53-4-201. Short title.

This part is known as the "Narcotics and Alcoholic Beverage Law Enforcement Act."

Section 174. Section Renumbered and Amended.

Section 53-4-202, Utah Code Annotated 1953, which is renumbered from Section 32A-15-102, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

[~~32A-15-102~~] 53-4-202. Responsibility and jurisdiction.

The [~~bureau~~] division shall:

(1) have specific responsibility for the enforcement of all laws of the state pertaining to alcoholic beverages and products;

(2) have general law enforcement jurisdiction throughout the state;

(3) have concurrent law enforcement jurisdiction with all local law enforcement agencies and their of-

ficers]. The bureau does not relieve local law enforcement agencies or officers of the responsibility of enforcing laws relating to alcoholic beverages and products or any other laws];

(4) cooperate and exchange information with any other state agency and with other law enforcement agencies of government, both within and outside this state, to obtain information that may achieve more effective results in the prevention, detection, and control of crime and apprehension of criminals;

(5) cooperate with the council in all matters concerning Title 32A, Alcoholic Beverage Control Act;

[(4)] (6) sponsor or supervise programs or projects related to prevention, detection, and control of violations of:

(a) Title 32A, [the] Alcoholic Beverage Control Act[, and the];

(b) Title 58, Chapter 37, Utah Controlled Substance Act;

(c) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(d) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(e) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; and

(f) Title 58, Chapter 38d, Clandestine Drug Lab Act; and

[(5) respond to the call of] (7) assist the governor [for] in an emergency or [other purposes] as the governor may require.

Section 175. Section Renumbered and Amended.

Section 53-4-203, Utah Code Annotated 1953, which is renumbered from Section 32A-15-104, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

[32A-15-104] 53-4-203. Duties of director.

The director, with the consent of the commissioner [of public safety], shall do the following:

[(1) The director shall appoint enforcement agents, investigative agents, clerks, and other employees as authorized from eligible lists supplied by the state merit system. Not fewer than 21 enforcement and investigative agents shall be appointed. This provision may not prohibit the director from employing or paying for the assistance of persons on a temporary basis who may otherwise be ineligible for state employment for purposes of assisting in crime prevention or detection.]

[(2) The director shall delegate responsibilities among employees as necessary for the purpose of policing and enforcing the laws of this state with respect to alcoholic beverages, products, dangerous drugs, and narcotics.]

[(3) The director shall establish ranks, grades, and positions in the bureau and designate the authority and responsibility in each rank, grade, and position.]

[(4) The director shall establish standards and qualifications and fix prerequisites of training, education, and experience for each rank, grade, and position, and fix salaries for each rank, grade, and position in accordance with salary standards adopted by the Division of Finance.]

[(5) The director shall appoint, under Subsection (1), personnel to each rank, grade, and position as necessary for the efficient operation and administration of the bureau and devise and administer examinations designed to test applicants for the positions. Any persons hired shall meet prescribed standards and prerequisites.]

[(6) The director shall formulate any necessary rules governing the bureau.]

[(7) The director shall discharge, demote, temporarily suspend, or take other disciplinary action against any employee in accordance with Title 67, Chapter 19, the State Personnel Management Act.]

[(8) The director shall prescribe any uniforms worn and equipment used by the employees.]

[(9) The director shall establish with the approval of the Division of Finance, the terms and conditions under which any expense allowance is paid to any employee.]

[(10)] (1) [The director shall] conduct in conjunction with the state boards of education and higher education in state schools, colleges, and universities, an educational program concerning alcoholic products, and work in conjunction with civic organizations, churches, local units of government, and other organizations in the prevention of alcoholic product and drug violations[.];

[(11)] (2) [The director shall] coordinate law enforcement programs throughout the state and accumulate and disseminate information related to the prevention, detection, and control of violations of this [title] chapter and Title 32A, Alcoholic Beverage Control Act, as it relates to storage or consumption of alcoholic beverages on premises maintained by social clubs, recreational, athletic, and kindred associations[.];

[(12) The director shall prepare and present evidence in connection with prosecution of persons charged with criminal offenses, and assist local law enforcement agencies in controlling law violations.]

[(13) The director shall cooperate with any law enforcement agency for the purpose of coordinating and correlating records concerning prevention, detection, and control of violations of the law.]

[(14)] (3) [The director shall] make inspections and investigations as required by the commission and the Department[.] of Alcoholic Beverage Control;

[(15)] (4) [The director shall] consult and cooperate with the council[.];

[(16)] (5) [The director shall] perform other acts as may be necessary or appropriate concerning control

of the use of alcoholic beverages and products and drugs[.]; and

[(17)] (6) [The director shall] make reports and recommendations to the Legislature, the governor, the commissioner [of public safety], the commission, [and] the Department of Alcoholic Beverage Control, and the council as may be required or requested.

[(18) The director shall make recommendations to the Legislature, the governor, the commissioner of public safety, the commission, the department, and the council.]

Section 176. Section Renumbered and Amended.

Section 53-4-204, Utah Code Annotated 1953, which is renumbered from Section 32A-15-106, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

[32A-15-106] 53-4-204. Director and officers to have peace officer powers.

[(1)] The director [of the bureau] and [each] enforcement [officer] officers:

[(a) is] (1) are vested with the powers of peace officers throughout the several counties of the state, with the exception of the power to serve civil process;

[(b) has] (2) have the powers and duties of inspectors under Title 32A, [the] Alcoholic Beverage Control Act;

[(c)] (3) may serve criminal process and arrest and prosecute violators of any law of this state; and

[(d)] (4) have the same rights as other peace officers to require aid in executing their duties.

[(2) The powers and duties conferred upon the director and the officers of the bureau are not a limitation upon the powers and duties of other peace officers in the state.]

Section 177. Section Renumbered and Amended.

Section 53-4-205, Utah Code Annotated 1953, which is renumbered from Section 32A-15-108, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

[32A-15-108] 53-4-205. Other agencies to cooperate with division.

(1) All agencies of the state and local governments shall cooperate with the [bureau] division in discharging its responsibilities under this [title] chapter, Title 32A, Alcoholic Beverage Control Act, Title 58, Chapter 37, Utah Controlled Substance Act, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, Title 58, Chapter 37b, Imitation Controlled Substances Act, and Title 58, Chapter 37c, Utah Controlled Substance Precursor Act.

(2) This part does not relieve local law enforcement agencies or officers of the responsibility of enforcing laws relating to alcoholic beverages and products or any other laws.

(3) The powers and duties conferred upon the director and the officers of the division are not a limitation upon the powers and duties of other peace officers in the state.

Section 178. Section Enacted.

Section 53-5-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 5. Law Enforcement and Technical Services

Part 1. Law Enforcement and Technical Services Division Administration

53-5-101. Short title.

This chapter is known as the "Law Enforcement and Technical Services Act."

Section 179. Section Enacted.

Section 53-5-102, Utah Code Annotated 1953, is enacted to read:

53-5-102. Definitions.

As used in this chapter:

(1) "Criminalistics" means the scientific discipline directed to the recognition, identification, individualization, and evaluation of physical evidence by application of the natural sciences in law-science matters.

(2) "Director" means the division director appointed under Section 53-5-103.

(3) "Division" means the Law Enforcement and Technical Services Division created in Section 53-5-103.

Section 180. Section Enacted.

Section 53-5-103, Utah Code Annotated 1953, is enacted to read:

53-5-103. Division — Creation — Director — Appointment — Qualifications.

(1) There is created within the department the Law Enforcement and Technical Services Division.

(2) The division shall be administered by a director appointed by the commissioner with the approval of the governor.

(3) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(4) The director acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 181. Section Enacted.

Section 53-5-104, Utah Code Annotated 1953, is enacted to read:

53-5-104. Division duties.

The division shall:

(1) provide and coordinate the delivery of support services to law enforcement agencies;

(2) maintain and provide access to criminal records for use by law enforcement agencies;

(3) publish law enforcement and statistical data;

(4) maintain dispatch and communications services for public safety communications centers and provide emergency medical, fire suppression, highway maintenance, public works, and law enforcement communications for municipal, county, state, and federal agencies;

(5) analyze evidence from crime scenes and crime-related incidents for criminal prosecution;

(6) provide criminalistic laboratory services to federal, state, and local law enforcement agencies, prosecuting attorneys' and agencies, and public defenders, with the exception of those services provided by the state medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act;

(7) establish satellite laboratories as necessary to provide criminalistic services;

(8) safeguard the public through licensing and regulation of activities that impact public safety, including polygraph examiners, concealed weapons, emergency vehicles, security companies, moonwalker enterprises, and burglar alarm companies;

(9) make rules to implement this chapter; and

(10) perform the functions specified in this chapter.

Section 182. Section Enacted.

Section 53-5-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Criminal Identification

53-5-201. Short title.

This part is known as the "Criminal Identification Act."

Section 183. Section Renumbered and Amended.

Section 53-5-202, Utah Code Annotated 1953, which is renumbered from Section 77-26a-2, Utah Code Annotated 1953, as enacted by Chapter 121, Laws of Utah 1983, is amended to read:

[~~77-26a-2~~] 53-5-202. **Definitions.**

As used in this [chapter] part:

(1) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

[~~(1) "Bureau" means the State Bureau of Criminal Identification within the Department of Public Safety.~~]

(2) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(a) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and

(b) sentencing, correctional supervision, and release.

(3) "Criminal justice agency" means courts or a government agency or subdivision of a government agency that administers criminal justice under a statute, executive order, or local ordinance and that allocates greater than 50% of its annual budget to the administration of criminal justice.

(4) "Executive order" means an order of the president of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access to it.

[~~(2)~~] (5) "Missing child" means any person under the age of 18 years who is missing from his or her home environment or a temporary placement facility for any reason and whose [~~whereabouts~~] location cannot be determined by the person responsible for the child's care.

Section 184. Section Renumbered and Amended.

Section 53-5-203, Utah Code Annotated 1953, which is renumbered from Section 77-26-3, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1992, is amended to read:

[~~77-26-3~~] 53-5-203. **Criminal investigation — Duties of division.**

The [bureau] division shall:

(1) procure and file information relating to identification and activities of persons who:

(a) are fugitives from justice;

(b) are wanted or missing;

(c) have been arrested for or convicted of a crime under the laws of any state or nation; and

(d) are believed to be involved in racketeering, organized crime, or a dangerous [offenses] offense;

(2) establish a statewide uniform crime reporting system that shall include:

(a) statistics concerning general categories of criminal activities;

(b) statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin, ethnicity, or other categories [which] that the [bureau] division finds appropriate; and

(c) other statistics as required by the Federal Bureau of Investigation;

(3) make a complete and systematic record and index of the information obtained under this [chapter] part;

(4) subject to the restrictions in this [~~chapter~~] part, establish policy concerning the use and dissemination of data obtained under this [~~chapter~~] part; [~~and~~]

(5) publish an annual report concerning the extent, fluctuation, distribution, and nature of crime in Utah[~~.~~];

(6) establish a statewide central register for children, which may include:

(a) identifying data including fingerprints of each child whose legal parent or guardian voluntarily submits the information to the register;

(b) identifying data of any child reported as missing by the person responsible for the child's care;

(c) dates and circumstances of any persons requesting or receiving information from the register; and

(d) any other information, including blood types and photographs found necessary in furthering the purposes of this part;

(7) receive information regarding missing children, as provided in Section 53A-11-502, and stolen vehicles, vessels, and outboard motors, as provided in Section 41-1a-1401;

(8) adopt systems of identification, including the fingerprint system, to be used by the division to facilitate law enforcement; and

(9) assign a distinguishing number or mark of identification to any pistol or revolver, as provided in Section 76-10-520.

Section 185. Section Renumbered and Amended.

Section 53-5-204, Utah Code Annotated 1953, which is renumbered from Section 77-26-23, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

[~~77-26-23~~] 53-5-204. Missing children — Reports — Notification.

[~~(1) For purposes of this section, "missing child" means a person under the age of 18 who is the subject of a custody dispute, who has been missing for at least 48 hours from his home environment or temporary placement facility, and whose whereabouts cannot be determined by the person responsible for the child's care.~~]

[~~(2) It is the duty of each police or~~] (1) Each law enforcement agency that is investigating the report of a missing child [~~to~~] shall provide information regarding that report to the [~~bureau~~] division.

[~~(3)~~] (2) The [~~bureau~~] division shall notify the State Registrar of Vital Statistics of all missing children reported in accordance with Subsection [~~(2)~~] (1) and shall provide the state registrar with information concerning the identity of those missing children.

[~~(4)~~] (3) If the [~~bureau~~] division has reason to believe that a missing child reported in accordance with Subsection [~~(2)~~] (1) has been enrolled in a specific school in this state, [~~it~~] the division shall also notify the last-known school of that report[~~, if that school can be identified by the person reporting the child missing~~].

[~~(5)~~] (4) Upon learning of the recovery of a missing child, the [~~bureau~~] division shall notify the state registrar and any school that it has previously informed of the child's disappearance.

[~~(6)~~] (5) The [~~bureau~~] division shall, by rule, determine the manner and form of reports, notices, and information required by this section.

[~~(7)~~] (6) Upon notification by the state registrar or school personnel that a request for a birth certificate [~~or~~], school record, or other information concerning a missing child has been made, or that an investigation is needed in accordance with Section 53A-11-503, the [~~bureau~~] division shall immediately notify the local law enforcement authority.

Section 186. Section Enacted.

Section 53-5-205, Utah Code Annotated 1953, is enacted to read:

53-5-205. Missing children records — Confidentiality — Availability.

Inquiries made regarding missing children are confidential and are available only to:

(1) a law enforcement agency investigating a report of a missing child;

(2) an agency having the responsibility or authority to care for, treat, or supervise a child who is the subject of a placement in temporary or substitute care or an adoption proceeding;

(3) a court, upon a finding that access to the records may be necessary for the determination of an issue before it;

(4) the office of the public prosecutor or its deputies;

(5) any person engaged in bona fide research when approved by the director of the division, excluding names and addresses; and

(6) entities or persons authorized to receive the information in accordance with Section 53-5-204.

Section 187. Section Renumbered and Amended.

Section 53-5-206, Utah Code Annotated 1953, which is renumbered from Section 77-26-3.5, Utah Code Annotated 1953, as enacted by Chapter 59, Laws of Utah 1992, is amended to read:

[~~77-26-3.5~~] 53-5-206. Uniform crime reporting system — Use of data.

The data acquired under the statewide uniform crime reporting system shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

Section 188. Section Renumbered and Amended.

Section 53-5-207, Utah Code Annotated 1953, which is renumbered from Section 77-26-5, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-5~~] 53-5-207. Collection of information.

The commissioner and persons designated by him [~~are authorized to call upon~~] may require all law enforcement officers, the warden of the state prison, the keeper of any jail or correctional institution, or superintendent of the state hospital to obtain information [~~which~~] that will aid in establishing the records required to be kept[~~, and all such officers shall furnish the information~~].

Section 189. Section Renumbered and Amended.

Section 53-5-208, Utah Code Annotated 1953, which is renumbered from Section 77-26-8, Utah Code Annotated 1953, as last amended by Chapter 23, Laws of Utah 1991, is amended to read:

[~~77-26-8~~] 53-5-208. Peace officers, prosecutors, and magistrates to supply information to state and F.B.I. — Notification of arrest based on warrant.

(1) Every peace officer shall:

(a) cause fingerprints of persons he has arrested to be taken on forms provided by the [~~bureau~~] division and the Federal Bureau of Investigation;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the [~~bureau~~] division, which shall forward the F.B.I. copy to the Identification Division[~~,~~] of the Federal Bureau of Investigation.

(2) If, after fingerprints have been taken in accordance with Subsection (1), the prosecutor declines to prosecute, or investigative action as described in Section 77-2-3 is terminated, the prosecutor or law enforcement agency shall notify the [~~bureau~~] division of this action within 14 working days.

(3) At the preliminary hearing or arraignment of a felony case, the prosecutor shall ensure that each felony defendant has been fingerprinted and an arrest and fingerprint form is transmitted to the [~~bureau~~] division. In felony cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the sheriff of the county to:

(a) cause fingerprints of each felony defendant to be taken on forms provided by the [~~bureau~~] division;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the [~~bureau~~] division.

(4) If an arrest is based upon information about the existence of a criminal warrant of arrest or commitment under Rule 6, Utah Rules of Criminal Procedure, every peace officer shall without delay notify the [~~bureau~~] division of the service of each warrant of arrest or commitment, in a manner specified by the [~~bureau without delay~~] division.

Section 190. Section Renumbered and Amended.

Section 53-5-209, Utah Code Annotated 1953, which is renumbered from Section 77-26-9, Utah Code Annotated 1953, as last amended by Chapters 30 and 233, Laws of Utah 1992, is amended to read:

[~~77-26-9~~] 53-5-209. Magistrates and court clerks to supply information — Statewide warrant system responsibility — Quality control — Training — Technical support — Transaction costs.

(1) Every magistrate or clerk of a court responsible for court records in this state shall furnish the [~~bureau~~] division with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convictions, acquittals, or probations granted, within 30 days of the disposition and on forms provided by the [~~bureau~~] division; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure, and Section 78-32-4, within one day of the action and in a manner provided by the [~~bureau~~] division.

(2) The [~~bureau~~] division is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering warrant information on the system;

(b) establish system procedures and provide training to all criminal justice agencies having access to warrant information;

(c) provide technical support, program development, and systems maintenance for the operation of the system; and

(d) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to warrant information.

(3) [~~Notwithstanding Subsection (2)(d) any~~] (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This subsection supersedes any conflicting provision in Subsection (2)(d).

Section 191. Section Renumbered and Amended.

Section 53-5-210, Utah Code Annotated 1953, which is renumbered from Section 77-26-10, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-10~~] 53-5-210. **Penal institutions and state hospital to supply information.**

(1) The warden of the state prison, keeper of any jail or correctional institution, and superintendent of the state hospital shall forward to the [bureau] division:

(a) the fingerprints and recent photographs of all persons confined in [~~such institutions~~] each institution under criminal commitment [~~and also~~];

(b) information relating to the parole, termination or expiration of sentence, or any other release of [~~such persons~~] each person from confinement during the preceding month; and

(c) a photograph taken near the time of release [on ~~forms provided by the bureau~~].

(2) The adult probation and parole section of the Department of Corrections shall furnish to the division:

(a) information relating to the revocation or termination of probation or parole; and

(b) upon request, the names, fingerprints, photographs, and other data.

(3) The chairman of the Board of Pardons shall provide to the division information regarding the issuance, recall, cancellation, or modification of any warrant issued by members of the Board of Pardons, under Section 77-27-11, within one day of issuance.

(4) Information provided to the division under this section shall be on forms designated by the division.

Section 192. Section Renumbered and Amended.

Section 53-5-211, Utah Code Annotated 1953, which is renumbered from Section 77-26-13, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1992, is amended to read:

[~~77-26-13~~] 53-5-211. **Assistance to law enforcement agencies — Investigation of crimes — Laboratory facilities.**

(1) The commissioner may assist any law enforcement agency in:

(a) establishing identification and investigation records systems;

(b) establishing uniform crime reporting systems;

(c) investigating any crime;

(d) coordinating the exchange of criminal identification, intelligence, and investigation information among law enforcement agencies; and

(e) providing [~~such~~] the agencies with equipment, technical assistance, and instruction.

(2) (a) At the governor's direction, the commissioner shall assign [~~bureau~~] division employees to investigate any crime within this state for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators of that crime even if the commissioner has not received a request from a law enforcement agency.

(b) The governor may establish a time period for the commissioner to pursue the investigation.

(c) To accomplish the purposes of this section, the commissioner may provide, through the [~~bureau~~] division, crime detection laboratory facilities.

Section 193. Section Renumbered and Amended.

Section 53-5-212, Utah Code Annotated 1953, which is renumbered from Section 77-26-14, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1992, is amended to read:

[~~77-26-14~~] 53-5-212. **Cooperation with agencies of any state or nation.**

The [~~bureau~~] division shall cooperate with appropriate agencies of any state or nation in developing uniform systems of criminal identification, crime reporting, and information exchange.

Section 194. Section Renumbered and Amended.

Section 53-5-213, Utah Code Annotated 1953, which is renumbered from Section 77-26-15, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-15~~] 53-5-213. **Admissibility in evidence of certified copies of division files.**

A copy of any fingerprint, record, document, or other evidence in the files of the [~~bureau~~] division, certified by the commissioner to be a true copy of the original, [~~shall be~~] is admissible in evidence in the same manner as the original.

Section 195. Section Renumbered and Amended.

Section 53-5-214, Utah Code Annotated 1953, which is renumbered from Section 77-26-16, Utah Code Annotated 1953, as last amended by Chapters 167 and 233, Laws of Utah 1992, is amended to read:

[~~77-26-16~~] 53-5-214. **Restrictions on access, use, and contents of division records — Challenging accuracy of records — Usage fees — Missing children records.**

[~~(1) As used in this chapter:~~]

[~~(a) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.~~]

[~~(b) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:~~]

[~~(i) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and~~]

[~~(ii) sentencing, correctional supervision, and release.~~]

[~~(c) "Criminal justice agency" means courts or a government agency or subdivision of a government~~

~~agency that administers criminal justice under a statute, executive order, or local ordinance and which allocates greater than 50% of its annual budget to the administration of criminal justice.~~]

[~~(d "Executive order" means an order of the president of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access to it.~~]

[~~(2)~~ (1) Dissemination of information from a criminal history record [~~and~~] or warrant of arrest information from [~~bureau~~] division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; [~~and~~]

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with the requirements of Section 78-30-3.5;

(f) [~~(i)~~] agencies and individuals as [~~authorized by~~] the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and

[~~(ii) the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data; and~~]

(g) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution pursuant to an agreement.

(2) An agreement under Subsection (1)(f) or (1)(g) shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data.

(3) Any criminal history record information obtained from [bureau] division files may be used only for the purposes for which it was provided and may not be further disseminated.

(4) [~~Criminal~~] If an individual has no prior criminal convictions, criminal history record information contained in the [~~bureau's~~] division's computerized criminal history files may not include arrest or disposition data concerning [~~individuals~~] an individual who [~~have~~] has been acquitted, [~~their~~] his charges dismissed, or when no complaint against [~~them~~] him has been filed [~~if they have had no prior criminal convictions~~].

(5) (a) This section does not preclude the use of the [~~Division of Information Technology Services'~~] division's central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored [~~in a manner~~] so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the [~~bureau's~~] division's files [~~shall be~~] is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) (a) The commissioner shall establish:

(i) procedures to allow an individual to review his criminal history record information; and

(ii) a processing fee [~~established~~] under [~~Subsection~~] Section 63-38-3 [~~(2)~~] for the services.

(b) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the [~~bureau's~~] division's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

Section 196. Section Renumbered and Amended.

Section 53-5-215, Utah Code Annotated 1953, which is renumbered from Section 77-26-17, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-17~~] 53-5-215. Telecommunications systems.

For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the [~~bureau~~] division may operate and coordinate [~~such communication~~] telecommunications systems as may be required in the conduct of its duties [~~as herein set forth~~] under this part.

Section 197. Section Renumbered and Amended.

Section 53-5-216, Utah Code Annotated 1953, which is renumbered from Section 77-26-18, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-18~~] 53-5-216. Authority of officers and officials to take fingerprints, photographs, and other data.

[~~To the end that officers and officials described in sections 77-26-8 through 77-26-11 may be enabled to transmit the information required of them in these sections, such~~] The officers and officials described in Sections 53-5-208 through 53-5-210 shall [~~have the authority and duty to~~] take, or cause to be taken, fingerprints, photographs, and other related data of persons [~~described in such sections~~] under this part.

Section 198. Section Renumbered and Amended.

Section 53-5-217, Utah Code Annotated 1953, which is renumbered from Section 77-26-19, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-19~~] 53-5-217. Refusal to provide information — False information — Misdemeanor.

[~~Any person who neglects or refuses~~] It is a class B misdemeanor for a person to:

(1) neglect or refuse to provide, or willfully [~~withholds,~~] withhold any information under [~~provisions of~~] this [~~chapter, or who~~] part;

(2) willfully [~~provides~~] provide false information[~~; or who~~];

(3) willfully [~~fails~~] fail to do or perform any act [~~so~~] required [~~to be done or performed by him~~] under this [~~chapter, or who shall~~] part;

(4) hinder or prevent another from doing an act [~~so~~] required [~~to be done by that other, shall be guilty of a class B misdemeanor.~~] under this part; or

(5) willfully remove, destroy, alter, mutilate, or disclose the contents of any file or record of the division unless authorized by and in compliance with procedures established by the commissioner.

Section 199. Section Renumbered and Amended.

Section 53-5-218, Utah Code Annotated 1953, which is renumbered from Section 77-26-22, Utah Code Annotated 1953, as last amended by Chapter 143, Laws of Utah 1989, is amended to read:

[~~77-26-22~~] 53-5-218. Notice required of arrest of school employee for controlled substance or sex offense.

(1) [~~Upon the arrest of any school employee for any of the offenses described in Section 58-37-8, or in Title 76, Chapter 5, Part 4, or for any public offense the commission of which involves sexual conduct, or upon receiving notice from any other jurisdiction that a school employee has committed an act which would, if committed in Utah, be an offense described in Section 58-37-8, or in Title 76, Chapter 5, Part 4, or an offense involving sexual conduct, the~~] The chief administrative officer of the law enforcement agency making the arrest or receiving [the] notice under Subsection (2) shall [~~cause notification to be given without delay to~~] immediately notify the following individuals:

[~~(1)~~] (a) the administrator of teacher certification in the State Office of Education; and

[~~(2)~~] (b) the superintendent of schools of the employing public school district or, if the offender is an employee of a private school, the administrator of that school.

(2) Subsection (1) applies upon:

(a) the arrest of any school employee for any offense:

(i) in Section 58-37-8;

(ii) in Title 76, Chapter 5, Part 4, Sexual Offenses; or

(iii) involving sexual conduct; or

(b) upon receiving notice from any other jurisdiction that a school employee has committed an act which would, if committed in Utah, be an offense under Subsection (a).

Section 200. Section Renumbered and Amended.

Section 53-5-219, Utah Code Annotated 1953, which is renumbered from Section 77-26-12, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

[~~77-26-12~~] 53-5-219. Supplies and equipment for compliance by reporting agencies.

All governing boards or commissions of each city, town, county, or correctional institution of the state shall furnish the appropriate officials with supplies and equipment necessary to perform the duties prescribed [~~duties~~] in this part.

Section 201. Section Renumbered and Amended.

Section 53-5-301, Utah Code Annotated 1953, which is renumbered from Section 34-37-1, Utah Code Annotated 1953, as enacted by Chapter 94, Laws of Utah 1973, is amended to read:

Part 3. Deception Detection Examiners

[~~34-37-1~~] 53-5-301. Short title.

This [~~act shall be~~] part is known [~~and may be cited~~] as the "[~~The~~] Deception Detection Examiners Act."

Section 202. Section Renumbered and Amended.

Section 53-5-302, Utah Code Annotated 1953, which is renumbered from Section 34-37-2, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1981, is amended to read:

[~~34-37-2~~] 53-5-302. Definitions.

As used in this [~~act~~] part:

[~~(1) "Department" means the department of public safety.~~]

(1) "Board" means the Detection of Deception Board created in Section 53-5-303.

(2) "Examination" means the use of an instrument on an individual for the purpose of deception detection.

(3) "Examiner" means any person who conducts an examination and who interprets the results obtained for the purpose of deception detection.

(4) "Intern" means a person being trained in the use of an instrument and the interpretation of the results obtained for the purpose of deception detection under the personal supervision and control of an examiner.

(5) "Instrument" means a polygraph, voice stress equipment, or any other device [which] that records the examinee's cardiovascular patterns, respiratory patterns, galvanic skin response, or other physiological characteristics for the purpose of monitoring levels of stress relating to truth and deception. [~~Instruments used for the purpose of monitoring levels of stress relating to truth and deception must be approved by the department.~~]

Section 203. Section Renumbered and Amended.

Section 53-5-303, Utah Code Annotated 1953, which is renumbered from Section 34-37-3, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session, is amended to read:

[~~34-37-3~~] 53-5-303. Detection of Deception Board — Creation — Members — Terms — Rules — Fees — Requirement of license.

[~~(1) The department shall issue, renew, suspend, and revoke licenses to examiners and interns and, for that purpose, shall appoint a five-member licensing board~~] (1) (a) There is created within the division the Detection of Deception Board.

(b) The board comprises five members as follows:

(i) a representative of the highway patrol;

(ii) a representative of a city law enforcement agency;

(iii) a representative of a county law enforcement agency;

(iv) a representative of the Department of Corrections; and

(v) a representative of the Utah Peace Officers Association.

(c) Members of the board shall be appointed for three-year terms by the commissioner, except that the initial appointments shall be made as follows:

(i) two members shall be appointed for three-year terms;

(ii) two members shall be appointed for two-year terms; and

(iii) one member shall be appointed for a one-year term.

(d) Members of the licensing board shall be reimbursed for their actual and necessary travel expenses and shall receive a per diem as provided by law.

(2) The [~~department~~] division shall [~~prescribe and promulgate~~] make rules for [~~its~~]:

(a) operation of the board; and [~~the exercise of its power for~~]

(b) the conduct of the business or practice of administering detection deception examinations [~~not in conflict with the Constitution and laws of the United States or this state and may amend the rules as it deems necessary~~].

(3) Fees charged under this [~~chapter~~] part shall be set by the [~~department~~] division pursuant to [~~Subsection~~] Section 63-38-3[~~(2)~~].

(4) The board shall:

(a) receive and evaluate applications for examiners' and interns' licenses;

(b) investigate applicants for licenses, as necessary;

(c) issue, renew, suspend, and revoke examiners' and interns' licenses; and

(d) work through the division to carry out its responsibilities.

[~~(2) No~~] (5) A person may not administer examinations without first receiving from the [~~department~~] board a license as provided in this [~~chapter~~] part.

Section 204. Section Renumbered and Amended.

Section 53-5-304, Utah Code Annotated 1953, which is renumbered from Section 34-37-5, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1981, is amended to read:

[~~34-37-5~~] 53-5-304. Contents of application for examiner's license — Qualifications and requirements of applicants — Division investigations.

(1) Every person desiring to become an examiner must file with the [~~department~~] board a written application, signed and verified by the applicant and containing the following information:

(a) full name;

(b) age together with date and place of birth;

(c) present resident address and residence addresses within the five years immediately preceding the application;

(d) present occupation and occupations held within the five years immediately preceding the application;

(e) address of the principal place in which the business is to be conducted;

(f) name under which the business shall be conducted;

(g) educational qualifications and formal instrument training;

(h) experience of the applicant;

(i) any arrests of the applicant;

(j) a full set of fingerprints and a photograph of the applicant taken within two years immediately preceding the application; and

(k) any further facts as may be required by the [department] board to show that the person signing the application is competent, honest, truthful, trustworthy, of good character, and bears a reputation for fair dealing.

(2) To receive a license as an examiner, an applicant must satisfy the [department] board that he:

(a) [he] is at least 21 years of age and is a resident of the state [of Utah.];

(b) [he] has a bachelor's degree from a four-year university or college recognized [as such] by the [department] division or has a high school diploma and at least four years of investigative experience approved by the [department] division; provided, that each full year of college education may be substituted for one year experience;

(c) [he] has satisfactorily completed a formal training course at an examiner's school, recognized and approved by the [department] division;

(d) [he] has completed a minimum of one year as a licensed intern[;] and has conducted a minimum of 100 examinations;

(e) [he] is competent, honest, truthful, trustworthy, of good character, and bears a reputation for fair dealing; and

(f) [he] has not been convicted of a misdemeanor involving moral turpitude or a felony and [has not been released or discharged under] any [other than honorable conditions] release or discharge from any of the armed forces of the United States has been honorable.

(3) The [department] board shall make individual investigations of applicants for licenses under this [act] part as [are] necessary.

Section 205. Section Renumbered and Amended.

Section 53-5-305, Utah Code Annotated 1953, which is renumbered from Section 34-37-6, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1977, is amended to read:

[34-37-6] 53-5-305. Intern license.

(1) An intern license shall be issued and delivered to an applicant who has met the qualifications [set forth] in Section [34-37-5] 53-5-304, except [subdivision] the qualifications in Subsection 53-5-304 (2)(d) [thereof] are not required.

(2) An intern license [shall be] is solely [for the purpose of permitting] to permit the applicant to receive training as an examiner under the supervision and control of a licensed examiner.

(3) The license [shall] is not [be] transferable and [shall] may be revoked or canceled only by the [department] board.

Section 206. Section Renumbered and Amended.

Section 53-5-306, Utah Code Annotated 1953, which is renumbered from Section 34-37-7, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session, is amended to read:

[34-37-7] 53-5-306. License fee not rebatable — Exemption.

[(1) The license fee for an examiner and intern shall be set by the department pursuant to Subsection 63-38-3(2).]

(1) Except as provided in Subsection (2), the license fee for an examiner or intern, set under Section 53-5-303, shall accompany any application for a license under this part and is not rebatable.

(2) Law enforcement officers who conduct public interest examinations in conjunction with law enforcement are exempt from this section.

[(3) The license fee shall accompany any application for a license under this act and is not rebatable.]

Section 207. Section Renumbered and Amended.

Section 53-5-307, Utah Code Annotated 1953, which is renumbered from Section 34-37-8, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1981, is amended to read:

[34-37-8] 53-5-307. Reciprocity to licensees of other states.

A person who is licensed as an examiner under the laws of another state or territory of the United States may be issued a license by the [department, at its discretion,] board upon the payment of the required fee and the filing of an application demonstrating that:

(1) he has lawfully engaged in the administration of deception detection examinations under the laws of that state or territory; and

(2) [The] (a) the other state or territory provides an avenue for license holders in this state to administer deception detection in their jurisdictions; [and] or

[(3) If] (b) if the state or territory does not have any licensing laws [then], upon compliance with [Utah laws a license may be issued] this part.

Section 208. Section Renumbered and Amended.

Section 53-5-308, Utah Code Annotated 1953, which is renumbered from Section 34-37-9, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1977, is amended to read:

[34-37-9] 53-5-308. Term of license — Form — Renewal — Posting of license.

(1) [Any] (a) A license issued under this chapter is valid only for the calendar year in which it is issued.

(b) The applicant's name, license type, and number shall appear on the license.

(2) In the absence of any reason or condition [which] that warrants refusal, licenses granted under this [act] part may be renewed by the [department] board for each ensuing year upon receipt of a written request and the prescribed fee.

(3) [Licenses] A license issued [pursuant to] under this [act] part shall be posted in a conspicuous place at the licensee's place of business.

Section 209. Section Renumbered and Amended.

Section 53-5-309, Utah Code Annotated 1953, which is renumbered from Section 34-37-10, Utah Code Annotated 1953, as last amended by Chapter 153, Laws of Utah 1977, is amended to read:

[34-37-10] 53-5-309. Investigation of complaints by division — Grounds for suspension or revocation of license.

(1) The [department] division upon its own motion or upon the written verified complaint of any person, shall investigate or cause to be investigated the actions of any examiner [or], intern, or any person who [shall assume to act] acts as [such] an examiner or intern within this state [and].

(2) The board may suspend or revoke any license issued under this [chapter] part at any time where the licensee:

(a) has by false or fraudulent representation obtained a license; or [where the licensee]

(b) is found [to be] guilty of any dishonest conduct, incompetency, or misconduct that discredits the profession.

Section 210. Section Renumbered and Amended.

Section 53-5-310, Utah Code Annotated 1953, which is renumbered from Section 34-37-11, Utah Code Annotated 1953, as enacted by Chapter 94, Laws of Utah 1973, is amended to read:

[34-37-11] 53-5-310. Board hearing on suspension or revocation of license — Judicial review.

(1) (a) (i) Before revoking any license, the [department] board shall grant a hearing and, at least five days prior to hearing give notice in writing to the licensee containing a statement of the charges made and the date, place, and time of hearing.

(ii) If the [department] board determines that the licensee is guilty of a violation of this [act] part, the board may suspend or revoke the license [may be suspended or revoked in the discretion of the department].

(b) [Any] (i) An applicant that has been refused a license shall be granted a hearing upon written request.

(ii) Notice of hearing shall specify the reasons for refusal to issue the license and be given at least five days in advance of the date of hearing.

(iii) If the [department shall determine] board determines that an applicant is not qualified to receive a license, a license [shall] may not be granted to him.

(2) [Any] Within 30 days after notice of board action, an applicant [or], licensee, or complainant [within thirty days after notice of department action shall have], has the right to appeal any adverse ruling, order, or decision of the [department] board to the district court for the county where the hearing was held.

(3) (a) Notice of appeal shall be filed in the office of the clerk of the court [who].

(b) The clerk of the court shall issue a writ of certiorari directed to the [department] board commanding it, within ten days after service [thereof] of the writ, to certify to the court its entire record in the matter in which the appeal has been taken.

(c) The court, without a jury, shall review the record and [make its determination of the cause between the parties] decide whether or not the applicant is qualified to receive a license.

(d) If the court finds that the [department] board has [regularly pursued] acted within its authority and has not acted arbitrarily it shall affirm the decision, order, or ruling of the [department] board.

Section 211. Section Renumbered and Amended.

Section 53-5-311, Utah Code Annotated 1953, which is renumbered from Section 34-37-12, Utah Code Annotated 1953, as enacted by Chapter 94, Laws of Utah 1973, is amended to read:

[34-37-12] 53-5-311. License restricted to natural persons.

[No] A license [shall] may only be issued under this [act] part to [other than] a natural person.

Section 212. Section Renumbered and Amended.

Section 53-5-312, Utah Code Annotated 1953, which is renumbered from Section 34-37-16, Utah Code Annotated 1953, as enacted by Chapter 98, Laws of Utah 1981, is amended to read:

[34-37-16] 53-5-312. Surreptitious examinations prohibited.

(1) It [shall be] is a violation of this [act] part to conduct a deception detection examination by instrument in any of the following ways:

(a) without the physical presence of the subject [and];

(b) through a surreptitious manner where a subject is not aware of the examination[. Furthermore, it shall be unlawful for: (1) any deception detection examination to be conducted by instrument by];

(c) by out-of-state examiners through telephonic means to anyone in Utah [or for];

(d) by Utah examiners [to use] through telephonic means [to determine truth or deception; or (2)].

(2) A refusal to submit to [~~such~~] a deception detection examination [~~to~~] may not be the basis for denying or terminating employment.

Section 213. Section Renumbered and Amended.

Section 53-5-313, Utah Code Annotated 1953, which is renumbered from Section 34-37-13, Utah Code Annotated 1953, as enacted by Chapter 94, Laws of Utah 1973, is amended to read:

[~~34-37-13~~] 53-5-313. Violation a misdemeanor.

[~~Any~~] A person [~~violating~~] who violates this [~~act shall be~~] part is guilty of a class B misdemeanor.

Section 214. Section Renumbered and Amended.

Section 53-5-314, Utah Code Annotated 1953, which is renumbered from Section 34-37-15, Utah Code Annotated 1953, as enacted by Chapter 98, Laws of Utah 1981, is amended to read:

[~~34-37-15~~] 53-5-314. Deception detection instrument must be approved by the division and produce permanent recording.

(1) Instruments used for the purpose of monitoring levels of stress relating to truth and deception must be approved by the division.

(2) An instrument used for deception detection must have a permanent recording produced by the instrument for objective analysis by the examiner or the [~~department~~] division.

(3) A written interpretation by an individual while conducting a deception detection examination [~~will~~] does not satisfy the requirements of a permanent recording.

Section 215. Section Renumbered and Amended.

Section 53-5-401, Utah Code Annotated 1953, which is renumbered from Section 41-13a-1, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

Part 4. Security Personnel Licensing and Regulation

[~~41-13a-1~~] 53-5-401. Short title.

This [~~chapter~~] part is known as the "Security Personnel Licensing and Regulation Act."

Section 216. Section Renumbered and Amended.

Section 53-5-402, Utah Code Annotated 1953, which is renumbered from Section 41-13a-2, Utah Code Annotated 1953, as last amended by Chapter 43, Laws of Utah 1989, is amended to read:

[~~41-13a-2~~] 53-5-402. Definitions.

As used in this [~~chapter~~] part:

(1) "Alarm response runner" means any person employed by a contract security company to primarily respond to security system signals, other than a person whose sole function is to maintain or repair a security system.

(2) "Armed courier service" means any person [~~that~~] who transports or offers to transport under armed security guard from one place or point to another place or point, valuables, currency, documents, papers, maps, stocks, bonds, checks, or any other item that requires expeditious delivery.

(3) "Armed private security officer" means a person:

(a) employed by a contract security company;

(b) whose principal duty is that of an armed security guard, armed armored car service guard, armed courier service guard, or armed alarm response runner; and

(c) who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armored car service" means any person [~~that~~] who transports or offers to transport under armed or unarmed security guard from one place or point to another place or point, currency, jewels, stocks, bonds, paintings, or other valuables of any kind, or other items in a specially equipped motor vehicle [~~which~~] that offers a high degree of security.

(5) "Board" means the Security Licensing Board [~~established under this chapter~~] created in Section 53-5-403.

(6) "Contract security company" means any person engaging in the business of providing, or [~~which~~] who undertakes to provide, a security guard, an alarm response runner, armored car service, or armed courier service on a contractual basis for another person.

[~~(7) "Department" means the Department of Public Safety.~~]

[~~(8)~~] (7) "Identification card" means a pocket card issued by the [~~department~~] division to a private security officer as evidence that he has met the minimum qualifications required to perform duties of an unarmed private security officer.

[~~(9)~~] (8) "Licensee" means any person to whom a contract security company license is granted under this [~~chapter~~] part.

(9) "Officer" means the president, vice-president, treasurer, secretary, or controller of a corporation.

[~~(10)~~] (10) "[~~Sworn peace~~] Peace officer" means any person who is a certified peace officer as defined in Title [~~67~~] 53, Chapter [~~15~~] 6, Peace Officer Standards and Training, and who derives total or special law enforcement powers from, and is an employee of, the federal government, the state, or any political subdivision, agency, department, branch, or service of either, of any municipality, or of any other unit of local government.

[~~(10)~~] (11) "Principal corporate officer" means the president, vice-president, treasurer, secretary, or controller, or any other person who performs functions for the corporation corresponding to those performed by the [~~foregoing~~] officers.

[~~(11)~~] (12) "Proprietary security organization" means any person [which] who employs a security guard, an alarm response runner, armored car service, or armed courier [~~services~~] service, solely for [~~such~~] the person, [~~and wherein an employer/employee~~] if the relationship of an employer and employee exists.

[~~(12)~~] (13) "Qualifying agent" means, in the case of a corporation, an officer or other person in a management capacity, or in the case of a partnership, a general or unlimited partner.

[~~(13)~~] (14) "Registrant" means a person who has a valid registration card issued by the [department] division.

[~~(14)~~] (15) "Registration card" means the permanent permit issued by the [~~department~~] division to a registrant as evidence that the registrant has met the minimum qualifications required by this [~~chapter~~] part to perform the duties of an armed private security officer.

[~~(15)~~] (16) "Regular basis" means more than 20 hours per month.

(17) (a) "Security guard" means a person [~~principally~~] employed to protect another person or property from criminal activities and whose duties include[~~, but are not limited to~~]: [~~(a)~~]

(i) the prevention of unlawful intrusion or entry, larceny, vandalism, abuse, arson, or trespass on private property; [~~(b)~~]

(ii) control, regulation, or direction of the flow or movements of the public, whether by vehicle, on foot, or otherwise; and [~~(c)~~]

(iii) street patrol service or merchant patrol service. [~~Persons~~]

(b) "Security guard" does not include a person whose duties are limited to custodial duties only [~~are excluded from this definition~~].

[~~(16)~~] (18) (a) "Security system" means an assembly of equipment and devices, or a single device [~~such as~~], including a solid-state unit [~~which~~] that plugs directly into a 110-volt AC line, designated to detect or signal unauthorized intrusion, movement, or exit at a premises, or to signal an attempted robbery, or other criminal acts at a protected premises. [~~Fire~~]

(b) "Security system" does not include fire alarm systems and alarm systems [~~which~~] that monitor temperature, humidity, or any other conditions not directly related to the detection of an unauthorized intrusion into premises or an attempted robbery at a premises [~~are excluded from this definition~~].

[~~(18)~~] (19) "Street patrol service" means any contract security company that [~~utilizes~~] uses foot patrols, motor vehicles, or any other means of transportation in public areas or on public thoroughfares in the performance of its security functions.

(20) "Unarmed private security officer" means a person:

(a) employed by a contract security company;

(b) whose principal duty is that of a security guard, armored car service guard, or alarm response runner;

(c) who never wears, carries, or has access to a firearm in the performance of those duties; and

(d) who wears clothing of a distinctive design or fashion, or clothing having any symbol, badge, emblem, insignia, or device [~~which~~] that identifies or tends to identify the wearer as a security guard, alarm response runner, or armored car service guard.

Section 217. Section Renumbered and Amended.

Section 53-5-403, Utah Code Annotated 1953, which is renumbered from Section 41-13a-3, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[~~41-13a-3~~] 53-5-403. Board — Duties — Membership — Compensation — Terms.

(1) There is created [a] within the division the Security Licensing Board [~~within the department of Public Safety~~]. [~~It shall perform the duties and functions conferred upon it by this chapter. Members of the board shall be appointed by the governor and shall be reimbursed for their actual and necessary travel expenses and receive per diem allowance as established by the Division of Finance.~~]

(2) The board [~~shall consist~~] is comprised of the following members:

(a) one member representing chiefs of police;

(b) one member representing county sheriffs;

(c) two members representing the contract security industry; and

(d) one member appointed at large as a citizens' representative.

(3) (a) Each member of the board shall [~~serve~~] be appointed for a term of three years, except that the initial board members shall be appointed as follows:

(i) two members shall be appointed for three-year terms;

(ii) two members shall be appointed for two-year terms; and

(iii) one member shall be appointed for a one-year term.

(b) The governor shall fill vacancies occurring among appointed members of the board with appointments for the duration of the unexpired term.

(c) The appointees shall meet the qualification for that position to be filled as provided in this section.

(4) Members of the board shall be appointed by the governor and shall be reimbursed for their actual and necessary travel expenses and receive per diem allowance as established by the Division of Finance.

(5) The board shall:

(a) conduct hearings in connection with applications for, suspension, or revocation of licenses, regis-

tration cards, and identification cards as directed by the division; and

(b) after a hearing recommend to the division whether to issue, renew, suspend, or revoke licenses, registration cards, and identification cards.

Section 218. Section Renumbered and Amended.

Section 53-5-404, Utah Code Annotated 1953, which is renumbered from Section 41-13a-4, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[~~41-13a-4~~] 53-5-404. Division duties.

[~~For purposes of this chapter, the department has the following powers, duties, and functions~~] The division shall:

(1) [~~to promulgate~~] make rules [~~which are reasonable, proper, and necessary to administer and enforce this chapter~~] to implement this part;

(2) [~~to make investigations concerning~~] investigate whether applicants [~~and as to whether this chapter is being complied with or violated~~] are complying with this part;

(3) [~~to~~] establish fees pursuant to [~~Subsection~~] Section 63-38-3 [~~(2)~~] as authorized in this part;

(4) [~~to~~] establish procedures for the preparation and processing of examinations, applications, license certificates, registration cards, identification cards, renewals, appeals, [~~hearings, and rule making proceedings,~~] and for the certification of trainers of armed and unarmed security guards;

(5) [~~to~~] determine the qualifications of licensees, registrants, and private security officers;

(6) upon recommendation of the board, [~~to~~] issue, renew, suspend, and revoke licenses, registration cards, and identification cards; and

(7) [~~to~~] issue temporary authorization to act as an unarmed or armed private security officer.

Section 219. Section Renumbered and Amended.

Section 53-5-405, Utah Code Annotated 1953, which is renumbered from Section 41-13a-5, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1987, is amended to read:

[~~41-13a-5~~] 53-5-405. Investigations — Grounds for suspension and revocation.

(1) The [~~department~~] division may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate or cause to be investigated the actions of any person who claims to be a licensee, registrant, or cardholder[~~, or any person who assumes to act as such within this state~~].

(2) Upon a recommendation of the board [~~pursuant to~~] after a hearing on the matter, the [~~department~~] division may suspend or revoke any license or card issued under this [~~chapter~~] part of any person who knowingly commits any of the following:

(a) makes any false statement or material omission in any application filed with the [department] division;

(b) is convicted of any crime that bears upon his ability to perform his functions and duties, or of any crime of violence or theft, or of the illegal use or possession of a dangerous weapon;

(c) is guilty of the unauthorized use of an authorized emergency vehicle as defined in Section 41-6-1;

(d) violates this [~~chapter~~] part or rules [~~promulgated~~] made under this [~~chapter~~] part; or

(e) commits any act prohibited under Section [~~41-13a-16~~] 53-5-416.

Section 220. Section Renumbered and Amended.

Section 53-5-406, Utah Code Annotated 1953, which is renumbered from Section 41-13a-6, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[~~41-13a-6~~] 53-5-406. Hearings — Evidence — Witnesses.

(1) Before revoking or suspending any license or card, the [~~department~~] division shall grant a hearing before the board and, at least five days prior to the hearing, give notice in writing to the licensee, registrant, or cardholder, containing a statement of the charges made and the date, place, and time of the hearing.

(2) (a) In any investigation conducted under this [~~chapter~~] part, the [~~department~~] division may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records, and documents.

(b) The officer conducting the hearing may administer oaths and may require testimony or evidence to be given under oath.

(3) (a) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the [~~department~~] division, the [~~department~~] division may petition the district court to compel the witness to obey the subpoena or to give the evidence.

(b) The court shall promptly issue process to the witness and shall hold a hearing on the petition as soon as possible.

(c) If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give evidence relevant to proper inquiry by the [~~department~~] division, the court may cite the witness for contempt.

Section 221. Section Renumbered and Amended.

Section 53-5-407, Utah Code Annotated 1953, which is renumbered from Section 41-13a-7, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[~~41-13a-7~~] 53-5-407. Filing of license and card applications.

(1) Applications for licenses, registration cards, and identification cards shall be filed with the [department] division on forms provided by the [department] division.

(2) If the applicant is an individual, the applications shall be subscribed and sworn to by that individual.

(3) If the applicant is a corporation, [it] the applications shall be subscribed and sworn to by at least one principal corporate officer.

Section 222. Section Renumbered and Amended.

Section 53-5-408, Utah Code Annotated 1953, which is renumbered from Section 41-13a-8, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-8] 53-5-408. Practice without license or card prohibited — Assignment or transfer of license or card prohibited.

(1) Except as otherwise provided in this chapter, [no] a person may not perform the functions and duties of a contract security company, an armed private security officer, or an unarmed private security officer in this state without a valid license, registration card, or identification card[, as the case may be].

(2) [No] A license, registration card, or identification card may not be assigned or transferred, either by operation of law or otherwise.

Section 223. Section Renumbered and Amended.

Section 53-5-409, Utah Code Annotated 1953, which is renumbered from Section 41-13a-9, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-9] 53-5-409. Fees.

Initial and renewal fees determined by the [department] division pursuant to [Subsection] Section 63-38-3 [(2)] shall be remitted with each initial and renewal license, registration card, and identification card application.

Section 224. Section Renumbered and Amended.

Section 53-5-410, Utah Code Annotated 1953, which is renumbered from Section 41-13a-10, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-10] 53-5-410. Contract security company — License — Examination — Compensations.

(1) Every applicant for a contract security company license, or in the case of a corporation or partnership the qualifying agent[, shall]:

(a) may not have been convicted of any felony, of any crime that bears upon the ability of the applicant to lawfully engage in the business of a contract security company, or of the illegal use or possession of a dangerous weapon, for any of which a full pardon or similar relief has not been granted;

(b) may not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and [has] have not been restored;

(c) may not suffer from habitual drunkenness or from narcotics addiction or dependence;

(d) shall be of good moral character as it relates to the functions and duties of a contract security company; and

(e) shall have three years of experience as a manager, supervisor, or administrator with a contract security company or proprietary security organization or have three years of supervisory experience approved by the [department] division with any federal, United States military, state, county, or municipal law enforcement agency.

(2) (a) If the [department] division determines that the applicant or qualifying agent has not satisfactorily complied with Subsection (1) (e), the [department] division may prepare and administer a written examination designed to measure a person's knowledge and competence in the contract security company business.

(b) An applicant or qualifying agent who passes the examination may substitute that for the experience requirement of Subsection (1)(e).

(3) (a) If the qualifying agent upon whom the licensee relies to comply with this section ceases to perform his duties on a regular basis, the licensee shall promptly notify the [department] division by certified or registered mail and shall obtain, as promptly as possible, a substitute qualifying agent within 45 days after the disqualification of the qualifying agent.

(b) If a substitute qualifying agent is not obtained within the 45-day period, the [department] division may revoke the license or may extend for a reasonable time the 45-day period.

(4) A corporation seeking a license shall be incorporated under the laws of this state or shall be duly qualified to do business within this state with a valid certificate of authority issued by the Division of Corporations and Commercial Code and an agent for service of process designated as required by law.

(5) Licenses are valid for a period of two years, shall be in a form determined by the [department] division, and shall specify the applicant's name, current business address, the license number, and expiration date.

Section 225. Section Renumbered and Amended.

Section 53-5-411, Utah Code Annotated 1953, which is renumbered from Section 41-13a-11, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-11] 53-5-411. Armed private security officer — Registration card.

(1) Every applicant for a registration card [shall]:

(a) may not have been convicted of any felony, of any crime that bears upon the ability of the applicant to perform the functions and duties of an armed private security officer, or of the illegal use or possession of a dangerous weapon, for any of which a full pardon or similar relief has not been granted;

(b) may not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and [has] have not been restored;

(c) may not suffer from habitual drunkenness or from narcotics addiction or dependence;

(d) shall be of good moral character as it relates to the functions and duties of an armed private security officer;

(e) may not possess any disability which in the opinion of the [department] division prevents him from performing the duties of an armed private security officer;

(f) shall provide proof to the [department] division that he has received minimum general training as determined by the [department] division by rule;

(g) shall pass a written examination on the prescribed material approved by the [department] division; and

(h) shall provide proof to the [department] division that he has received minimum firearms training as determined by the [department] division by rule.

(2) The registration card shall be carried by the registrant while performing the duties of an armed private security officer and when carrying a firearm and shall be exhibited upon request.

(3) Registration cards are valid for a period of two years and shall be in a form [as] determined by the [department] division.

(4) Every applicant for renewal of a registration card shall:

(a) file a registration card renewal form not less than 30 days prior to the expiration of the card; and

(b) provide proof to the [department] division that he has completed in-service training as [determined by the department] required by the division by rule.

Section 226. Section Renumbered and Amended.

Section 53-5-412, Utah Code Annotated 1953, which is renumbered from Section 41-13a-12, Utah Code Annotated 1953, as last amended by Chapter 22, Laws of Utah 1989, is amended to read:

[41-13a-12] 53-5-412. Restricted use of firearms — Scope of registrant duties.

(1) [It is unlawful for any] A person who acts as an armed private security officer, other than a peace officer as defined in Section 77-1a-1, [to] may not carry a firearm in the performance of his duties without a valid registration card.

(2) (a) A registration card permits the registrant, while in the performance of his duties, to carry a firearm if:

(i) the firearm is approved by the [department not otherwise prohibited by state law] division; and [with which]

(ii) the registrant has met the training requirements [set forth by] of the [department] division. The use of any firearm not approved by the [department] division is prohibited.

(b) A registration card does not [permit] authorize the registrant to carry a concealed weapon unless the registrant [complies] applies for and obtains a permit in accordance with Section [76-10-513] 53-5-704.

(3) A registrant is exempt from Section 76-10-505, prohibiting carrying a loaded firearm, during the performance of his duties.

Section 227. Section Renumbered and Amended.

Section 53-5-413, Utah Code Annotated 1953, which is renumbered from Section 41-13a-13, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-13] 53-5-413. Unarmed private security officer — Identification card.

[Every] An applicant for an unarmed private security officer identification card [shall]:

(1) shall complete minimum training requirements or an examination determined by [the department by] division rule;

(2) may not have been convicted of:

(a) any felony[, of];

(b) any crime that bears upon the ability of the applicant to perform the functions and duties of an unarmed private security officer[,]; or [of]

(c) the illegal use or possession of a dangerous weapon; and

(3) may not suffer from habitual drunkenness or from narcotics addiction or dependence.

Section 228. Section Renumbered and Amended.

Section 53-5-414, Utah Code Annotated 1953, which is renumbered from Section 41-13a-14, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-14] 53-5-414. Uniforms — Badges — Designations — Uniform deposit.

(1) A person employed as a [sworn] peace officer who is also employed as an armed or unarmed private security officer for a contract security company, may not wear the uniform, including the badge, [which] that he regularly wears while on duty as a [sworn] peace officer.

(2) [No] A person, while performing the duties of an armed or unarmed private security officer, may not wear or display any badge, insignia, device,

shield, patch, or pattern [which] that indicates or tends to indicate that he is a [sworn] peace officer or [which] that contains or includes the word "police" or its equivalent, or is similar in wording to any law enforcement agency in this state.

(3) [No] A person [may], while performing any private security services, may not have or [utilize] use any vehicle or equipment displaying the words "police," "law enforcement officer," or its equivalent, or have any sign, shield, marking, accessory, or insignia that indicates that the vehicle is a vehicle of a public law enforcement agency.

(4) All military or police style uniforms shall, except for rainwear or other foul weather clothing, have:

(a) affixed over the breast pocket, on the outermost garment and on all caps worn by [such] the persons, badges or cloth patches, distinct in designation from those [utilized] used by law enforcement agencies within the state and approved by the [department] division; and

(b) affixed over the right breast pocket of the outermost garment a plate or tape of the size 5" x 1" with the words "Security Officer" on the plate or tape.

(5) [Any] An employer may require a reasonable deposit to secure the return of the uniform, weapon, or any equipment provided by the employer.

Section 229. Section Renumbered and Amended.

Section 53-5-415, Utah Code Annotated 1953, which is renumbered from Section 41-13a-15, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-15] 53-5-415. Evidence of insurance required.

All licensees and employers of armed private security officers shall file with the [department] division a certificate of insurance evidencing comprehensive general liability coverage [as] in an amount determined by the [department] division.

Section 230. Section Renumbered and Amended.

Section 53-5-416, Utah Code Annotated 1953, which is renumbered from Section 41-13a-16, Utah Code Annotated 1953, as last amended by Chapters 18 and 241, Laws of Utah 1991, is amended to read:

[41-13a-16] 53-5-416. Unlawful conduct — Misdemeanor.

(1) A person is guilty of a class B misdemeanor if he knowingly:

(a) engages in the business of a contract security company or provides contract security services [:(i)] without a valid license;

[(ii) with a suspended license; or]

[(iii) with another person's license;]

(b) performs the functions and duties of an armed private security officer, other than carrying a firearm, without a valid registration card;

(c) performs the functions and duties of an unarmed private security officer without a valid identification card;

(d) employs any person to perform the duties of an:

(i) armed private security officer who is not the holder of a valid registration card; or

(ii) unarmed private security officer who is not the holder of a valid identification card;

(e) publishes any advertisement, letterhead, circulars, statement, or phrase of any sort [which] that suggests that a licensee is an official [police] law enforcement agency or any other agency, instrumentality, or division of this state, or any of its political subdivisions, or of the federal government;

(f) issues any badge or shield not in conformance with this [chapter] part;

(g) falsely or fraudulently obtains a license or card;

(h) falsely represents that a person is the holder of a valid license or card;

(i) carries a firearm while acting as a private security officer without a valid registration card;

(j) makes any statement [which] that would reasonably cause another person to believe that a private security officer functions as a [sworn peace] law enforcement officer or other official of this state, or of any of its political subdivisions, or an agency of the federal government; or

(k) acts as a private security officer while in [the] possession of the registration card or identification card of another person.

(2) (a) Upon a recommendation of the board, the [department] division may assess a civil penalty of $500 on any contract security company [which] that violates this [chapter] part.

(b) Assessment of this civil penalty is an alternative to the suspension or revocation of a license.

(3) Any person who is regularly employed as a [certified peace] law enforcement officer who also is employed on a regular basis as an armed or unarmed private security officer shall comply with this [chapter] part unless:

(a) exempted under Section [41-13a-20] 53-5-420; and

(b) a proprietary relationship is established under this [chapter] part.

Section 231. Section Renumbered and Amended.

Section 53-5-417, Utah Code Annotated 1953, which is renumbered from Section 41-13a-17, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-17] 53-5-417. State pre-emption of local regulations.

(1) [No] A political subdivision of this state may not enact any legislation, code, or ordinance or [promulgate] make any rules relating to the licensing, training, or regulation of contract security companies or persons functioning as armed or unarmed private security officers.

(2) Any legislation, code, ordinance, or rules [promulgated] made by any political subdivision of this state, relating to the licensing, training, or regulation of contract security companies or individuals functioning as armed or unarmed private security officers, are superseded by this [chapter] part.

Section 232. Section Renumbered and Amended.

Section 53-5-418, Utah Code Annotated 1953, which is renumbered from Section 41-13a-18, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-18] 53-5-418. Judicial review of division action.

Any person aggrieved by any final action of the [department] division under this [chapter] part has the right to judicial review by the district court to determine if the final action was arbitrary and capricious.

Section 233. Section Renumbered and Amended.

Section 53-5-419, Utah Code Annotated 1953, which is renumbered from Section 41-13a-19, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-19] 53-5-419. Reciprocity licensure.

The [department] division may issue an identification card or registration card to an armed or unarmed private security officer [without regard to Section 41-13a-11] and waive the requirements of Sections 53-5-411 and [41-13a-13] 53-5-413 if:

(1) the armed or unarmed private security officer is properly registered and certified in another state, territory, or country whose training requirements are equal to the requirements of this state; and [if]

(2) that state, territory, or country will grant similar privileges to cardholders in this state.

Section 234. Section Renumbered and Amended.

Section 53-5-420, Utah Code Annotated 1953, which is renumbered from Section 41-13a-20, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1985, is amended to read:

[41-13a-20] 53-5-420. Exemptions from part — Proprietary security organizations.

[This chapter] (1) Except as provided in Subsection (2), this part does not apply to: [(1)]

(a) any proprietary security organization; or [(2)]

(b) armed or unarmed private security officers employed by a proprietary security organization.

(2) (a) Any proprietary security organization may submit [its] an armed or unarmed private security [officers] officer to the jurisdiction of the [department] division under this [chapter] part upon written request to the [department] division.

(b) Upon approval by the [department] division the armed or unarmed private security [officers shall be] officer is under the jurisdiction of the [department] division under this [chapter] part.

Section 235. Section Renumbered and Amended.

Section 53-5-501, Utah Code Annotated 1953, which is renumbered from Section 13-18-1, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

Part 5. Burglar Alarm Security Certification

[13-18-1] 53-5-501. Citation of act.

This [act shall be] part is known [and may be cited] as the "Burglar Alarm Security Certification Act."

Section 236. Section Renumbered and Amended.

Section 53-5-502, Utah Code Annotated 1953, which is renumbered from Section 13-18-2, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[13-18-2] 53-5-502. Definitions.

As used in this [chapter] part:

[(2)] (1) "Alarm agent" means any individual employed within this state by a company engaged in an alarm business.

[(1)] (2) (a) "Alarm business" means any commercial activity involving the sale, installation, maintenance, alteration, repair, replacement, servicing, monitoring, or moving of alarm systems[, but].

(b) "Alarm business" does not include any of the following:

(i) commercial activities involving only the manufacture or sale of alarm systems and not [also] involving the installation, maintenance, alteration, repair, replacement, servicing, moving, monitoring, or responding to alarm systems[. "Alarm business" does not include];

(ii) the activities of the owner of a proprietary system or his or her employees.

(3) "Alarm company" means any person or association of persons engaged in an alarm business.

(4) (a) "Alarm system" means an assembly of equipment and devices [(or] including a single device designed as a solid-state unit [which] that plugs directly into a 120 volt AC outlet[)], designed to detect and signal an unauthorized intrusion into premises or to signal an attempted robbery on protected premises, and to which signal [public police] law enforcement officers or private security guards are expected to respond.

(b) "Alarm system" does not include fire alarm systems or systems [which] that monitor temperature, humidity, or any other condition not directly

related to the detection of an unauthorized intrusion into premises or an attempted [robbery] burglary on the premises.

(5) [~~"Department" means the department of public safety.~~] "I.D. card" means an identification card required under Section 53-5-514.

(6) "Principal corporate officer" means the president, vice-president, treasurer, secretary, or comptroller, or any other person who performs functions for the corporation similar to those performed by these officers.

(7) "Proprietary system" means an alarm system [which] that employs the sounding or recording of alarm and supervisory signals at a control center solely under the supervision of the proprietor of the protected premises.

Section 237. Section Renumbered and Amended.

Section 53-5-503, Utah Code Annotated 1953, which is renumbered from Section 13-18-3, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-3~~] 53-5-503. Division rules.

The [department] division may [~~promulgate regulations necessary to carry out the purposes of this chapter and to establish~~] make rules establishing procedures for the preparation and processing of applications, certificates, identification cards, and renewals[~~, appeals, and hearings~~].

Section 238. Section Renumbered and Amended.

Section 53-5-504, Utah Code Annotated 1953, which is renumbered from Section 13-18-4, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-4~~] 53-5-504. Security certificate required — Time for application — Electricians.

(1) [No] A person may not engage in or operate an alarm business within this state unless that person is in possession of a valid security certificate.

[~~(2) Every person engaged in the alarm business within this state on the effective date of this Burglar Alarm Security Certification Act shall within 180 days of that date apply to the department for a certificate to engage in an alarm business. Any person filing a timely application may continue to engage in the alarm business pending a final disposition of the application.~~]

[~~(3)~~] (2) The certificate and identification requirements of this [chapter shall] part do not apply to licensed master electricians whose primary business is not the alarm business[~~; however, when in the course of business,~~ a], except when the licensed master electrician or a journeyman electrician under the supervision of a master electrician installs an alarm system[~~, he shall comply with the provisions of this chapter and all regulations promulgated under it~~].

Section 239. Section Renumbered and Amended.

Section 53-5-505, Utah Code Annotated 1953, which is renumbered from Section 13-18-5, Utah Code Annotated 1953, as last amended by Chapter 130, Laws of Utah 1991, is amended to read:

[~~13-18-5~~] 53-5-505. Filing of application.

(1) Application for any certificate required by this [chapter] part shall be filed with the [department] division on a form provided by the [department] division. An application shall be subscribed and sworn to by:

(a) [If] an individual if the applicant is an individual[~~, the application shall be subscribed and sworn to by the individual.~~];

(b) [If] an individual having authority and responsibility for the management and operation of the activities of an alarm business conducted in the state if the applicant is:

(i) an individual who does not reside within the state, operate an alarm business within the state, and is not employed by an alarm company within the state; or

(ii) a firm or partnership and the owner or a partner does not reside within the state, operate an alarm business within the state, and is not employed by an alarm company within the state[~~, or if the applicant is a firm or partnership and the owner or a partner does not reside, operate an alarm business, and is not employed by an alarm company within the state, then the application shall be subscribed and sworn to by an individual having authority and responsibility for the management and operation of the activities of the alarm business conducted in the state.~~];

(c) [If] at least one principal corporate officer if the applicant is a corporation[~~, the application shall be subscribed and sworn to by at least one principal corporate officer.~~]; and

(d) [If] the individual having the authority and responsibility if the applicant is a corporation and none of its principal corporate officers is responsible for the management and operations of the alarm business in the state[~~, the application shall also be subscribed and sworn to by the individual having such authority and responsibility~~].

(2) A complete set of fingerprints of every individual signing an application shall accompany each application.

Section 240. Section Renumbered and Amended.

Section 53-5-506, Utah Code Annotated 1953, which is renumbered from Section 13-18-6, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-6~~] 53-5-506. Investigation of applicant — Fingerprints checked.

(1) After receipt of an application for a certificate, the [department] division shall conduct an investigation to determine whether the facts stated in the

application are true, and shall compare the fingerprints of the individual or the individuals signing the application with fingerprints filed with the [~~Bureau of Criminal Identification of the department of public safety~~] Law Enforcement and Technical Services Division.

(2) The [~~department~~] division shall also submit the fingerprints to the Federal Bureau of Investigation and request a search of its fingerprint files to determine if the individual fingerprinted has any recorded convictions.

Section 241. Section Renumbered and Amended.

Section 53-5-507, Utah Code Annotated 1953, which is renumbered from Section 13-18-7, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~13-18-7~~] 53-5-507. Investigation of applicant.

(1) In any investigation conducted under [~~the provisions of~~] this [~~chapter~~] part, the [~~department~~] division may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records, and documents.

(2) (a) Relevant books, accounts, records, and documents required to be produced by this section shall be maintained in the files of the [~~department~~] division.

(b) Access to those records shall be limited to the department or to a court of competent jurisdiction.

(3) (a) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the [~~department~~] division, the [~~department~~] division may petition a court of competent jurisdiction to compel the witness to obey the subpoena or to give the evidence.

(b) The court shall promptly issue the subpoena and have it served on the witness and shall hold a hearing on the petition as soon as possible.

Section 242. Section Renumbered and Amended.

Section 53-5-508, Utah Code Annotated 1953, which is renumbered from Section 13-18-8, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-8~~] 53-5-508. Denial of application — Grounds.

The [~~department~~] division may deny the application for an alarm business certificate, if it finds that the applicant or the individual having the authority and the responsibility for the management and operation of the applicant's alarm business within the state, or any of the applicant's owners, partners, or principal corporate officers:

(1) has committed any act which, if committed by a certificate holder, would be grounds for revocation of a certificate;

(2) while uncertified, has knowingly and willfully committed, or aided and abetted in the commission of any act for which a certificate is required by this [chapter] part; or

(3) has been convicted in any jurisdiction of a felony or a misdemeanor, if the [~~department~~] division finds that the conviction reflects unfavorably on the fitness of the applicant to engage in the alarm business.

Section 243. Section Renumbered and Amended.

Section 53-5-509, Utah Code Annotated 1953, which is renumbered from Section 13-18-9, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~13-18-9~~] 53-5-509. Notice of approval or denial — Applicant entitled to a hearing.

(1) If the application is approved, the [~~department~~] division shall notify the applicant in writing that a certificate will be issued. The notification shall state:

(a) that the certificate [~~shall expire~~] expires two years from the date of issuance unless suspended or revoked for cause;

(b) that the certificate may be renewed as provided in this [~~chapter~~] part; and

(c) the time within which application for renewal of the certificate must be made.

(2) (a) If the application of the alarm company is denied, the [~~department~~] division shall notify the applicant in writing.

(b) If the application is denied because of correctable defects in the application, the [~~department~~] division shall give the applicant ten days after his receipt of written notice setting forth the defects to make the required corrections.

(3) If the application of the alarm company is denied, the applicant may request a hearing by filing a request for agency action.

Section 244. Section Renumbered and Amended.

Section 53-5-510, Utah Code Annotated 1953, which is renumbered from Section 13-18-10, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session, is amended to read:

[~~13-18-10~~] 53-5-510. Fees — Renewal of certificate.

(1) [A] The division shall establish a nonrefundable initial application fee [~~determined by the department pursuant to Subsection~~] in accordance with Section 63-38-3 [~~(2)~~] that shall be remitted with each application to cover investigative and administrative costs.

(2) (a) Certificates [~~shall~~] expire every two years. [~~Renewal shall be biennially as determined by the department.~~]

(b) Application for renewal of a certificate may not be received by the [~~department~~] division later than 30 days prior to the expiration date of the certificate.

(c) The [~~department~~] division may deny renewal of a certificate for [~~good~~] cause.

(d) If the [~~department~~] division decides to deny renewal of a certificate, [it] the division shall promptly give written notice to the applicant of its intended denial and of the applicant's right to a hearing on the denial.

(e) The applicant may, within 15 days after receipt of the written notice, request a hearing on the intended denial.

(3) (a) A renewal fee shall be remitted with [~~the biennial~~] each application for renewal.

(b) This fee shall be refunded if the application for renewal is denied or withdrawn before approval.

(4) (a) An alarm company to which a certificate has been issued shall submit to the [~~department~~] division a properly completed renewal application form, not later than 30 days before the expiration of the certificate.

(b) The application shall be accompanied by a nonrefundable administrative fee, which shall be in addition to the [~~biennial~~] renewal fee required in Subsection (3).

(c) Both of these fees shall be [~~set~~] established by the [~~department pursuant to Subsection~~] division under Section 63-38-3 [~~(2)~~].

Section 245. Section Renumbered and Amended.

Section 53-5-511, Utah Code Annotated 1953, which is renumbered from Section 13-18-11, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-11~~] 53-5-511. Assignment or transfer of certificate prohibited.

A certificate for an alarm business may not be assigned or transferred [~~either by operation of law or otherwise~~].

Section 246. Section Renumbered and Amended.

Section 53-5-512, Utah Code Annotated 1953, which is renumbered from Section 13-18-12, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~13-18-12~~] 53-5-512. Suspension or revocation of certificate — Grounds.

(1) (a) The [~~department~~] division may suspend or revoke a certificate for an alarm business.

(b) The suspension or revocation may be based on the grounds that the alarm company or one or more of its owners, partners, principal corporate officers, or the individual having the authority and the responsibility for the management and operation of its activities conducted in the state has:

(i) [~~has~~] violated [~~any of the provisions of~~] this [~~chapter~~] part or any rule of the [~~department enacted~~] division made under the authority of this [~~chapter~~] part, and the [~~department~~] division finds that the violation reflects unfavorably upon the fitness of the alarm company to engage in the alarm business;

(ii) [~~has~~] knowingly and willfully given any false information of a material nature to the [~~department~~] division in connection with an application for a certificate, a renewal or reinstatement of a certificate, or in a notice of transfer of an alarm business certified under this [~~chapter~~] part;

(iii) [~~has~~] been convicted in any jurisdiction of a felony or a misdemeanor, and the [~~department~~] division finds that the conviction reflects unfavorably on the fitness of the alarm company to engage in the alarm business;

(iv) [~~has~~] committed any act while the certificate was not in effect that would be grounds for denial of an application or for revocation of a certificate; or

(v) [~~has~~] been convicted of [~~violation of~~] violating a municipal ordinance, as evidenced by a petition to the [~~department~~] division by a local governmental subdivision, as provided in Subsection [~~13-18-18(5)~~] 53-5-518(4), and the [~~department~~] division finds that the violation reflects unfavorably upon the fitness of the alarm company to engage in the alarm business.

(2) Any person denied a certificate, or whose certificate has been suspended or revoked by the [~~department~~] division, may seek judicial review of the [~~department's~~] division's action.

Section 247. Section Renumbered and Amended.

Section 53-5-513, Utah Code Annotated 1953, which is renumbered from Section 13-18-13, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-13~~] 53-5-513. Form of certificate.

The certificate shall be in the form prescribed by the [~~department~~] division and shall include:

(1) the name of the applicant[,];

(2) the nature and type of service to be performed[,];

(3) the business name under which the applicant is to operate[,];

(4) the addresses of the locations where the applicant is authorized to operate[,]; and

(5) the number and date of the certificate and its date of expiration.

Section 248. Section Renumbered and Amended.

Section 53-5-514, Utah Code Annotated 1953, which is renumbered from Section 13-18-14, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session, is amended to read:

[~~13-18-14~~] 53-5-514. Identification card required — Application — Fee.

(1) [~~No~~] An individual may not function as an alarm agent or perform the duties described in Subsections (a) and (b) unless the individual possesses a

valid [~~identification card (hereinafter referred to as "I.D.") card)~~].

(a) Owners, principal corporate officers, partners, and managers of all alarm companies [~~shall be required to~~] must obtain I.D. cards if they directly engage in selling, installing, maintaining, altering, repairing, replacing, servicing, moving, monitoring, responding to, or causing others to respond to alarm systems within the state.

(b) Any individual engaged in the alarm business or employed by or associated with an alarm company within the state who is not an alarm agent but who has access to confidential information relating to a customer or subscriber of an alarm company or who monitors radio equipment used in connection with the alarm business [~~shall~~] must obtain an I.D. card.

(2) (a) Any individual required to obtain an I.D. card under this section shall file an application for an I.D. card with the [~~department~~] division in the manner prescribed by the [~~department~~] division.

(b) The application for an I.D. card shall be accompanied by a fee determined by the [~~department pursuant to Subsection~~] division under Section 63-38-3[~~(2)~~].

(3) (a) After receipt of an application for an I.D. card, the [~~department~~] division shall conduct an investigation to determine whether the facts stated in the application are true, and shall compare the fingerprints of the applicant with fingerprints filed with the [~~Bureau of Criminal Identification of the Department of Public Safety~~] Law Enforcement and Technical Services Division.

(b) The [~~department~~] division shall also submit the fingerprints to the Federal Bureau of Investigation and request a search of its fingerprint files to determine if the individual fingerprinted has any recorded convictions.

(4) The [~~department~~] division may deny the application for an I.D. card if it finds that the applicant has been convicted of a felony or a misdemeanor in any jurisdiction and the [~~department~~] division finds that the conviction reflects unfavorably on the fitness of the applicant to engage in the alarm business or to be employed by the alarm company.

(5) The applicant may appeal a denial as provided in [~~Subsections 13-18-9(3)~~] Sections 53-5-509 and [~~13-18-12(2)~~] 53-5-512.

Section 249. Section Renumbered and Amended.

Section 53-5-515, Utah Code Annotated 1953, which is renumbered from Section 13-18-15, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~13-18-15~~] 53-5-515. Suspension or revocation of identification card — Grounds.

(1) The [~~department~~] division may suspend or revoke an I.D. card if the cardholder has done any of the following:

(a) [~~has~~] violated [~~any of the provisions of~~] this [~~chapter~~] part or any [~~department~~] division rule [~~enacted~~] made under the authority of this [~~chapter~~] part, and the [~~department~~] division finds that the violation reflects unfavorably upon the fitness of the I.D. cardholder to function as an alarm agent or to perform the duties described in Subsection [~~13-18-14~~] 53-5-514 (1);

(b) [~~has~~] knowingly and willfully given any false information of a material nature to the [~~department~~] division in connection with an application for an I.D. card or a renewal or reinstatement of an I.D. card; [~~or~~]

(c) [~~has~~] been convicted in any jurisdiction of a felony or a misdemeanor and the [~~department~~] division finds that the conviction reflects unfavorably on the fitness of the I.D. cardholder to function as an alarm agent or to perform the duties described in Subsection [~~13-18-14~~] 53-5-514 (1).

(2) If the [~~department~~] division suspends or revokes an I.D. card, the cardholder, upon receipt of the notice of suspension or revocation, shall cease to perform any services related to the alarm business.

Section 250. Section Renumbered and Amended.

Section 53-5-516, Utah Code Annotated 1953, which is renumbered from Section 13-18-16, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[~~13-18-16~~] 53-5-516. Transfer of identification card prohibited.

[~~No~~] An I.D. card issued under this chapter [~~shall be~~] is not transferable, either by operation of law or otherwise.

Section 251. Section Renumbered and Amended.

Section 53-5-517, Utah Code Annotated 1953, which is renumbered from Section 13-18-17, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

[~~13-18-17~~] 53-5-517. Renewal of identification card — Fee — Notice of death of employee or violations.

(1) (a) I.D. cards [~~shall~~] expire one year after the date of issuance.

(b) [~~The department may not accept applications~~] An application for renewal of an I.D. card [~~later than~~] may only be accepted by the division if the application is submitted at least 30 days before the I.D. card expires.

(c) The [~~department~~] division may deny renewal of an I.D. card for any good cause, subject to the cardholder's right to an adjudicative proceeding.

(2) A renewal fee determined by the [~~department pursuant to Subsection~~] division under Section 63-38-3 [~~(2)~~] shall be submitted with each application for renewal of an I.D. card.

(3) (a) An alarm company shall notify the [~~department~~] division of the death of any of its employees within ten days after the alarm company has actual notice of the death.

(b) The alarm company shall also notify the [department] division of any known act of any individual associated with the alarm company that may be grounds for denial or revocation of a certificate or an I.D. card.

Section 252. Section Renumbered and Amended.

Section 53-5-518, Utah Code Annotated 1953, which is renumbered from Section 13-18-18, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[13-18-18] 53-5-518. Local regulation preempted by act — Powers of local authorities.

(1) [After the effective date of this Burglar Alarm Security Certification Act, no] A local governmental subdivision within this state [shall] may not enact any legislation or [promulgate] make any rules or regulations [relating to the requirement of] requiring security certification of alarm businesses, alarm agents, or other individuals required to obtain an I.D. card under this [chapter] part.

[(2) Any ordinance or regulation of any local governmental subdivision within this state requiring that alarm agents or other individuals employed by or associated with an alarm company obtain I.D. cards shall be preempted by this chapter 60 days after its effective date.]

[(3) The provisions of this] (2) (a) This section [are not, however, intended to and do] does not prevent local governmental subdivisions from requiring alarm companies and alarm agents to register their names, addresses, and certificate number or I.D. card number with the local governmental subdivision within which they operate, subject to the guidelines established by [department regulation] division rule.

(b) Local governmental subdivisions may also require that alarm companies and alarm agents give them reasonable notice of termination or suspension of certificates and I.D. cards. [No]

(c) A fee may not be charged [nor may any] and an application may not be required by any local governmental subdivision for registration.

[(4)] (3) Local authorities may, within the guidelines established by [department regulation] division rule, require that both users of alarm systems and alarm companies meet reasonable equipment and performance standards concerning false alarms.

[(5)] (4) (a) Local governmental subdivisions [which promulgate] that make ordinances or regulations may petition the [department] division to revoke the operating authority of an alarm company certified under this chapter or to revoke or suspend the right of an individual to use an I.D. card within the local governmental subdivision, if the alarm company or individual is convicted of violating local ordinances or regulations [enacted] made under Subsection [(4)] (3).

(b) The petition of the local governmental subdivision shall describe how the conviction reflects unfavorably on the fitness of the alarm [business] company or the alarm agent to engage in the alarm [company] business.

(c) The [department] division shall [promulgate regulations] make rules setting forth procedures for implementing this subsection.

Section 253. Section Renumbered and Amended.

Section 53-5-519, Utah Code Annotated 1953, which is renumbered from Section 13-18-19, Utah Code Annotated 1953, as enacted by Chapter 18, Laws of Utah 1983, is amended to read:

[13-18-19] 53-5-519. Violations — Penalty.

[Any] (1) A person found guilty of violating any of the following [shall be] is guilty of a class B misdemeanor:

[(1)] (a) engaging in the alarm business without complying with [the provisions of] this [chapter] part;

[(2)] (b) failing to obtain an I.D. card as required by this [chapter] part;

[(3)] (c) willfully and knowingly submitting false information of a material nature in any application for an alarm business certificate or for an I.D. card, or in any renewal application.

(2) An alarm business that violates this part is subject to the following civil penalties:

(a) a $500 fine may be assessed by the division; or

(b) suspension or revocation of its license by the division.

Section 254. Section Enacted.

Section 53-5-601, Utah Code Annotated 1953, is enacted to read:

Part 6. Moonwalker Safety

53-5-601. Short title.

This part is known as the "Moonwalker Safety Act."

Section 255. Section Enacted.

Section 53-5-602, Utah Code Annotated 1953, is enacted to read:

53-5-602. Definitions.

As used in this part, "moonwalker" means an inflatable, trampoline-type structure designed to be relocated from time to time with or without disassembly and used or intended to be used for commercial amusement purposes.

Section 256. Section Renumbered and Amended.

Section 53-5-603, Utah Code Annotated 1953, which is renumbered from Section 10-8-102, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

[10-8-102] 53-5-603. Division rules.

In order to prevent the injury or death of a person using a moonwalker, when located for use by the public[~~, and in accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act~~], the [department] division shall [~~regulate by~~ making] make rules for all the following:

(1) the definition of a term, phrase, or word used pursuant to this [~~chapter~~] part that does not reflect the ordinary meaning of the term, phrase, or word;

(2) the training and certification of an operator of a moonwalker;

(3) the securing and fastening of a moonwalker;

(4) the assembly and disassembly, including suitable locations of assembly, of a moonwalker;

(5) additional safety devices or safety requirements for moonwalkers, including:

(a) the maximum safe number of persons inside a moonwalker;

(b) the safe weather conditions for operating a moonwalker; and

(c) the fencing or enclosure of a moonwalker.

Section 257. Section Renumbered and Amended.

Section 53-5-604, Utah Code Annotated 1953, which is renumbered from Section 10-8-104, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

[~~10-8-104~~] 53-5-604. Registration, insurance contracts, and indemnification.

Before operating a moonwalker in this state, the owner and operator of a moonwalker must do all of the following:

(1) register with the executive governing body of the municipality or county, in an unincorporated area, in which the person intends to operate the moonwalker;

(2) execute a binding insurance contract that provides liability and property damage insurance for those using the moonwalker and for the area surrounding the moonwalker;

(3) execute a contract with the municipality or county that indemnifies and holds harmless the state of Utah, the municipality or county, their officers, agents, and employees, and any nonprofit organization or corporation using a moonwalker by contract, lease, or other agreement against loss, damages, injury, liability, and claims caused by the moonwalker operations.

Section 258. Section Renumbered and Amended.

Section 53-5-605, Utah Code Annotated 1953, which is renumbered from Section 10-8-105, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

[~~10-8-105~~] 53-5-605. Identification labels.

Every moonwalker shall have a sign attached to the moonwalker that identifies all the following:

(1) the trade name or other descriptive name of the moonwalker;

(2) a valid municipality or county registration;

(3) the name and address of the manufacturer of the moonwalker;

(4) the maximum safe number of passengers who may use the moonwalker at any one time; and

(5) any other safety restriction imposed by rule of the [~~department~~] division.

Section 259. Section Renumbered and Amended.

Section 53-5-606, Utah Code Annotated 1953, which is renumbered from Section 10-8-106, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990, is amended to read:

[~~10-8-106~~] 53-5-606. Acts prohibited.

An owner and operator of a moonwalker may not do any of the following:

(1) operate a moonwalker without being trained and certified in accordance with [~~department~~] division rules;

(2) overcrowd a moonwalker past the limits established by the rules of the [~~department~~] division;

(3) operate the moonwalker during unsafe weather conditions as established by the rules of the [~~department~~] division;

(4) operate the moonwalker without first registering with the executive governing body of the municipality or county in which they intend to operate the moonwalker;

(5) operate the moonwalker if it places bystanders at risk of injury because of lack of proper fencing or enclosure of the moonwalker as required by the rules of the [~~department~~] division;

(6) otherwise violate any of the rules of the [~~department~~] division.

Section 260. Section Renumbered and Amended.

Section 53-5-607, Utah Code Annotated 1953, which is renumbered from Section 10-8-108, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991, is amended to read:

[~~10-8-108~~] 53-5-607. Violations and penalties.

(1)(a) The owner and operator who fails to adhere to the safety, training, and certification standards established by the rules of the [~~department~~] division for the operation of a moonwalker in this state is guilty of a class A misdemeanor.

(b) If [~~such~~] the failure results in bodily harm or property damage, the owner and operator is guilty of a third degree felony.

(c) If [~~such~~] the failure results in serious bodily harm or death of a moonwalker user or bystander,

the owner and operator is guilty of a second degree felony.

(2) The owner and operator of a moonwalker [~~that~~] who is convicted [~~for~~] of any of the crimes under Subsection (1) shall pay for any restitution and damages to the:

(a) [~~to the~~] owner of the real or personal property; and

(b) [~~to the~~] person injured or the heirs of anyone killed.

Section 261. Section Enacted.

Section 53-5-701, Utah Code Annotated 1953, is enacted to read:

Part 7. Concealed Weapons

53-5-701. Short title.

This part is known as the "Concealed Weapon Act."

Section 262. Section Enacted.

Section 53-5-702, Utah Code Annotated 1953, is enacted to read:

53-5-702. Definitions.

(1) As used in this part, "board" means the Concealed Weapon Review Board created in Section 53-5-703.

(2) The definitions in Section 76-10-501 apply to this part.

Section 263. Section Enacted.

Section 53-5-703, Utah Code Annotated 1953, is enacted to read:

53-5-703. Board — Membership — Compensation — Terms — Duties.

(1) There is created within the division the Concealed Weapon Review Board.

(2)(a) The board is comprised of not more than five members appointed by the commissioner on a bipartisan basis.

(b) The board shall include a member representing law enforcement and at least two citizens, one of whom represents sporting interests.

(3) Members of the board shall be appointed for three-year terms, except that the initial appointments shall be made as follows:

(a) two members shall be appointed for three-year terms;

(b) two members shall be appointed for two-year terms; and

(c) one member shall be appointed for a one-year term.

(4) Members of the board do not receive per diem, but shall be reimbursed for their actual and necessary travel expenses at the rate established by the Division of Finance.

(5) The board shall meet at least quarterly, unless the board has no business to conduct during that quarter.

(6) The board, upon receiving a timely filed petition for review, shall review the denial or revocation of a permit to carry a concealed weapon.

Section 264. Section Renumbered and Amended.

Section 53-5-704, Utah Code Annotated 1953, which is renumbered from Section 76-10-513, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1986, is amended to read:

[~~76-10-513~~] 53-5-704. Division duties — Permit to carry concealed weapon — Requirements for issuance — Violation — Appeal procedure.

(1) The [~~Department of Public Safety~~] division or its designated agent, upon proof that the person applying is of good character, and upon the showing of cause shall issue to the person, within 60 days after receiving an application, a permit to carry a concealed firearm. The permit is valid throughout the state, without restriction, for two years.

(2) An applicant satisfactorily demonstrates good character if he:

(a) is 21 years of age or older;

(b) has not been convicted of a felony;

(c) has not been convicted of any crime of violence;

(d) has not been convicted of any offenses involving the use of alcohol;

(e) has not been convicted of any offense involving the unlawful use of narcotics or other controlled substances;

(f) has not been convicted of any offenses involving moral turpitude; and

(g) has not been adjudicated by a court of a state or of the United States as mentally incompetent, unless the adjudication has been withdrawn or reversed.

(3) In assessing good character under Subsection (2), the [~~department~~] licensing authority shall consider mitigating circumstances.

(4) The [~~Department of Public Safety~~] licensing authority shall also require the applicant to provide:

(a) letters of character reference;

(b) two recent dated photographs;

(c) two sets of fingerprints;

(d) a five-year employment history;

(e) a five-year residential history; and

(f) evidence of weapons familiarity.

(5) In issuing a permit under this part, the licensing authority is not vicariously liable for damages caused by the permit holder.

(6) If any person knowingly and willfully provides false information on an application filed under this part, he is guilty of a class B misdemeanor. Upon conviction, if a decision on the application is pending, the application shall be denied; if the permit has been issued, it shall be immediately revoked.

(7) In the event of a denial or revocation by the agency, the applicant may, within 60 days of the date the denial or revocation is received by the applicant, file a petition for review with [a] the board [~~of review established by the commissioner of public safety. The board shall be bipartisan and shall include a member from law enforcement and at least two citizens, one of whom represents sporting interests. The board of review shall consist of not more than five members. The members serve without compensation or per diem. The board shall meet at least quarterly, unless the board has no business to conduct during that quarter~~].

Section 265. Section Renumbered and Amended.

Section 53-5-705, Utah Code Annotated 1953, which is renumbered from Section 76-10-513.5, Utah Code Annotated 1953, as enacted by Chapter 276, Laws of Utah 1990, is amended to read:

[~~76-10-513.5~~] 53-5-705. Temporary permit to carry concealed firearm.

(1) The [~~Department of Public Safety~~] division or its designated agent may issue a temporary permit to carry a concealed firearm to a person who:

(a) has applied for a permit under Section [~~76-10-513~~] 53-5-704;

(b) has applied for a temporary permit under this section; and

(c) meets the criteria required in Subsections (2) and (3).

(2) To receive a temporary permit under this section, the applicant shall:

(a) demonstrate good character by the same requirements as in Section [~~76-10-513~~] 53-5-704; and

(b) demonstrate in writing to the satisfaction of the [~~department~~] licensing authority extenuating circumstances that would justify issuing a temporary permit.

(3) A temporary permit may not be issued under this section until preliminary record checks regarding the applicant have been made with the National Crime Information Center and the [~~Utah Bureau of Criminal Investigation~~] division to determine any criminal history.

(4) A temporary permit is valid only for a maximum of 90 days or any lesser period specified by the [~~department~~] division, or until a permit under Section [~~76-10-513~~] 53-5-704 is issued to the holder of the temporary permit, whichever period is shorter.

(5) The [~~department~~] licensing authority may deny issuance or revoke a temporary permit prior to expiration if the commissioner [~~of public safety~~] determines:

(a) the circumstances justifying the temporary permit no longer exist;

(b) the holder of the permit has knowingly and willfully provided false information regarding his character; or

(c) the holder of the temporary permit does not meet the requirements for a permit under Section [~~76-10-513~~] 53-5-704.

(6)(a) The denial or revocation of a temporary permit shall be in writing and shall include the reasons for the action.

(b) The [~~department~~] licensing authority's decision to deny or revoke a temporary permit may not be appealed to the board [~~under Section 76-10-513~~].

(c) Denial or revocation under this subsection is final action for purposes of judicial review under Section 63-46b-15.

Section 266. Section Renumbered and Amended.

Section 53-5-706, Utah Code Annotated 1953, which is renumbered from Section 76-10-515, Utah Code Annotated 1953, as last amended by Chapter 76, Laws of Utah 1979, is amended to read:

[~~76-10-515~~] 53-5-706. License — Fingerprints transmitted to division — Report from division.

[~~The~~] (1)(a) Except as provided in Subsection (2), the fingerprints of each applicant shall be taken on two copies of forms prescribed by the [~~state bureau of criminal identification~~] division and shall be forwarded to the [~~bureau~~] division.

(b) Upon receipt of the fingerprints and the fee [~~as~~] prescribed in Section [~~76-10-516~~] 53-5-707, the [~~bureau~~] division shall conduct a search of its files for criminal history information pertaining to the applicant, and shall request the Federal Bureau of Investigation to conduct a similar search through its files.

(c) The [~~bureau~~] division shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, or of which a record is found in the files of the Federal Bureau of Investigation. [~~No~~]

(d) A license [~~shall~~] may not be issued by any licensing authority until receipt of the report from the [~~bureau~~] division. [~~Provided, however, that if~~]

(2) If the license applicant has previously applied to the same licensing authority for a license to carry concealed firearms and the applicant's fingerprints and fee have been previously forwarded within one year to the [~~bureau as herein provided~~] division, the licensing authority shall note the previous identification numbers and other data which would provide positive identification in the files of the [~~bureau~~] division on the copy of any subsequent license submitted to the [~~bureau~~] division in [~~conformance~~] ac-

cordance with this section, and no additional application form, fingerprints, or fee [~~shall be~~] are required.

Section 267. Section Renumbered and Amended.

Section 53-5-707, Utah Code Annotated 1953, which is renumbered from Section 76-10-516, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1986, is amended to read:

[~~76-10-516~~] 53-5-707. Permit — Fee — Disposition.

(1) Each applicant for a permit shall pay a fee of $35 at the time of filing his application.

(2) The renewal fee for the permit is $5.

(3) All fees shall promptly be deposited in the state treasury and credited to the General Fund.

Section 268. Section Renumbered and Amended.

Section 53-5-708, Utah Code Annotated 1953, which is renumbered from Section 76-10-517, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

[~~76-10-517~~] 53-5-708. License — Records — Copies transmitted to division.

(1) When any license is issued, a record shall be maintained in the office of the licensing authority which shall be open to public inspection.

(2) Copies of each license issued shall be filed immediately by the [~~issuing officer or~~] licensing authority with the [~~bureau~~] division.

Section 269. Section Renumbered and Amended.

Section 53-5-709, Utah Code Annotated 1953, which is renumbered from Section 76-10-518, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1986, is amended to read:

[~~76-10-518~~] 53-5-709. Permit — Suspension — Revocation by division for law violation.

(1) The [bureau] division, within 30 days after receiving notification that a person granted a permit under this part has been convicted of a crime of violence or has failed to maintain good character as defined in Subsection [~~76-10-513~~] 53-5-704 (2) in Utah or any other state, shall revoke the permit and the person whose permit is revoked may not [then] be granted a permit.

(2)(a) If a person granted a permit under this part has been charged with a crime of violence in Utah or any other state, the [bureau] division shall suspend the permit.

(b) Upon notice of the acquittal of the person charged, or notice of the charges having been dropped, the [bureau] division shall immediately reinstate the suspended permit.

Section 270. Section Enacted.

Section 53-6-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 6. Peace Officer Standards and Training

Part 1. Peace Officer Standards and Training Division Administration

53-6-101. Short title.

This chapter is known as the "Peace Officer Standards and Training Act."

Section 271. Section Enacted.

Section 53-6-102, Utah Code Annotated 1953, is enacted to read:

53-6-102. Definitions.

As used in this chapter:

(1) "Certified academy" means a peace officer training institution certified in accordance with the standards developed under Section 53-6-105.

(2) "Council" means the Peace Officer Standards and Training Council created in Section 53-6-106.

(3) "Director" means the director of the Peace Officer Standards and Training Division appointed under Section 53-6-104.

(4) "Division" means the Peace Officer Standards and Training Division created in Section 53-6-103.

(5) "POST" means the division.

Section 272. Section Renumbered and Amended.

Section 53-6-103, Utah Code Annotated 1953, which is renumbered from Section 67-15-1, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-1~~] 53-6-103. Peace Officer Standards and Training Division — Creation — Administration — Duties.

[~~To better promote and insure the safety and welfare of the citizens of this state in their respective communities and to provide for more efficient and professional law enforcement by establishing minimum standards and training for peace officers throughout the state, there~~] (1) There is [hereby] created [~~a division of the state~~] within the department [~~of public safety to be known as~~] the [division of] Peace Officer Standards and Training [~~which~~] Division.

(2) The division shall be administered by a director [~~appointed by and~~] acting under the supervision and control of the commissioner [~~of public safety~~].

(3) The division shall promote and ensure the safety and welfare of the citizens of this state in their respective communities and provide for efficient and professional law enforcement by establishing minimum standards and training for peace officers throughout the state.

Section 273. Section Renumbered and Amended.

Section 53-6-104, Utah Code Annotated 1953, which is renumbered from Section 67-15-2, Utah

Code Annotated 1953, as last amended by Chapter 185, Laws of Utah 1977, is amended to read:

[~~67-15-2~~] 53-6-104. Appointment of director of division — Term of office.

(1) The commissioner [~~of public safety~~], upon recommendation of the council [~~on peace officer standards and training~~] and with the approval of the governor, shall appoint a director of the [state] division [~~of peace officer standards and training who shall serve at the pleasure of the commissioner~~].

(2) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(3) The director shall be a full-time officer of the state.

(4) The director may appoint deputies, consultants, clerks, and other employees from eligibility lists authorized by the Department of Human Resource Management.

(5) The director may be removed from his position at the will of the commissioner.

(6) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 274. Section Renumbered and Amended.

Section 53-6-105, Utah Code Annotated 1953, which is renumbered from Section 67-15-4, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1987, is amended to read:

[~~67-15-4~~] 53-6-105. Duties of director — Powers.

(1) The [~~powers and duties of the~~] director [~~of the Division of Peace Officer Standards and Training~~], [~~which shall be exercised~~] with the advice of the council [~~on Peace Officer Standards and Training~~], shall [~~include the following~~]:

(a) [~~to promulgate~~] prescribe standards for the certification of a peace officer training academy, [~~to~~] certify an academy [~~meeting~~] that meets the prescribed [~~requirements, and to subsequently revoke certification for cause~~] standards, and prescribe standards for revocation of certification for cause;

(b) [~~to~~] prescribe minimum qualifications for certification of peace officers appointed or elected to enforce the [~~law~~] laws of this state and its subdivisions[~~;~~] and [~~to~~] prescribe standards for revocation of certification for cause;

(c) [~~to~~] establish minimum requirements for the certification of training instructors and [~~to~~] establish standards for revocation of certification;

(d) [~~to~~] provide for the issuance of appropriate certificates to those peace officers completing the basic training programs offered by a certified academy or [~~to~~] those persons who pass a certification examination as provided for in this chapter;

(e) [~~to~~] consult and cooperate with certified academy administrators and instructors for the continued development and improvement of the basic training programs provided by the certified academy and for the further development and implementation of advanced in-service training programs;

(f) [~~to~~] consult and cooperate with state institutions of higher [~~learning~~] education to develop specialized courses of study for peace officers in the areas of criminal justice, police administration, criminology, social sciences, and other related disciplines;

(g) [~~to~~] consult and cooperate with other departments, agencies, and local governments concerned with peace officer training[~~, and in his discretion, make training aids and materials available to local law enforcement agencies~~];

(h) [~~to~~] perform any other acts necessary to develop peace officer training programs within the state;

(i) [~~to~~] report to the council [~~on Peace Officer Standards and Training~~] at regular meetings of the council and when the council requires;

(j) [~~to~~] recommend peace officer standards and training requirements to the commissioner, governor, and the Legislature; and

(k) [~~to promulgate necessary~~] make rules [~~to implement the intent and purposes of~~] as provided in this chapter.

(2) With the permission of the commissioner [~~of the Department of Public Safety~~], the director may execute contracts on behalf of the division [~~of Peace Officer Standards and Training~~] with criminal justice agencies to provide training for employees of those agencies if:

(a) the employees or the employing agency pay a registration fee equivalent to the cost of the training; and

(b) the contract does not reduce the effectiveness of the division [~~of Peace Officer Standards and Training~~] in its primary responsibility of providing training for peace officers of the state.

(3) The director may:

(a) revoke certification of a certified academy for cause; and

(b) make training aids and materials available to local law enforcement agencies.

Section 275. Section Renumbered and Amended.

Section 53-6-106, Utah Code Annotated 1953, which is renumbered from Section 67-15-11, Utah Code Annotated 1953, as enacted by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-11~~] 53-6-106. Creation of Peace Officer Standards and Training Council — Purpose — Membership — Quorum — Meetings — Compensation.

[~~A Council on~~] (1) There is created the Peace Officer Standards and Training [~~is hereby established to~~] Council.

(2) The council shall serve as an advisory board to the director of the division [~~of peace officer training~~] on matters relating to peace officer standards and training.

(3) The council [~~shall include~~] includes:

(a) the attorney general or his designated representative[~~;~~];

(b) the superintendent of the highway patrol[~~; and~~];

(c) the executive director of the Department of Corrections or his designated representative; and

(d) 14 additional members appointed by the governor having qualifications, experience, or education in the field of law enforcement as follows:

[~~(a) One~~] (i) one incumbent mayor;

[~~(b) One~~] (ii) one incumbent county commissioner;

[~~(c) Three~~] (iii) three incumbent sheriffs, one of whom [~~shall be~~] is a representative of the Utah Sheriffs Association, one of whom [~~shall be~~] is from a county having a population of 100,000 or more, and one of whom [~~shall be~~] is from a county having a population of less than 100,000;

[~~(d) Three~~] (iv) three incumbent police chiefs, one of whom [~~shall be~~] is a representative of the Utah Chiefs of Police Association, one of whom [~~shall be~~] is from a city of the first or second class, and one of whom [~~shall be~~] is from a city of the third class or town;

[~~(e) One~~] (v) one officer from the Federal Bureau of Investigation appointed by the governor upon the recommendation of [~~said~~] the agency;

[~~(f) A~~] (vi) a representative of the Utah Peace Officers Association;

[~~(g) An~~] (vii) an educator in the field of public administration, criminal justice, or related area; and

[~~(h) Three~~] (viii) three persons selected at large by the governor.

(4) (a) The 14 members of the council shall be appointed by the governor for four-year terms.

(b) A member may be reappointed for additional terms.

(c) A vacancy on the council shall be filled by the governor from the same category in which the vacancy occurs.

(5) A member of the council ceases to be a member:

(a) immediately upon the termination of his holding the office or employment that was the basis for his eligibility to membership on the council; or

(b) upon two unexcused absences in one year from regularly scheduled council meetings.

(6) The council shall select a chairman and vice-chairman from among its members.

(7) Ten members of the advisory council constitute a quorum.

(8) (a) Meetings may be called by the chairman, the commissioner, or the director and shall be called by the chairman upon the written request of nine members.

(b) Meetings shall be held at the times and places determined by the director.

(9) The council shall meet at least two times per year.

(10) (a) Members of the council shall receive a per diem allowance as approved by the Division of Finance.

(b) All members shall be reimbursed for their actual and necessary travel expenses incurred in the performance of their official duties.

(11) Membership on the council does not disqualify any member from holding any other public office or employment.

Section 276. Section Renumbered and Amended.

Section 53-6-107, Utah Code Annotated 1953, which is renumbered from Section 67-15-17, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-17~~] 53-6-107. General duties of council.

The council [~~is vested with the responsibility and duty to~~] shall:

(1) advise the director [~~with respect to~~] regarding:

[~~(1) The~~] (a) the approval, certification, or revocation of certification of any [~~peace officer training~~] certified academy [~~or academies~~] established in the state[~~;~~];

[~~(2) The~~] (b) the refusal, suspension, or revocation of certification of a peace officer[~~;~~];

[~~(3) Minimum~~] (c) minimum courses of study, attendance requirements, and the equipment and facilities to be required at [~~peace officer training academies.~~] a certified academy;

[~~(4) Minimum~~] (d) minimum qualifications for instructors at [~~peace officer training academies.~~] a certified academy;

[~~(5) The~~] (e) the minimum basic training requirements [~~which~~] that peace officers shall complete before receiving certification[~~;~~]; and

[~~(6) Categories~~] (f) categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements [~~with respect to such~~] for the categories or classifications[~~;~~];

(2) recommend that studies, surveys, or reports, or all of them be made by the director concerning the implementation of the objectives and purposes of this chapter;

(3) make recommendations and reports to the commissioner and governor from time to time; and

(4) perform other acts as necessary to carry out the duties of the council in this chapter.

Section 277. Section Renumbered and Amended.

Section 53-6-108, Utah Code Annotated 1953, which is renumbered from Section 67-15-20, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-20~~] 53-6-108. Donations, contributions, grants, gifts, bequests, devises, or endowments — Authority to accept — Disposition.

(1) The division [~~of peace officer standards and training~~] may accept any donations, contributions, grants, gifts, bequests, devises, or endowments of money or property[~~, and the same~~], which shall [~~then become~~] be the property of the state [~~of Utah~~].

(2)(a) If the donor directs that [~~such~~] the money or property be used in a specified manner, then the division shall use it in accordance with these directions and state law. [~~Otherwise, all such~~]

(b) All money and the proceeds from [~~such~~] donated property not disposed of under Subsection (a) shall be deposited in the General Fund [~~of the state~~] as restricted revenue [~~of~~] for the division [~~of peace officer standards and training~~].

Section 278. Section Enacted.

Section 53-6-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Peace Officer Training and Certification

53-6-201. Short title.

This part is known as the "Peace Officer Training and Certification Act."

Section 279. Section Renumbered and Amended.

Section 53-6-202, Utah Code Annotated 1953, which is renumbered from Section 67-15-5, Utah Code Annotated 1953, as enacted by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-5~~] 53-6-202. Basic training course — Subject material — Instructors — Schedules — Minimum length — Completion required — Annual training — Prohibition from exercising powers — Reinstatement.

(1)(a) The director shall:

(i)(A) suggest and prepare subject material; and [~~shall~~]

(B) schedule instructors for basic training courses[~~,~~]; or [~~shall~~]

(ii) review the material and instructor choices submitted by a certified [~~police~~] academy.

(b) The subject material, instructors, and schedules shall be approved or disapproved by a majority vote of the council [~~on peace officers standards and training~~].

(2) The materials shall be reviewed and approved by the council on or before July 1st of each year and may from time to time be changed or amended by majority vote of the council.

(3) The basic [~~course~~] training in [~~an~~] a certified academy shall be [~~not less than 200 hours in length, all of which must be~~] appropriate for the basic training of peace officers in the techniques of law enforcement in the discretion of the director.

(4)(a) All peace officers must satisfactorily complete the basic training course or the waiver process provided for in this chapter as well as [~~such~~] annual certified training of not less than 40 hours as the director [~~of the division of peace officers standards and training~~], with the advice and consent of the council [~~on peace officers standards and training~~], directs[~~, though annual training shall consist of not less than 40 hours per year~~].

(b) A peace officer who fails to satisfactorily [~~to~~] complete the annual training shall automatically be prohibited from exercising peace officer powers until [~~such time as~~] any deficiency is made up.

(5) The director, with the advice of the council [~~on peace officers training~~], [~~is authorized to establish~~] may make rules [~~and procedures~~] relating to the reinstatement of powers of peace officers who have been prohibited from exercising those powers under [~~the provisions of~~] this [~~chapter~~] part.

Section 280. Section Renumbered and Amended.

Section 53-6-203, Utah Code Annotated 1953, which is renumbered from Section 67-15-6, Utah Code Annotated 1953, as last amended by Chapter 119, Laws of Utah 1992, is amended to read:

[~~67-15-6~~] 53-6-203. Applicants for admission to training programs or for certification examination — Requirements.

(1) Before being accepted for admission to the training programs conducted by a certified [~~peace officer training~~] academy, and before being allowed to take a certification examination, each applicant for admission or certification examination shall meet the following requirements:

(a) [~~The applicant shall~~] be a United States citizen[~~.~~];

(b) [~~The applicant shall~~] be at least 21 years old at the time of appointment as a peace officer[~~.~~];

(c) [~~The applicant shall~~] be a high school graduate[~~.~~];

(d) [~~The applicant may not~~] have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state[~~.~~];

(e) [~~The applicant shall demonstrate~~] have demonstrated good moral character, as determined by a background investigation[~~.~~]; and

(f) [~~The applicant shall~~] be free of any physical, emotional, or mental [~~conditions~~] condition that might [affect] adversely affect the performance of his duty as a peace officer.

(2) [A] (a) An application for admission to a training program shall be accompanied by a criminal history background check of local, state, and national criminal history files and a background investigation [~~shall be conducted, the~~].

(b) The costs of [~~which~~] the background check and investigation shall be borne by the applicant or the applicant's employing agency.

[~~(a)~~] (i) Conviction of any offense[~~,~~] not serious enough to be [~~subject to~~] covered under Subsection (1)(d), involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale, or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination.

[~~(b)~~] (ii) An applicant may be admitted to a training program provisionally, pending completion of any background check or investigation required by this subsection.

(3) (a) Notwithstanding Section 77-18-2 regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction [~~which~~] that has been expunged, dismissed, or treated in a similar manner to either of these procedures, may be considered for purposes of this section.

(b) This provision applies to convictions entered both before and after the effective date of this section.

(4) Any background check or background investigation performed pursuant to the requirements of this section shall be [~~for the purposes of determining~~] to determine eligibility for admission to training programs or qualification for certification examinations and [shall] may not be used as a replacement for any background investigations [which] that may be required of an employing agency.

Section 281. Section Renumbered and Amended.

Section 53-6-204, Utah Code Annotated 1953, which is renumbered from Section 67-15-6.5, Utah Code Annotated 1953, as enacted by Chapter 211, Laws of Utah 1983, is amended to read:

[~~67-15-6.5~~] 53-6-204. Time of application for admission to training program.

At the time a person is employed or appointed as a peace officer, the chief executive officer of the agency employing or appointing shall submit to a certified academy an application together with the required background information [~~as provided for~~ in] required under Section [67-15-6] 53-6-203.

Section 282. Section Renumbered and Amended.

Section 53-6-205, Utah Code Annotated 1953, which is renumbered from Section 67-15-7, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1987, is amended to read:

[~~67-15-7~~] 53-6-205. Completion of training course or passing of certificate examination required — Persons affected.

(1) (a) [A] Except as provided in Subsection (2), a peace officer in this state must successfully complete the basic course at a certified academy, or successfully pass a state certification examination according to the requirements of Section [~~67-15-8~~] 53-6-206, before that person can be certified.

(b) A person may not exercise peace officer powers until certified.

(2) [~~(a)~~] Subsection (1) applies only to persons not previously certified and who receive their first employment appointment or election as a peace officer in this state on or after January 1, 1985.

[~~(b) Persons who are employed, appointed, or elected as peace officers between the effective date of this act and January 1, 1985, must be certified before January 1, 1985.~~]

Section 283. Section Renumbered and Amended.

Section 53-6-206, Utah Code Annotated 1953, which is renumbered from Section 67-15-8, Utah Code Annotated 1953, as last amended by Chapter 54, Laws of Utah 1990, is amended to read:

[~~67-15-8~~] 53-6-206. Waiver of training course requirement — Certification exam.

(1) The director may waive the required basic peace officer training and certify each applicant who passes a written examination, an oral examination, or both a written and oral examination that affirms the applicant's ability in law enforcement.

(2) A waiver applicant shall:

(a) furnish evidence of satisfactory completion of a peace officer training program that, in the director's judgment, is equivalent to the program required for certification in this state; and

(b) furnish evidence that the requirements of Section [67-15-6] 53-6-203, relating to qualifications for admission to the Utah training programs have been met.

(3) A waiver applicant may not exercise peace officer powers until all waiver process requirements have been met.

(4) An applicant who fails the certification examination must complete the basic training course required by this [chapter] part and be certified in order to become a peace officer authorized to exercise peace officer powers.

Section 284. Section Renumbered and Amended.

Section 53-6-207, Utah Code Annotated 1953, which is renumbered from Section 67-15-9, Utah

Code Annotated 1953, as enacted by Chapter 103, Laws of Utah 1967, is amended to read:

[~~67-15-9~~] 53-6-207. Municipalities may set higher minimum standards.

The minimum standards [~~set forth~~] in this [~~act~~] part concerning peace officer qualifications and training [~~shall in no way be deemed to~~] do not preclude counties, cities, or towns from establishing standards higher than the minimum standards contained in this [~~act~~] part.

Section 285. Section Renumbered and Amended.

Section 53-6-208, Utah Code Annotated 1953, which is renumbered from Section 67-15-10, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1987, is amended to read:

[~~67-15-10~~] 53-6-208. Inactive certificates — Lapse of certificate — Reinstatement.

(1)(a) The certificate of a peace officer who has not been actively engaged in performing the duties of a peace officer for one year shall be designated "inactive."

(b) If a peace officer having an inactive certificate becomes reemployed or subsequently reengaged as a peace officer, his certificate may be reissued or reinstated by the director upon successful completion by that peace officer of the waiver process established by the director.

(c) The director may require a peace officer with an inactive certificate to successfully complete the basic training course before reissuing or reinstating certification.

(2) (a) The certificate of a peace officer [~~who~~] lapses if he has not been actively engaged in performing the duties of a peace officer for four continuous years [~~shall lapse~~].

(b) Subject to [~~the provisions of~~] Section [~~67-15-8~~] 53-6-206, the peace officer shall successfully complete the basic training course before the certificate may be reissued or reinstated.

Section 286. Section Renumbered and Amended.

Section 53-6-209, Utah Code Annotated 1953, which is renumbered from Section 67-15-10.1, Utah Code Annotated 1953, as enacted by Chapter 69, Laws of Utah 1987, is amended to read:

[~~67-15-10.1~~] 53-6-209. Termination of employment — Change of status form.

(1) When a peace officer's employment terminates, the employing agency shall submit a [~~completed~~] change of status form noting the termination of the peace officer to the division [~~of Peace Officer Standards and Training~~].

(2) The change of status [~~document~~] form shall:

(a) be completed and submitted within seven days of the peace officer's termination date;

(b) identify the circumstances of the peace officer's status change by indicating that the peace officer has resigned, retired, terminated, transferred, deceased, or that the peace officer's name has changed;

(c) indicate the effective date of action; and

(d) indicate the name of the new employer, if the status change is due to a transfer.

(3) Any person or agency who intentionally falsifies [~~or~~], misrepresents, or fails to give notice of the change of status of a peace officer is liable to the division for any damages that may be sustained by the failure to make [~~such~~] the notification.

Section 287. Section Renumbered and Amended.

Section 53-6-210, Utah Code Annotated 1953, which is renumbered from Section 67-15-10.2, Utah Code Annotated 1953, as last amended by Chapter 135, Laws of Utah 1988, is amended to read:

[~~67-15-10.2~~] 53-6-210. Investigations and certification hearings — Powers of division — Violation.

(1) For [~~the purpose of~~] investigations by the division [~~of Peace Officer Standards and Training~~] and for certification hearings or other testimony before the council [~~on Peace Officer Standards and Training~~], the division [~~of Peace Officer Standards and Training~~] may administer oaths and affirmations, subpoena witnesses, take evidence, and require by subpoena duces tecum the production of relevant papers, records, or other documents or information, whether filed or kept in original form, or electronically stored or recorded[~~, that are considered relevant or material~~].

(2) A person who willfully disobeys a properly served subpoena issued by the division is guilty of a class B misdemeanor.

Section 288. Section Renumbered and Amended.

Section 53-6-211, Utah Code Annotated 1953, which is renumbered from Section 67-15-10.5, Utah Code Annotated 1953, as last amended by Chapter 135, Laws of Utah 1988, is amended to read:

[~~67-15-10.5~~] 53-6-211. Revocation, suspension, or refusal of certification — Hearings — Grounds — Notice to employer.

(1) (a) The director may, upon the concurrence of the majority of the council, revoke, refuse, or suspend certification of a peace officer for cause.

(b) The council shall give the person or peace officer involved prior notice and an opportunity for a full hearing before the council.

(c) The director, with the concurrence of the council, may by rule designate a presiding officer to represent the council in adjudicative proceedings or hearings before the council.

(d) Any of the following constitute cause for action under Subsection (1) (a):

(i) willful falsification of any information to obtain certified status;

(ii) physical or mental disability affecting the employee's ability to perform his duties;

(iii) addiction to or the unlawful sale, possession, or use of narcotics, drugs, or drug paraphernalia;

(iv) conviction of a felony or any crime involving dishonesty, unlawful sexual conduct, physical violence, or driving under the influence of alcohol or drugs; or

(v) any conduct or pattern of conduct that would tend to disrupt, diminish, or otherwise jeopardize public trust and fidelity in law enforcement.

(2) (a) Notwithstanding Section 77-18-2 regarding expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction may be considered for purposes of this section.

(b) In this section, "conviction" includes a conviction [which] that has been expunged, dismissed, or treated in a similar manner to either of these procedures.

(c) This provision applies to convictions entered both before and after the effective date of this section.

(3) The director shall send notice to the governing body of the political subdivision employing the peace officer and shall receive information or comments concerning the peace officer from the governing body or the agency employing the officer before suspending or revoking that peace officer's certification.

(4) Denial, suspension, or revocation procedures may not be initiated by the council when an officer is terminated for infraction of his agency's policies, general orders, or similar guidelines of operation that do not amount to any of the causes for denial, suspension, or revocation enumerated in Subsection (1).

(5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude revocation or subsequent denial of peace officer certification status by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(b) Employment by another agency, or reinstatement of a peace officer by his parent agency after termination, whether the termination was voluntary or involuntary, does not preclude revocation or subsequent denial of peace officer certification status by the council if the peace officer was terminated for any of the reasons under Subsection (1).

Section 289. Section Renumbered and Amended.

Section 53-6-212, Utah Code Annotated 1953, which is renumbered from Section 77-1a-7, Utah Code Annotated 1953, as enacted by Chapter 174, Laws of Utah 1985, is amended to read:

[~~77-1a-7~~] 53-6-212. Responsibility for training — Certification.

(1) [~~Except the requirements of Section 77-1a-1 (3), the Division of Peace Officer Standards and Training~~] The division is not responsible for providing basic or in-service training for peace officers defined and designated in Sections 77-1a-2 through 77-1a-5 except for approval of the instructors and content of training where required by this chapter, Title 77, Chapter 1a, Peace Officer Designation, or [~~the Peace Officer Division of Standards and Training~~] division rules.

(2) Where this chapter or Title 77, Chapter 1a, Peace Officer Designation, requires an agency head to certify that a member has completed required training, the [~~Division of Peace Officer Standards and Training~~] division shall rely on the certification, as provided, to be accurate.

Section 290. Section Renumbered and Amended.

Section 53-6-213, Utah Code Annotated 1953, which is renumbered from Section 67-15-21, Utah Code Annotated 1953, as enacted by Chapter 150, Laws of Utah 1986, is amended to read:

[~~67-15-21~~] 53-6-213. Appropriations from reparation fund.

(1) The Legislature shall appropriate from the trust fund under the Crime Victims' Reparations Act to the [~~Department of Public Safety,~~] division [of ~~Police Officer Standards and Training~~], funds for training of peace officers in the state.

(2) The department shall make an annual report to the Legislature, which includes the amount received during the previous fiscal year.

Section 291. Section Renumbered and Amended.

Section 53-7-101, Utah Code Annotated 1953, which is renumbered from Section 63-27-101, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

CHAPTER 7. Utah Fire Prevention and Safety

Part 1. State Fire Marshal Division Administration

[~~63-27-101~~] 53-7-101. Short title.

This chapter is known as the "Utah Fire Prevention [~~Law~~] and Safety Act."

Section 292. Section Renumbered and Amended.

Section 53-7-102, Utah Code Annotated 1953, which is renumbered from Section 63-27-103, Utah Code Annotated 1953, as enacted by Chapters 157 and 220, Laws of Utah 1991, is amended to read:

[63-27-103] 53-7-102. Definitions.

As used in this chapter:

[~~(1) "Board" means the Utah Fire Prevention Board created in Section 63-27-104.~~]

[~~(2) "Commissioner" means the commissioner of the Department of Public Safety.~~]

[~~(3)~~] (1) "Director" means the state fire marshal appointed in accordance with Section [~~63-27-104~~] 53-7-103.

[~~(4)~~] (2) "Division" means the [~~Division of the~~] State Fire Marshal Division created in Section [~~63-27-104~~] 53-7-103.

[~~(5)~~] (3) "Fire officer" means:

(a) the state fire marshal;

(b) the state fire marshal's deputies or salaried assistants;

(c) the fire chief or fire marshal of any county, city, or town fire department;

(d) the fire officer of any fire district;

(e) the fire officer of any special service district organized for fire protection purposes; and

(f) authorized personnel of any of the persons specified in Subsections (a) through (e).

(4) "State fire marshal" means the fire marshal appointed director by the commissioner under Section 53-7-103.

Section 293. Section Renumbered and Amended.

Section 53-7-103, Utah Code Annotated 1953, which is renumbered from Section 63-27-104, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-104~~] 53-7-103. State Fire Marshal Division — Creation — State fire marshal — Appointment, qualifications, duties, and compensation.

(1) [~~(a)~~] There is created within the department [~~of Public Safety~~] the [~~Division of the~~] State Fire Marshal Division. [~~Within the division is created the Utah Fire Prevention Board.~~]

[~~(b) The division shall implement the rules of the board and perform all other duties delegated by the board.~~]

(2) (a) The director of the division is the state fire marshal, who shall be appointed by the commissioner upon the recommendation of the [~~board~~] Utah Fire Prevention Board created in Section 53-7-203 and with the approval of the governor.

(b) The [~~director~~] state fire marshal is the executive and administrative head of the division, and shall be qualified by experience and education to enforce [~~the~~] rules [~~of the board~~] made under this chapter and perform the duties prescribed by the commissioner.

(3) The state fire marshal acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

[~~(3)~~] (4) The [~~director~~] state fire marshal shall:

(a) enforce rules made [~~by the board~~] under this chapter as provided in accordance with Section 53-7-104;

(b) complete the duties assigned by the commissioner; [~~and~~]

(c) examine plans and specifications for school buildings, as required by Section 53A-20-104;

(d) approve modifications or additions to plans and specifications for school building construction adopted by the State Board of Education, as required by Section 53A-20-102;

(e) approve criteria established by the state superintendent for building inspectors, as required by Sections 10-9-106 and 17-27-105; and

[~~(e)~~] (f) perform all other duties provided in this chapter.

[~~(4)~~] (5) The [~~director~~] state fire marshal shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 294. Section Renumbered and Amended.

Section 53-7-104, Utah Code Annotated 1953, which is renumbered from Section 63-27-111, as last amended by Chapters 157 and 202, and renumbered and amended by Chapter 220, Laws of Utah 1991, is renumbered and amended to read:

[~~63-27-111~~] 53-7-104. Enforcement of rules, regulations, and standards — Division of authority and responsibility.

(1) The authority and responsibility for [~~enforcement of~~] enforcing rules made under this chapter [~~shall be~~] is divided as provided in this section.

(2) The fire officers of any city or county shall enforce the rules of the state fire marshal in their respective areas.

(3) The state fire marshal may enforce the rules in:

(a) areas outside of corporate cities, fire protection districts, and special districts organized for fire protection purposes; and

(b) state-owned property, school district owned property, and privately owned property used for schools located within corporate cities and county fire protection districts, asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health-care facilities, children's homes or institutions, or similar institutional type occupancy of any capacity.

(4) The state fire marshal may enforce the rules in corporate cities, counties, and fire protection districts, and special service districts organized for fire protection purposes upon written request of the chief fire official or the local governing body.

Section 295. Section Renumbered and Amended.

Section 53-7-105, Utah Code Annotated 1953, which is renumbered from Section 63-27-122, Utah Code Annotated 1953, as renumbered and amended

by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-122~~] 53-7-105. State fire marshal, deputies, and investigators — Status of peace officers — Inclusion in Public Safety Retirement — Training.

(1) The state fire marshal, his [~~salaried~~] deputies, and investigators, for the purpose of enforcing and investigating violations of fire related statutes and ordinances, have the status of peace officers.

(2) Inclusion under Title 49, Chapter 4, Public Safety Retirement Act, or Title 49, Chapter 4a, Public Safety Noncontributory Retirement Act, is not authorized by Subsection (1) except as provided in those chapters.

(3) The commissioner, with the concurrence of the Peace Officer Standards and Training Advisory Board may require peace officer standards and training for the state fire marshal, his deputies, and investigators.

Section 296. Section Renumbered and Amended.

Section 53-7-106, Utah Code Annotated 1953, which is renumbered from Section 63-27-103.1, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1992, is amended to read:

[~~63-27-103.1~~] 53-7-106. Adoption of fire code.

(1) Subject to [~~the provisions of Subsection (3), and~~] Section [~~63-27-109~~] 53-7-204, the Uniform Fire Code, as promulgated by the International Fire Code Institute, is the state fire code, to which cities, counties, fire protection districts, and the state shall adhere in [~~the~~] safeguarding [~~of~~] life and property from the hazards of fire and explosion.

[~~(2) The board shall adopt by rule the specific edition of the Uniform Fire Code to be used as the standard and may adopt by rule successor editions of the same code.~~]

[~~(3) The board may adopt by rule amendments to the Uniform Fire Code, modifying the code, which are applicable to the entire state or within a city, county, or fire protection district only in accordance with Section 63-27-103.2.~~]

[~~(4)~~] (2) (a) The legislative body of a political subdivision may [~~enact~~] make ordinances that are more restrictive in its fire code requirements than the state fire code, in order to meet the public safety needs of the political subdivision.

(b) The legislative body of a political subdivision shall provide to the [~~board~~] Utah Fire Prevention Board one copy of each ordinance enacted under Subsection (a).

(c) The [~~board~~] state fire marshall shall keep an indexed copy of the ordinances.

(d) Copies of the ordinances [~~shall be~~] are available from the [~~board~~] state fire marshall on request.

Section 297. Section Enacted.

Section 53-7-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Fire Prevention and Fireworks

53-7-201. Short title.

This part is known as the "Fire Prevention and Fireworks Act."

Section 298. Section Renumbered and Amended.

Section 53-7-202, Utah Code Annotated 1953, which is renumbered from Section 11-3-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 268, Laws of Utah 1992, is amended to read:

[~~11-3-2~~] 53-7-202. Definitions.

As used in this [~~chapter~~] part:

(1) "Agricultural and wildlife fireworks" means a class C dangerous explosive that:

(a) uses sound or light when deployed; and

(b) is designated to prevent crop damage or unwanted animals from entering a specified area.

(2) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

[~~(2)~~] (3) "Class A explosive" means a class A explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

[~~(3)~~] (4) "Class B explosive" means a class B explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

[~~(4)~~] (5) "Class C explosive" means a class C explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

[~~(5)~~] (6) (a) "Class C common state approved explosive" means a class C explosive that is:

(i) a cardboard or heavy paper cylindrical tube or cone that:

(A) produces a shower of color and sparks that reach a maximum height of 15 feet;

(B) may whistle or pop; and

(C) is not designed to explode or leave the ground;

(ii) a pyrotechnic wheel device that:

(A) may be attached to a post or tree; and

(B) contains up to six "driver" units or tubes;

(iii) any device that:

(A) spins, jumps, or emits popping sounds when placed on the ground;

(B) does not exceed a height of 15 feet when discharged; and

(C) does not travel laterally more than ten feet on a smooth surface when discharged;

(iv) a morning glory, suzuki, or flitter sparkler; and

(v) a single tube day type parachute that does not carry any flare or flame upon descent.

(b) "Class C common state approved explosive" does not mean:

(i) class C dangerous explosives; or

(ii) exempt explosives.

[~~(6)~~] (7) (a) "Class C dangerous explosive" means a class C explosive that is:

(i) a firecracker, cannon cracker, salute, cherry bomb, or other similar explosive;

(ii) a skyrocket or any device other than a model rocket that uses combustible or explosive material and rises more than 15 feet when discharged;

(iii) a roman candle or other device that discharges balls of fire over 15 feet in height;

(iv) a tube or cone aerial firework that propels comets, shells, salutes, flash shells, or similar devices more than 15 feet into the air; and

(v) a chaser, whistler, or other device that darts or travels more than ten feet laterally on a smooth surface or exceeds 15 feet in height when discharged.

(b) A "Class C dangerous explosive" does not mean:

(i) class C common state approved explosives; or

(ii) exempt explosives.

[~~(7)~~] (8) "Display fireworks" means an aerial shell, salute, flash shell, comet, sky battle, mine, and any similar class C explosive or class B explosive.

[~~(8)~~] (9) (a) "Display operator" means the person who purchases and is responsible for setting up and discharging display fireworks.

(b) "Display operator" does not mean a fire department.

[~~(9)~~] (10) "Exempt explosive" means a model rocket, toy pistol cap, emergency signal flare, snake or glow worm, party popper, trick noisemaker, match, and wire sparkler under 12 inches in length.

[~~(10)~~] (11) (a) "Fireworks" means:

(i) class C explosives;

(ii) class C dangerous explosives; and

(iii) class C common state approved explosives.

(b) "Fireworks" does not mean:

(i) exempt explosives;

(ii) class A explosives; and

(iii) class B explosives.

[~~(11)~~] (12) "Importer" means a person who brings class B or class C explosives into Utah for the general purpose of resale within the state or exportation to other states.

[~~(12)~~] (13) (a) "Pyrotechnic" means any composition or device manufactured or used to produce a visible or audible effect by combustion, deflagration, or detonation.

(b) "Pyrotechnic" does not mean exempt explosives.

[~~(13)~~] (14) "Retail seller" means a person who sells class C common state approved explosives to the public during the period authorized under Section [~~11-3-6~~] 53-7-225.

[~~(14)~~] (15) "Trick noisemaker" includes a:

(a) tube or sphere containing pyrotechnic composition that produces a white or colored smoke as its primary effect when ignited; and

(b) device that produces a small report intended to surprise the user, including a:

(i) "booby trap," which is a small tube with a string protruding from both ends [which] that ignites the friction sensitive composition in the tube when the string is pulled;

(ii) "snapper," which is a small paper-wrapped device containing a minute quantity of explosive composition coated on bits of sand [~~which~~] that explodes producing a small report;

(iii) "trick match," which is a kitchen or book match coated with a small quantity of explosive or pyrotechnic composition [~~which~~] that produces a small shower of sparks when ignited;

(iv) "cigarette load," which is a small wooden peg coated with a small quantity of explosive composition that produces a small report when the cigarette is ignited; and

(v) "auto burglar alarm," which is a tube that:

(A) contains pyrotechnic composition [~~which~~] that produces a loud whistle and smoke when ignited;

(B) may contain a small quantity of explosive to produce a small [~~report~~] explosive noise; and

(C) is ignited by a squib.

[~~(15)~~] (16) "Unclassified fireworks" means any of the following:

(a) a pyrotechnic device that is used, given away, or offered for sale, that has not been tested, approved, and classified by the U.S. Department of Transportation;

(b) an approved device that has been altered or redesigned since obtaining approval by the U.S. Department of Transportation; [~~and~~]

(c) a pyrotechnic device that is being tested by a manufacturer, importer, or wholesaler before receiving approval by the U.S. Department of Transportation.

[~~(16)~~] (17) "Wholesaler" means any of the following:

(a) a person who sells class C common state approved explosives to a retailer; [~~and~~]

(b) a person who sells class B explosives or class C dangerous explosives for display use.

Section 299. Section Renumbered and Amended.

Section 53-7-203, Utah Code Annotated 1953, which is renumbered from Section 63-27-106, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-106~~] 53-7-203. Utah Fire Prevention Board — Creation — Members — Terms — Selection of chairman and officers — Quorum — Meetings — Compensation — Division's duty to implement board rules.

(1) There is created within the division the Utah Fire Prevention Board.

[~~(1)~~] (2) The board shall be nonpartisan and comprise [~~nine~~] ten members appointed by the governor, with the advice and consent of the Senate, as follows:

(a) a city or county official;

(b) a licensed architect;

(c) a licensed fire protection engineer;

[~~(c)~~] (d) a member of the Utah State Firemen's Association;

[~~(d)~~] (e) a member of the Utah State Board of Forestry and Fire Control;

[~~(e)~~] (f) a member of the Utah State Industrial Commission;

[~~(f) a licensed fire protection engineer;~~]

(g) a member of the Utah State Fire Chiefs Association;

(h) a member of the Utah Fire Marshal's Association; [~~and~~]

(i) a building inspector; and

[~~(i)~~] (j) a citizen appointed at large.

[~~(2) (a) Members of the board prior to April 29, 1991, shall serve as members of the committee throughout the terms for which they were appointed.~~]

[~~(b)~~] (3) Members of the board [~~appointed after April 28, 1991,~~] shall serve for six year terms.

[~~(3)~~] (4) The board shall select from its members a chairman and other officers as the board finds necessary.

[~~(4)~~] (5) A majority of the members of the board is a quorum.

(6) The board shall hold regular semiannual meetings for the transaction of its business at a time and place to be fixed by the board and shall hold other meetings as necessary for proper transaction of business.

(7) The members of the board receive no salary from the state but shall be reimbursed for their actual and necessary expenses while engaged in official duties as determined by the Division of Finance.

(8) The division shall implement the rules of the board and perform all other duties delegated by the board.

Section 300. Section Renumbered and Amended.

Section 53-7-204, Utah Code Annotated 1953, which is renumbered from Section 63-27-109, Utah Code Annotated 1953, as last amended by Chapter 130, Laws of Utah 1992, is amended to read:

[~~63-27-109~~] 53-7-204. Duties of Utah Fire Prevention Board — Rulemaking — Local administrative duties.

(1) The board shall:

(a) make rules [~~in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act~~]:

(i) adopting the specific edition of the Uniform Fire Code [~~in accordance with Section 63-27-103.1~~] to be used as the standard;

(ii) establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the aged, a residential health care facility, a children's home or institution, or any similar institutional type occupancy of any capacity; and

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(iii) establishing safety and other requirements for placement and discharge of display fireworks based upon:

(A) the specific edition of the Uniform Fire Code selected under Subsection (i); and

(B) relevant publications of the National Fire Protection Association;

(iv) establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives;

(v) defining methods to establish proof of competence to place and discharge display fireworks;

[~~(iii)~~] (vi) for deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies; and

[~~(iv) to implement~~] (vii) implementing Sections [~~63-27-103.1~~] 53-7-106 and [~~63-27-103.2~~] 53-7-205;

(b) recommend to the commissioner a state fire marshal;

(c) develop policies under which the state fire marshal and his authorized representatives will perform;

(d) provide for the employment of field assistants and other salaried personnel as required;

(e) prescribe the duties of the state fire marshal and his authorized representatives;

(f) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents; [and]

(g) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state[.];

(h) coordinate the efforts of all people engaged in fire suppression in the state;

(i) work aggressively with the local political subdivisions to reduce fire losses; and

(j) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property.

(2) The board may incorporate in its rules by reference, in whole or in part, nationally recognized and readily available standards and codes pertaining to the protection of life and property from fire, explosion, or panic.

(3) (a) The board may only make amendments to the Uniform Fire Code adopted under Subsection (1)(a)(i) in accordance with Section 53-7-205.

(b) The amendments may be applicable to the entire state or within a city, county, or fire protection district.

[~~(3)~~] (4) The board shall establish a fire services training school that shall:

(a) provide instruction and training for paid, volunteer, institutional, and industrial firefighters;

(b) develop new methods of practices for firefighting and fire prevention;

(c) provide training for fire and arson detection and investigation;

(d) provide public educational programs to promote fire safety;

(e) provide for certification of firefighters, pump operators, instructors, and officers; and

(f) provide facilities for teaching fire fighting skills.

[~~(4)~~] (5) To establish the fire service training school, the board:

(a) shall establish a cost recovery fee to be deposited in the General Fund for training of commercially employed firefighters;

(b) may accept gifts, donations, and grants of property and services on behalf of the fire service training school;

(c) may enter into contractual agreements necessary to facilitate establishment of the school; and

(d) shall request funding for the school.

[~~(5)~~] (6) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with Section 2.303 of the Uniform Fire Code; and

(c) establishing, modifying, or deleting fire flow and water supply requirements.

Section 301. Section Renumbered and Amended.

Section 53-7-205, Utah Code Annotated 1953, which is renumbered from Section 63-27-103.2, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1992, is amended to read:

[~~63-27-103.2~~] 53-7-205. Uniform Fire Code amendments — Board duties and responsibilities.

(1) The board shall receive from a city, county, or fire protection district requests for amendments to the Uniform Fire Code.

(2) The division or the board on its own initiative may make recommendations to the division for amendments to the Uniform Fire Code.

(3) (a) Within 45 days after receipt of a request or recommendation concerning an amendment, the board shall direct the division to convene an informal hearing concerning the amendment.

(b) The hearing shall be conducted in accordance with the rules of the board.

(c) The board shall decide to accept, modify, or reject the amendment.

(4) Within 15 days following the completion of the hearing, the board shall direct the division to notify the city, county, or fire protection district of its decision in writing.

(5) The board shall [~~direct the division to~~] make rules [~~in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~] incorporating the amendments accepted or modified under Subsection (3).

Section 302. Section Renumbered and Amended.

Section 53-7-206, Utah Code Annotated 1953, which is renumbered from Section 11-4-1, Utah Code Annotated 1953, as last amended by Chapter 20, Laws of Utah 1965, is amended to read:

[~~11-4-1~~] 53-7-206. Equipment for new fire protection systems — Standard equipment.

All equipment for fire protective purposes, purchased in connection with the installation of completely new fire protection systems by any authorities having charge of public property, shall be equipped with the standard hydrant stem and cap nuts and standard threads for fire hose and fire hydrant couplings and fittings designated as the national standard, as adopted by the [~~national~~] board

[~~of fire underwriters~~], which standard is [~~hereby~~] designated as the standard for [~~such~~] the equipment in the state [~~of Utah~~].

Section 303. Section Renumbered and Amended.

Section 53-7-207, Utah Code Annotated 1953, which is renumbered from Section 11-4-3, Utah Code Annotated 1953, as last amended by Chapter 20, Laws of Utah 1965, is amended to read:

[~~11-4-3~~] 53-7-207. Selling or offering for sale nonstandard equipment unlawful — Exception.

[~~It shall be unlawful for any~~] (1) A person[~~, firm, corporation, or association to~~] may not sell or offer for sale [~~in the state of Utah~~] any fire hose, fire hydrant, fire engine, or other equipment with threaded parts[~~, except adapters and caps for fire protective purposes~~] unless [~~it~~] the equipment is fitted and equipped with the threads designated as national standard and adopted by the [~~national~~] board [~~of fire underwriters~~] and designated by law as the standard of [~~such~~] the equipment in the state [~~of Utah, unless such~~].

(2) Subsection (1) does not apply to:

(a) equipment [~~is~~] sold or offered for sale to a local governing body for the purposes of maintaining, repairing, replacing, or extending existing fire protection equipment as provided in Section 11-4-2; and

(b) adapters and caps for fire protective purposes.

Section 304. Section Renumbered and Amended.

Section 53-7-208, Utah Code Annotated 1953, which is renumbered from Section 11-4-4, Utah Code Annotated 1953, as last amended by Chapter 77, Laws of Utah 1977, is amended to read:

[~~11-4-4~~] 53-7-208. Penalty and punishment — Jurisdiction of prosecutions.

(1) Any [~~such~~] person[~~, firm or corporation~~] who [~~shall violate the provisions of this act, upon conviction thereof, shall be deemed~~] violates Sections 53-7-206 and 53-7-207, requiring standard equipment, is guilty of a class B misdemeanor [~~and~~].

(2) A violator shall be punished by:

(a) a fine of not less than $25 nor more than $250[~~; or by~~];

(b) imprisonment in the county jail for not less than ten days, nor more than sixty days[~~,~~]; or [~~by~~]

(c) both [~~such~~] a fine and imprisonment[~~, in the discretion of the court~~].

(3) Justices of the peace and circuit judges [~~shall~~] have concurrent jurisdiction over prosecutions for violations of this [~~act~~] part.

Section 305. Section Renumbered and Amended.

Section 53-7-209, Utah Code Annotated 1953, which is renumbered from Section 63-27-110, Utah Code Annotated 1953, as last amended by Chapter 157 and renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-110~~] 53-7-209. Inspection of buildings by officials.

(1) A fire chief or officer may enter any building or premises not used as a private dwelling at any reasonable hour to inspect the building or premises and enforce the rules made under this [~~chapter~~] part, including the [~~provisions of the~~] Uniform Fire Code [~~incorporated by reference~~] adopted under Section [~~63-27-109~~] 53-7-204.

(2) The owner, lessee, manager, or operator of any building or premises [~~under Subsection (1)~~] not used as a private dwelling shall permit inspections under this section.

Section 306. Section Renumbered and Amended.

Section 53-7-210, Utah Code Annotated 1953, which is renumbered from Section 63-27-117, Utah Code Annotated 1953, as last amended by Chapter 157 and renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-117~~] 53-7-210. Fire investigations by local officers — Notification to fire marshal.

(1) The chief fire officer of any city, town, or county fire department, or of any fire district or special service district organized for fire protection purposes, or his authorized representative shall investigate the cause, origin, and circumstances of each fire occurring in his jurisdiction when property has been destroyed or damaged.

(2) [~~Those officers~~] The fire officer shall:

(a) begin the investigation immediately after the occurrence of the fire; and

(b) attempt to determine, among other things, whether the fire was the result of carelessness or of design.

(3) If the fire officer making this investigation determines that the fire appears to be of suspicious or incendiary origin he shall immediately notify the [~~state fire marshal~~] division.

Section 307. Section Renumbered and Amended.

Section 53-7-211, Utah Code Annotated 1953, which is renumbered from Section 63-27-118, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-118~~] 53-7-211. Fire investigations by fire marshal.

(1) If the [~~state fire marshal~~] division is of the opinion that further investigation of [~~any~~] a fire is necessary, the state fire marshal, his deputy, or representative may:

(a) join the investigation in cooperation with the fire officers who have been conducting it;

(b) upon the request of the chief fire official of the political subdivision, assume control of the investigation and direct it; or

(c) conduct an independent investigation if necessary.

(2) [~~An~~] A fire officer who has conducted or is conducting the investigation shall cooperate in every possible way with the state fire marshal, his deputy, and representative to further the purpose of the investigation.

(3) The county attorney of the county in which the fire occurred shall, upon the request of the state fire marshal, his deputy, or representative assist in the investigation.

Section 308. Section Renumbered and Amended.

Section 53-7-212, Utah Code Annotated 1953, which is renumbered from Section 63-27-119, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-119~~] 53-7-212. Powers of fire marshal in respect to investigation.

In investigating any fire the state fire marshal and his deputy [~~have the right to~~] may:

(1) subpoena witnesses;

(2) compel their attendance and testimony; and

(3) require the production of books, papers, documents, records, and other tangible items [~~which~~] that constitute or may contain evidence relevant to the investigation in the judgment of the state fire marshal or his deputy.

Section 309. Section Renumbered and Amended.

Section 53-7-213, Utah Code Annotated 1953, which is renumbered from Section 63-27-120, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-120~~] 53-7-213. Criminal charges resulting from investigation — Procedure.

If the state fire marshal, his deputy, or representative, or any other officer participating in the investigation of any fire [~~thinks~~] believes that there is evidence sufficient to charge a person with arson, burning with intent to defraud or prejudice the insurer, or a similar crime, he shall furnish the county attorney of the county in which the crime occurred with his evidence and request the county attorney to commence the proper procedures to charge the person with the appropriate crime.

Section 310. Section Renumbered and Amended.

Section 53-7-214, Utah Code Annotated 1953, which is renumbered from Section 63-27-121, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-121~~] 53-7-214. Insurance company reports of fires.

(1) The state fire marshal, his [~~salaried~~] deputy, and investigator may, in writing, require any insurance company transacting business in this state to release to the state fire marshal all relevant information or evidence found important by the state fire marshal, his [~~salaried~~] deputy, and investigator [~~which~~] that the company may have in its possession, relating to any fire loss in this state in which the company has an insuring interest. Relevant information includes:

(a) insurance policy information [~~relevant~~] related to a fire loss under investigation and any application for the policy;

(b) available policy premium payment records;

(c) history of previous claims made by the insured; and

(d) material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence [~~relevant~~] related to the investigation.

(2) (a) Every insurance company transacting business in the state must file with the [~~state fire marshal~~] division a report of any fire of suspicious origin.

(b) The report shall show:

(i) the name of the insured;

(ii) the location of the property burned;

(iii) the probable cause of the fire;

(iv) the occupancy of the property burned;

(v) the construction of the building or structure burned;

(vi) the market value of the property involved;

(vii) the actual loss;

(viii) the insurance carried;

(ix) the insurance paid;

(x) the apportionment of loss where more than one company was on the risk; and

(xi) [~~where~~] if a motor vehicle or building is involved in any fire loss, a description of the motor vehicle or building.

(c) In case of a fire of suspicious or incendiary origin, a preliminary report shall be made immediately through some officer or representative of the insurance company, showing:

(i) the name of the insured;

(ii) the date of the fire;

(iii) the location;

(iv) occupancy; and

(v) other facts and circumstances tending to establish the cause or origin of the fire.

(3) All persons making an adjustment occasioned by a loss due to a fire of suspicious or incendiary origin in this state shall, upon written request, send to the [~~state fire marshal~~] division a copy of the final

adjustment immediately after the adjustment is made, signed by the person making the adjustment.

(4) Any insurance company or person acting in its behalf or any person making adjustments occasioned by a loss due to fire who releases information, whether oral or written, pursuant to Subsection (1), (2), or (3) is immune from any liability for the release of this information arising out of a civil action or penalty resulting from a criminal prosecution.

Section 311. Section Renumbered and Amended.

Section 53-7-215, Utah Code Annotated 1953, which is renumbered from Section 63-27-112, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-112~~] 53-7-215. Portable fire extinguishers — Persons not subject to part.

(1) The filling or charging of portable fire extinguishers prior to initial sale by the manufacturer is not subject to this [~~chapter~~] part.

(2) Any firm that maintains its own fully equipped and specially staffed fire prevention, fire protection, and fire extinguisher servicing facilities is not subject to the licensing provisions of this [~~chapter~~] part if it services only its own portable fire extinguishers.

(3) Individuals shall maintain a current certificate of registration.

Section 312. Section Renumbered and Amended.

Section 53-7-216, Utah Code Annotated 1953, which is renumbered from Section 63-27-113, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-113~~] 53-7-216. Portable fire extinguishers — Certification required to service.

(1) Each firm engaged in the business of servicing portable fire extinguishers or automatic fire suppression systems that automatically detect fire and discharge an approved fire extinguishing agent onto or in the area of the fire shall be certified by the state fire marshal.

(2) An application for certification shall be in writing, on forms prescribed by the board, and require evidence of competency.

(3) The board may [~~set~~] establish a fee under Section 63-38-3 to be paid upon application for certification.

(4) This section does not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

Section 313. Section Renumbered and Amended.

Section 53-7-217, Utah Code Annotated 1953, which is renumbered from Section 63-27-114, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-114~~] 53-7-217. Portable fire extinguishers — Permit required to perform hydrostatic testing.

Each firm performing hydrostatic testing of portable fire extinguishers shall:

(1) perform the tests in accordance with the specifications of the United States Department of Transportation for compressed gas cylinders [~~shall~~]; and

(2) obtain a permit from the [~~state fire marshal's office~~] division by applying in writing on forms provided by [~~that office~~] the division.

Section 314. Section Renumbered and Amended.

Section 53-7-218, Utah Code Annotated 1953, which is renumbered from Section 63-27-115, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-115~~] 53-7-218. Portable fire extinguishers — Sale or lease without approval prohibited.

A portable fire extinguisher may not be sold or leased in the state unless it is approved, labeled, or listed by a nationally recognized testing laboratory approved by the [~~state fire marshal's office~~] division as qualified to test portable fire extinguishers.

Section 315. Section Renumbered and Amended.

Section 53-7-219, Utah Code Annotated 1953, which is renumbered from Section 63-27-116, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-116~~] 53-7-219. Portable fire extinguishers — Hearings authorized.

The state fire marshal [~~has authority to~~] may conduct hearings or proceedings concerning the renewal, revocation, or refusal to issue permits.

Section 316. Section Enacted.

Section 53-7-220, Utah Code Annotated 1953, is enacted to read:

53-7-220. Short title.

Sections 53-7-220 through 53-7-225 are known as the "Utah Fireworks Act."

Section 317. Section Enacted.

Section 53-7-221, Utah Code Annotated 1953, is enacted to read:

53-7-221. Exceptions from Utah Fireworks Act.

(1) Sections 53-7-220 through 53-7-225 do not apply to class A, class B, and class C explosives that are not for use in Utah, but are manufactured, stored, warehoused, or in transit for destinations outside of Utah.

(2) Sections 53-7-220 through 53-7-225 do not supersede Section 23-13-7, regarding use of fireworks and explosives by the Division of Wildlife Resources and federal game agents.

Section 318. Section Renumbered and Amended.

Section 53-7-222, Utah Code Annotated 1953, which is renumbered from Section 11-3-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 268, Laws of Utah 1992, is amended to read:

[~~11-3-3~~] 53-7-222. Restrictions on the sale or use of fireworks.

(1) (a) The [~~state fire marshal~~] division shall test and approve a representative sample of each class C common state approved explosive before the explosive may be sold to the public.

(b) The [~~state fire marshal~~] division shall publish a list of all class C explosives that are approved for sale to the public each year.

(2) (a) Except as provided in Subsection (b), class C dangerous explosives may not be possessed, discharged, sold, or offered for retail sale.

(b) (i) The following persons may purchase, possess, or discharge class C dangerous explosives:

(A) display operators who receive a license from the [~~state fire marshal~~] division in accordance with Section 53-7-223 and approval from their local licensing authority in accordance with Section 11-3-3.5; and

(B) operators approved by the Division of Wildlife Resources or Department of Agriculture to discharge agricultural and wildlife fireworks.

(ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and offer to sell class C dangerous explosives [~~in accordance with this subsection~~].

(3) Unclassified fireworks may not be sold, or offered for sale.

Section 319. Section Renumbered and Amended.

Section 53-7-223, Utah Code Annotated 1953, which is renumbered from Section 11-3-3.2, Utah Code Annotated 1953, as enacted by Chapter 268, Laws of Utah 1992, is amended to read:

[~~11-3-3.2~~] 53-7-223. State license for display operators — Permit — Fee — Division duties — Revocation.

(1) A [~~display operator~~] person may not purchase, possess, or discharge display fireworks unless the [~~operator~~] person has obtained a display operator license from the [~~state fire marshal~~] division.

[~~(2) The state fire marshal shall make rules establishing safety and other requirements for placement and discharge of display fireworks based upon:~~]

[~~(a) the Uniform Fire Code; and~~]

[~~(b) relevant publications of the National Fire Protection Association.~~]

[~~(3)~~] (2) The [~~state fire marshal~~] division shall:

(a) issue a five-year license to any display operator who:

(i) applies for the permit;

(ii) pays a $5 fee;

(iii) demonstrates proof of competence; and

(iv) certifies that he will comply with the rules governing placement and discharge of display fireworks established by the [~~state fire marshal~~] board; [~~and~~]

(b) provide the licensee with a copy of the rules governing placement and discharge of display fireworks [~~adopted~~] made under [~~the authority of this section~~] Section 53-7-204; and

(c) together with county and municipal officers enforce Sections 53-7-220 through 53-7-225.

[~~(4)~~] (3) The [~~state fire marshal~~] division may:

[~~(a) make rules defining methods to establish proof of competence;~~]

[~~(b)~~] (a) revoke a license issued under this section for cause;

(b) seize display fireworks, fireworks, and unclassified fireworks that are offered for sale, sold, or in the possession of an individual in violation of Sections 53-7-220 through 53-7-225; and

(c) create application and certification forms.

Section 320. Section Enacted.

Section 53-7-224, Utah Code Annotated 1953, is enacted to read:

53-7-224. Licensing importers and wholesalers — Fee.

The division shall:

(1) annually license each importer and wholesaler of pyrotechnic devices; and

(2) charge an annual license fee of $250.

Section 321. Section Renumbered and Amended.

Section 53-7-225, Utah Code Annotated 1953, which is renumbered from Section 11-3-6, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1992, is amended to read:

[~~11-3-6~~] 53-7-225. Times for sale and discharge of fireworks.

Class C common state approved explosives may be:

(1) sold:

[~~(1)~~] (a) after June 19 and before July 26;

[~~(2)~~] (b) after December 19 and before January 3; and

[~~(3)~~] (c) 15 days before and on the Chinese New Year[~~.~~];

(2) discharged three days before, on the day of, and three days following:

(a) July 4;

(b) July 24;

(c) January 1; and

(d) the Chinese New Year.

Section 322. Section Renumbered and Amended.

Section 53-7-226, Utah Code Annotated 1953, which is renumbered from Section 63-27-123, Utah Code Annotated 1953, as enacted by Chapter 220, Laws of Utah 1991, is amended to read:

[~~63-27-123~~] 53-7-226. Violations — Misdemeanor.

A person is guilty of a class B misdemeanor if he:

(1) violates [~~any provision of~~] this [~~chapter~~] part;

(2) violates any order made under this [~~chapter~~] part;

(3) produces, reproduces, or uses the official seal of registration of the [~~state fire marshal~~] division in any manner or for any purpose inconsistent with the rules of the [~~state fire marshal~~] board;

(4) removes, uses, or damages service tags or other labels or markings required by the [~~state fire marshal~~] board in a manner inconsistent with the rules of the [~~state fire marshal~~] board;

(5) engages in the sale, storage, or handling of class C fireworks without a permit where a local government requires a permit;

(6) sells at retail, transports, or discharges fireworks that are not approved under rules made by the [~~state fire marshal~~] board;

(7) performs or intends to perform services or induces the public to enter into any obligation relating to the performance of those services [which] that are untrue, misleading, or reasonably known to be untrue or misleading; or

(8) builds in violation of the [~~state fire marshal's~~] division's plan review or written instructions conducted on building specifications, building plans, or amendments of those specifications or plans as required under this [chapter] part.

Section 323. Section Enacted.

Section 53-7-301, Utah Code Annotated 1953, is enacted to read:

Part 3. Liquified Petroleum Gas

53-7-301. Short title.

This part is known as the "Liquified Petroleum Gas Act."

Section 324. Section Renumbered and Amended.

Section 53-7-302, Utah Code Annotated 1953, which is renumbered from Section 63-29a-101, Utah Code Annotated 1953, as last amended by Chapter 56, Laws of Utah 1990, is amended to read:

[~~63-29a-101~~] 53-7-302. Definitions.

As used in this [~~chapter~~] part:

(1) "Board" means the Liquefied Petroleum Gas Board created in Section 53-7-304.

(2) "Container" means any vessel, including cylinders, tanks, portable tanks, and cargo tanks[,] used for [the] transporting or storing [of] liquefied petroleum gases, except containers subject to regulation and inspection by the Utah Department of Transportation and under federal laws or regulations.

(3) "Distributor" means any person engaged in the distribution of liquefied petroleum gas, either wholesale or retail, including a commercial [~~carriers~~] carrier, as identified by the Utah Department of Transportation or the Interstate Commerce Commission, who [~~transport~~] transports or [~~haul~~] hauls liquefied petroleum gas that is to be distributed or sold within this state.

[~~(4) "Division" means the Division of the State Fire Marshal.~~]

[~~(5)~~] (4) "Enforcing authority" means the division, the municipal or county fire department, [~~other~~] another fire-prevention agency acting within its [~~respective fire-prevention~~] jurisdiction, or the building official of any city or county and his authorized representatives. [~~The board has responsibility and grants enforcement authority and administration to the division, as in Section 63-29a-106.~~]

[~~(6)~~] (5) "Gas appliance" means any device [~~which utilizes~~] that uses liquefied petroleum gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

[~~(7)~~] (6) "Installer" means any person who has satisfactorily passed an examination under the supervision of the board, testing his knowledge and ability to install or properly repair domestic systems, industrial systems, liquefied petroleum gas carburetion systems, bulk plant systems, standby plant systems, or other similar systems, and who holds an installer's certificate under this [chapter] part.

[~~(8)~~] (7) "Licensee" means a person licensed by the board to engage in the liquefied petroleum gas business.

[~~(9)~~] (8) "Liquefied petroleum gas" means any material having a vapor pressure not exceeding that allowed for commercial propane and composed [~~predominately~~] predominantly of the following hydrocarbons, either by themselves or as mixtures: propane[;], propylene[;], butane, normal butane, or isobutane[;], and butylene, including isomers.

[~~(10)~~] (9) "Liquefied petroleum gas carburetion system" means any carburetion system using liquefied petroleum gas as a fuel in a motor vehicle.

[~~(11)~~] (10) "Liquefied petroleum gas fueling system" means an assembly consisting of compressors, containers, piping, and other delivery devices for the purpose of dispensing liquefied petroleum gas for use as a fuel in a motor vehicle.

[(12)] (11) "LPG" means liquefied petroleum gas [or gases].

[(13)] (12) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and includes:

(a) a husband [or], wife, or both where joint benefits are derived from the operation of a business or activity subject to this [chapter] part; and

(b) any state, county, municipality, or other agency engaged in a business or activity subject to this [chapter] part.

[(14)] (13) "Red tag" means a card or device, red in color, containing printed notice of the condemnation of a liquefied petroleum gas system as a result of a violation of this [chapter] part, or any rules or orders made by the board; the tag, when attached to the system, is official notice of condemnation and of the prohibition of further use, so long as the red tag remains lawfully affixed.

[(15)] (14) "System" means an assembly consisting of one or more containers with a means for conveying [liquefied petroleum gas] LPG from the container or containers to dispensing or consuming devices, either continuously or intermittently, and that incorporates components intended to achieve control of quantity, flow, and pressure or state, either liquid or vapor.

Section 325. Section Renumbered and Amended.

Section 53-7-303, Utah Code Annotated 1953, which is renumbered from Section 63-29a-102, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[63-29a-102] 53-7-303. Exclusions from part.

This [chapter] part does not apply to any of the following:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing;

(5) underground storage facilities other than LPG containers designed for underground use; [or]

(6) refineries, pipeline terminals, or natural gas processing plants.

Section 326. Section Renumbered and Amended.

Section 53-7-304, Utah Code Annotated 1953, which is renumbered from Section 63-29a-103, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[63-29a-103] 53-7-304. Liquefied Petroleum Gas Board — Creation — Composition — Appointment — Terms of officers — Meetings — Compensation.

(1) (a) There is created within the division the Liquefied Petroleum Gas Board.

(b) The board is composed of seven members:

(i) two Utah fire chiefs or marshals;

(ii) two members of the general public; and

(iii) three members who are representatives of the LPG industry.

(2) The fire chiefs or marshals and the members of the general public shall be appointed by the governor, on a nonpartisan basis.

(3) Members of the board who are representatives of the LPG industry shall have been legal residents of the state for at least one year [next] immediately preceding the date of appointment and have been actively engaged in the LPG industry for a period of at least five years.

[(4)(a) For the first appointed board, the president of the Utah Propane Gas Association shall provide the list of at least five nominees.]

[(b) For all subsequent board appointments, the] (4) The LPG industry representatives shall be appointed by the governor from a list of at least five but no more than the 12 nominees receiving the largest number of votes according to written ballots executed by representatives of the licensees under Subsection (6).

(5) (a) [Members of the board shall be appointed within 90 days after this chapter becomes effective. Of the fire chief, fire marshal, and LPG industry representative members first appointed, the first appointed shall serve for one year, the next appointed shall serve for two years, and the next appointed shall serve for three years. The member of the general public serves for three years.] Members serve upon the date of appointment[, and] until a replacement is appointed. [Upon expiration of the terms of the members first appointed, the]

(b) The terms of all members are three years, beginning the day following the expiration of the preceding term.

(6) (a) The balloting of licensees shall be conducted by the division.

(b) For the appointments, the division shall forward to each licensee by registered or certified United States mail an official ballot for each staffed plant or facility held under Section [63-29a-107] 53-7-309, with instructions for executing the ballot and returning it to the division.

(7) (a) The board shall elect its own chairman and vice-chairman at its first regular meeting each calendar year.

(b) All meetings of the board shall be held on a prescribed date, at least quarterly, and [also] at any

time a majority of the board members makes a request in writing to the board chairman.

(c) Any five members constitute a quorum for the transaction of business [~~which comes before the board~~].

(8) The members of the board do not receive compensation, but may receive allowance and travel expenses as determined by the Division of Finance.

Section 327. Section Renumbered and Amended.

Section 53-7-305, Utah Code Annotated 1953, which is renumbered from Section 63-29a-105, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[~~63-29a-105~~] 53-7-305. Board rulemaking — Notice.

(1) (a) The board shall [adopt] make rules as reasonably necessary for the protection of the health, welfare, and safety of the public and persons using LPG.

(b) The rules shall be in substantial conformity with the generally accepted standards of safety concerning LPG, and shall include the following conditions:

[~~(a)~~] (i) the rules relating to safety in the storage, distribution, dispensing, transporting, and [~~utilization~~] use of LPG in this state and in the manufacture, fabrication, assembly, sale, installation, and use of LPG systems, containers, apparatus, or appliances shall be reasonable; and

[~~(b)~~] (ii) the rules shall conform as nearly as possible to the standards of the National Fire Protection Association, relating to the design, construction, installation, and use of systems, containers, apparatus, appliances, and pertinent equipment for the storage, transportation, dispensation, and [~~utilization~~] use of LPG.

[~~(2) Rules under Subsections (1)(a) and (b) shall be made under Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.~~]

(2) The board may make rules:

(a) setting minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, or using LPG;

(b) specifying the odorization of the gases and the degree of odorization;

(c) governing LPG distributors and installers and the installation of LPG systems, carburetion systems, and fueling systems; and

(d) prescribing maximum container removal rates.

[~~(a) In addition, when~~] (3) (a) When a proposed rule is filed, the board shall give at least ten days' notice to all license applicants and licensees under this chapter by mailing a notice of the proposed new, revised, or amended rule together with a notice of hearing to the licensee's current address on file with the board.

(b) Any person affected by rulemaking under this [~~chapter~~] part may submit written comment on the rule.

(c) A certificate citing the adoption and the effective date of a rule shall be signed by the members comprising a majority of the board.

(d) Within ten days after the adoption of the rule, the board shall cause to be mailed to each license applicant or licensee, at his current address on file, a notice of the adoption of the rule, including its effective date.

(e) A facsimile of any member's signature may be used under this section if authorized by the member.

Section 328. Section Renumbered and Amended.

Section 53-7-306, Utah Code Annotated 1953, which is renumbered from Section 63-29a-104, Utah Code Annotated 1953, as last amended by Chapter 149, Laws of Utah 1988, is amended to read:

[~~63-29a-104~~] 53-7-306. Duties and powers of the board — Fee setting.

[~~(1) The board may adopt rules:~~]

[~~(a) setting minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, or utilizing LPG;~~]

[~~(b) specifying the odorization of the gases and the degree of odorization; and~~]

[~~(c) governing LPG distributors and installers and the installation of LPG systems, carburetion systems, and fueling systems.~~]

(1) The board shall monitor rates charged in the industry for container removal.

(2) The board may:

(a) set civil penalties for violation of any rule or order made under this [chapter] part;

(b) in conducting hearings on the issuance or revocation of any license[~~,~~]:

(i) compel the attendance of witnesses by subpoena[~~,~~];

(ii) require the production of any records or documents determined by it to be pertinent to the subject matter of the hearing[~~,~~]; and

(iii) apply to the district court of the county where the hearing is held for an order citing any applicant or witness for contempt, and for failure to attend, testify, or produce required documents;

(c) suspend or revoke licenses and refuse renewals of licenses [when] if the applicant or licensee has been guilty of [~~acts of~~] conduct harmful to either the safety or protection of the public;

(d) [~~in carrying out the provisions of this chapter and holding its regular or other meetings,~~] adopt bylaws [~~setting forth~~] for its procedures and methods of operation; and

(e) at the request of the enforcing authority, grant exceptions from its rules to accommodate local needs as it determines to be in the best interest of [~~the safety of the~~] public safety or the persons using LPG materials or services.

(3) The board shall, [~~under~~] in accordance with Section [~~63-38-3~~] 53-7-314, [~~set all~~] establish fees [~~and charges to be remitted~~] to cover the cost of [~~administration~~] administering this section.

Section 329. Section Renumbered and Amended.

Section 53-7-307, Utah Code Annotated 1953, which is renumbered from Section 63-29a-105.5, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1988, is amended to read:

[~~63-29a-105.5~~] 53-7-307. Duties of the division.

The division shall:

(1) prescribe the method and form [~~of application~~] to apply for a LPG license, with the approval of the board;

(2) investigate the experience, reputation, and background of applicants;

(3) [~~make recommendations~~] recommend to the board [~~pertaining to the issuance~~] issuing, [~~suspension~~] suspending, [~~revocation~~] revoking, and [~~denial of~~] denying licenses;

(4) assist the board in conducting hearings in connection with the applications for, or revocation of, licenses;

(5) submit to the governor a biennial report before September 1 of each even-numbered year, covering the board's transactions during the biennium ending June 30 of that year, including a complete statement of the receipts and expenditures of the board during that period;

(6) keep accurate records and minutes of all meetings, which shall be open to public inspection at all reasonable times, and keep a public record of all applications for licenses[~~,~~] and licenses issued by the board;

(7) conduct examinations of every license applicant to determine the responsibility, ability, knowledge, experience, or other qualifications of the applicant for a license;

(8) require competency testing for all employees and subcontractors of licensees engaged in transporting or dispensing LPG or installing, servicing, or repairing an LPG[~~,~~] fueling[~~,~~] or carburetion system under this [~~chapter~~] part;

(9) prepare applications, collect fees, and issue licenses for any facility that handles [~~liquefied petroleum gas~~] LPG;

(10) provide for or direct the inspection of the site of any facility that stores, dispenses, services, or handles [~~liquefied petroleum gas~~] LPG;

(11) provide inspections to any facility where a qualified authority does not exist; and

(12) prepare and administer examinations, collect fees, and issue LPG certificates to personnel who handle or work with [~~liquefied petroleum gas~~] LPG.

Section 330. Section Renumbered and Amended.

Section 53-7-308, Utah Code Annotated 1953, which is renumbered from Section 63-29a-106, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[~~63-29a-106~~] 53-7-308. Licenses and certificates.

A person may not engage in any of the following activities related to LPG unless he has obtained an authorizing license or certification from the board:

(1) container activities: the manufacture, assembly, repair, sale, installation, or subframing of containers for use in this state, except that a license is not required for the sale of new containers of 96 pounds water capacity or less;

(2) systems activities: the installation, service, or repair of LPG systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or servicing a system and appliances to be used with LPG as a fuel;

(3) appliance activities: the service, installation, or repair of appliances used or to be used in this state in connection with systems using LPG as a fuel; or

(4) product activities: the sale, transportation, dispensation, or storage of LPG in this state, except that a license is not required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

Section 331. Section Renumbered and Amended.

Section 53-7-309, Utah Code Annotated 1953, which is renumbered from Section 63-29a-107, Utah Code Annotated 1953, as last amended by Chapter 149, Laws of Utah 1988, is amended to read:

[~~63-29a-107~~] 53-7-309. Classification of applicants and licensees.

(1) To administer this [~~chapter~~] part, the board shall classify all applicants and licensees as follows:

(a) Class 1: a licensed dealer who:

(i) is engaged in the business of installing gas appliances or systems for the use of LPG;

(ii) sells, fills, refills, delivers, or is permitted to deliver any LPG; or

(iii) is involved under both Subsection [~~(a)~~](i) and [~~(a)~~](ii).

(b) Class 2: a business engaged in the sale, transportation, and exchange of cylinders, or engaged in more than one of these, but not transporting or transferring gas in liquid.

(c) Class 3: a business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances or LPG systems.

(d) Class 4: those businesses not specifically within classification 1, 2, or 3 may at the discretion of the board be issued special licenses.

(2) (a) Any license granted under this section entitles the licensee to operate a staffed plant or facility consistent with the license at one location, which is stated in the license, under Section [~~63-29a-108~~] 53-7-310.

(b) For each additional staffed plant or facility owned or operated by the licensee, the licensee shall register the additional location with the board and pay an additional annual fee, to be set [under] in accordance with Section [~~63-29a-111.5~~] 53-7-314.

Section 332. Section Renumbered and Amended.

Section 53-7-310, Utah Code Annotated 1953, which is renumbered from Section 63-29a-108, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[~~63-29a-108~~] 53-7-310. License specifications and limits.

(1) (a) [~~Every~~] A license issued under this [~~chapter~~] part shall state the name of the person or persons to whom it is issued.

(b) The license shall specify the location, by street and number, of the premises for which it is issued and the particular classification of the license authorizing the type of staffed plant or facility to be conducted.

(c) The registration of additional staffed plants or facilities, under Subsection [~~63-29a-107~~] 53-7-309 (2), shall specify the location, by street and number, of the premises for which it is issued and the particular classification of the license authorizing the type of business to be conducted.

(2) (a) Any license issued under this [chapter] part is not transferable by the licensee or licensees to any other person, firm, association, partnership, or corporation, and is valid only for the particular premises and particular persons described on the license.

(b) [When] If there is any transfer or change in the ownership, the change shall be reported to the board within 30 days.

(c) A license or registration fee paid under this [chapter] part may not be refunded when any license issued is no longer valid [either] because of:

(i) a voluntary transfer of any nature[;];

(ii) revocation under [~~the provisions of~~] this [chapter,] part;

(iii) death of the holder[,];

(iv) insolvency[;];

(v) assignment for the benefit of creditors[;]; or

(vi) for any other reason [~~as~~] determined by rule of the board.

Section 333. Section Renumbered and Amended.

Section 53-7-311, Utah Code Annotated 1953, which is renumbered from Section 63-29a-109, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[~~63-29a-109~~] 53-7-311. Certification of licensees for certain activities.

(1) [~~The board shall require each licensee~~] A person that transports or dispenses LPG or that installs, repairs, or services appliances, containers, equipment, systems, or piping for the use of LPG [~~to ensure that all persons who perform these activities~~] shall be certified by the [~~board~~] division by passing an appropriate examination based on the safety requirements of the board.

(2) (a) A trainee employee is exempt from this examination for 45 working days, and until examined by a representative of the board. A trainee employee, during the 45-day period, shall be [~~under supervision of~~] supervised by a qualified instructor.

(b) Any LPG licensee hiring a trainee shall, within 20 days of the commencement of employment, notify the board, so that an examination may be scheduled. If the trainee fails to pass the examination, the trainee may retake it after additional instruction. Prior to retaking the exam, the trainee shall again be [~~under the supervision of~~] supervised by a qualified instructor.

(3) (a) The board shall [~~set~~] establish a reasonable fee in accordance with Section 53-7-314 to cover the costs of administering the examination.

(b) All examinations shall be administered by the division.

Section 334. Section Renumbered and Amended.

Section 53-7-312, Utah Code Annotated 1953, which is renumbered from Section 63-29a-111, Utah Code Annotated 1953, as last amended by Chapter 149, Laws of Utah 1988, is amended to read:

[~~63-29a-111~~] 53-7-312. Board approval of certain storage system plans — Procedure.

(1) (a) The complete plans and specifications for all systems involving the storage of more than 5,000 water gallons of LPG shall be submitted to the division and receive approval by the board before installation is started. The plans shall be drawn to scale and contain sufficient detail and clarity as necessary to indicate the nature and character of the proposed system and its compliance with this [chapter] part.

(b) Two copies of the plans shall be submitted to the division and one copy shall be returned to the applicant with approval or disapproval indicated on it.

(2)(a) For dispensing systems for 5,000 water gallons or less of LPG, a detailed sketch or plan shall be submitted to the division and receive approval by the board before installation is started.

(b) Two copies of the plans shall be submitted to the division and one copy shall be returned to the applicant with approval or disapproval indicated on it.

Section 335. Section Renumbered and Amended.

Section 53-7-312, Utah Code Annotated 1953, which is renumbered from Section 63-29a-104.5, Utah Code Annotated 1953, as enacted by Chapter 284, Laws of Utah 1992, is amended to read:

[~~63-29a-104.5~~] 53-7-313. Removal of LPG containers — Reasonableness of rates.

(1) [~~(a)~~] Rates charged for removal of leased LPG containers shall be reasonable.

[~~(b) The board shall monitor rates charged in the industry for container removal and may, to the extent the board finds necessary, make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, prescribing maximum removal rates.~~]

(2) The lessor of an LPG container shall credit the lessee's account the current retail price for the amount of LPG remaining in the leased container at the time the container is removed.

Section 336. Section Renumbered and Amended.

Section 53-7-314, Utah Code Annotated 1953, which is renumbered from Section 63-29a-111.5, Utah Code Annotated 1953, as enacted by Chapter 149, Laws of Utah 1988, is amended to read:

[~~63-29a-111.5~~] 53-7-314. Fees — Setting — Deposit — Use.

(1) The board shall establish fees authorized in this part in accordance with the procedures specified in Section 63-38-3, but the fees shall be deposited as provided in Subsection (2).

(2) Fees [~~for a license application and for a license, and other fees~~] collected by the division under this [~~chapter~~] part, shall be deposited with the state treasurer as a nonlapsing dedicated credit, to be used for the implementation of this [~~chapter~~] part.

Section 337. Section Renumbered and Amended.

Section 53-7-315, Utah Code Annotated 1953, which is renumbered from Section 63-29a-110, Utah Code Annotated 1953, as last amended by Chapter 284, Laws of Utah 1992, is amended to read:

[~~63-29a-110~~] 53-7-315. Enforcement of part and rules.

(1) Except as provided in Subsection (6), [~~provisions of~~] this [~~chapter~~] part, the rules made under it, and orders issued by the board are enforced by:

(a) the enforcing authority, unless otherwise provided by the board; and

(b) the board.

(2)(a) A person who knowingly violates or fails to comply with this [~~chapter~~] part is guilty of a class B misdemeanor and is punishable by a fine of not less than $50 nor more than $500.

(b) A person previously convicted under Subsection (a) who knowingly violates or fails to comply with this [~~chapter~~] part is guilty of a class B misdemeanor and is punishable by a fine of not less than $200 nor more than $2,000.

(c) Each day the violation or failure to comply continues constitutes a separate offense.

(3) The enforcing authority may enter the premises of a licensee under this [~~chapter~~] part, or any building or other premises open to the public, at any reasonable time, for the purpose of determining and verifying compliance with this [~~chapter~~] part and the rules and orders of the board.

(4) An enforcing authority may declare any container, appliance, equipment, transport, or system that does not conform to the safety requirements of this [~~chapter~~] part or the rules or orders of the board, or [~~which~~] that is otherwise defective, as unsafe or dangerous for LPG service, and shall attach a red tag in a conspicuous location.

(5) (a) A person who knowingly sells, furnishes, delivers, or supplies LPG for storage in, or use or consumption by, or through, a container, appliance, transport, or system to which a red tag is attached is guilty of a class B misdemeanor punishable by a fine of not less than $100 and not more than $2,000.

(b) Liquefied petroleum gas shall be removed from a container to which a red tag is attached only as provided by rules made by the board.

(c) An unauthorized person who knowingly removes, destroys, or in any way obliterates a red tag attached to a container, appliance, transport, or system is guilty of a class B misdemeanor punishable by a fine of not less than $50 and not more than $2,000.

(d) The enforcing authority may establish and collect a fee for any services or inspections required by this [~~chapter~~] part, the rules made under it, and orders issued by the board. The fee shall be reasonable and may not exceed the amount of the cost of service or inspection provided. Fees collected under this subsection may be retained by the enforcing authority, and shall be applied to the expenses of providing these services.

(6)(a) Except as provided in Subsection (c), a person who fills a leased container in violation of the terms of a written lease is liable in an action by the container lessor for the greater of:

(i) the actual damages to the container lessor, including incidental and consequential damages and attorneys' fees; or

(ii) $500 for each violation.

(b) (i) The burden of ascertaining the terms of a written lease for purposes of Subsection (a) is on the person filling the container.

(ii) A person has ascertained the terms of a written lease if he has:

(A) read the lease;

(B) received the assurance of the container owner that the lease does not prohibit the person from filling the container;

(C) obtained a signed, written statement from the lessee that the written lease does not prohibit the person from filling the container; or

(D) the leased container is clearly labelled as a container subject to lease terms prohibiting the filling of the container without the lessor's permission.

(c) If a lessee or lessor misrepresents his ownership or the terms of his written lease under Subsection (b), the lessee or lessor who made the misrepresentation, and not the person filling the tank, is liable for the damages under Subsection (a).

(7) If a written container lease entered into after May 1, 1992, restricts the right to fill a leased container, the restriction shall be plainly stated in the lease in any manner designed to draw the attention of the lessee to the lease provision, including:

(a) typing the restriction in at least two point larger type than the majority of the document type;

(b) underlining the restriction; or

(c) typing the restriction in boldface type.

(8) A lessor whose container lease does not comply with Subsection (7) is disqualified from protection under Subsection (6).

Section 338. Section Renumbered and Amended.

Section 53-7-316, Utah Code Annotated 1953, which is renumbered from Section 63-29a-112, Utah Code Annotated 1953, as enacted by Chapter 164, Laws of Utah 1987, is amended to read:

[~~63-29a-112~~] 53-7-316. Effect of part on state and local provision.

(1) This [~~chapter~~] part supersedes all other conflicting state laws or rules concerning LPG as regulated under this [~~chapter~~] part.

(2) A municipality or other political subdivision may not adopt or enforce any ordinance or rule in conflict with [~~the provisions of~~] this [chapter] part, or with the rules made under [it] this part.

Section 339. Section Enacted.

Section 53-8-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 8. Utah Highway Patrol

Part 1. Utah Highway Patrol Division Administration

53-8-101. Short title.

This chapter is known as the "Utah Highway Patrol Act."

Section 340. Section Enacted.

Section 53-8-102, Utah Code Annotated 1953, is enacted to read:

53-8-102. Definitions.

As used in this chapter:

(1) "Division" means the Utah Highway Patrol Division created in Section 53-8-103.

(2) "Highway Patrol" means the Highway Patrol troopers employed under Section 53-8-104.

(3) "Superintendent" means the director of the division, appointed under Section 53-8-103.

Section 341. Section Renumbered and Amended.

Section 53-8-103, Utah Code Annotated 1953, which is renumbered from Section 27-10-1, Utah Code Annotated 1953, is amended to read:

[~~27-10-1~~] 53-8-103. Utah Highway Patrol Division — Creation — Appointment of superintendent — Powers — Qualifications — Term — Compensation.

(1) There [~~shall be a state~~] is created the Utah Highway Patrol [~~under the supervision and control of the commissioner of public safety~~] Division.

(2) The director of the division shall be the superintendent appointed by the commissioner with the approval of the governor.

(3) The superintendent is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner.

(4) The superintendent acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(5) The superintendent shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 342. Section Renumbered and Amended.

Section 53-8-104, Utah Code Annotated 1953, which is renumbered from Section 27-10-2, Utah Code Annotated 1953, is amended to read:

[~~27-10-2~~] 53-8-104. Superintendent's duties.

The [~~commissioner of public safety~~] superintendent shall:

[~~(a) Divide~~] (1) divide the state highways into sections for the purpose of patrolling and policing [~~the same and~~];

(2) employ [~~persons~~] peace officers known as highway patrol troopers to patrol or police [~~said~~] the highways[~~, such persons shall be known as patrols.~~] within this state and to enforce the state statutes as required;

[~~(b) Establish~~] (3) establish ranks, grades, and positions in the [state] Highway Patrol and designate

the authority and responsibility in each rank, grade, and position[.];

[(c) Establish] (4) establish for the [state] Highway Patrol standards and qualifications and fix prerequisites of training, education, and experience for each rank, grade, and position[, and shall fix salaries for each rank, grade and position in accordance with salary standards adopted by the department of Finance.];

[(d) Appoint such] (5) appoint personnel to each rank, grade, and position [as are deemed by him to be] necessary for the efficient operation and administration of the [state] Highway Patrol [and];

(6) devise and administer examinations[,] designed to test applicants for [the] positions[, and any persons applying shall be required to meet the prescribed standards and prerequisites.] with the Highway Patrol;

[(e) Formulate such] (7) make rules [and regulations] governing the [state] Highway Patrol as [from time to time] appear to [him] the superintendent advisable[.];

[(f) Discharge] (8) discharge, demote, or temporarily suspend any employee in the [state] Highway Patrol[,] for cause;

[(g) Prescribe] (9) prescribe the uniforms to be worn and the equipment to be used by employees of the [state] Highway Patrol[.];

[(h) Charge] (10) charge against each employee of the [state] Highway Patrol the value of any property of the state lost or destroyed through the carelessness of [such] the employee[.];

[(i) Establish] (11) establish, with the approval of the [state department] Division of Finance, the terms and conditions under which expense allowance should be paid to any employee of the [state] Highway Patrol while away from his station[.];

[(j) Station] (12) station the [state] Highway Patrol in [such] localities as he [shall deem] finds advisable for the enforcement of the laws of this state[.]; and

[(k) Conduct] (13) conduct in conjunction with the [department] State Board of Education in and through all state schools [a definite] an educational campaign in highway safety and work in conjunction with civic organizations, churches, local units of government, and other organizations [which] that may function in accomplishing the purposes of reducing highway accidents.

Section 343. Section Renumbered and Amended.

Section 53-8-105, Utah Code Annotated 1953, which is renumbered from Section 27-10-4, Utah Code Annotated 1953, as last amended by Chapter 152, Laws of Utah 1988, is amended to read:

[27-10-4] 53-8-105. Duties of Highway Patrol.

[(1) The Utah] In addition to the duties in this chapter, the Highway Patrol shall:

[(a)] (1) enforce the state laws and rules governing use of the state highways;

[(b)] (2) regulate traffic on all highways and roads of the state;

[(c) respond to the call of] (3) assist the governor [for] in an emergency or [other purposes] at other times at his discretion[, and to the call of];

(4) issue and deny overweight and oversize permits as provided in Sections 27-12-154 and 27-12-155;

(5) inspect certain vehicles to determine road worthiness and safe condition as provided in Section 41-6-148.31;

(6) upon request, assist with any condition of unrest existing or developing on a campus or related facility of an institution of higher education;

(7) assist the Alcoholic Beverage Control Commission in an emergency to enforce the state liquor laws;

[(d)] (8) provide security and protection for both houses of the Legislature while in session as the speaker of the House of Representatives and the president of the Senate finds necessary[.]; and

[(2) The Department of Public Safety shall] (9) carry out the following for the Supreme Court and the Court of Appeals:

(a) provide security and protection to those courts when in session in the capital city of the state;

(b) execute orders issued by the courts; and

(c) carry out duties as directed by the courts.

Section 344. Section Renumbered and Amended.

Section 53-8-106, Utah Code Annotated 1953, which is renumbered from Section 27-10-5, Utah Code Annotated 1953, is amended to read:

[27-10-5] 53-8-106. Vested with powers of peace officers.

(1) The commissioner [of public safety], superintendent, and each member of the [state] Highway Patrol [is vested with] have the powers of peace officers [throughout the several counties] in each county of the state with the exception of the power to serve civil process.

(2) They may serve criminal process [and], arrest and prosecute violators of any law of this state, and [shall] have the same right as other peace officers to require aid in executing their duties.

(3) The powers and duties [hereby] conferred upon the [commissioner of public safety] superintendent and members of the Highway Patrol [shall be] are supplementary to and [in no way] not a limitation on the powers and duties of other peace officers in the state.

Section 345. Section Renumbered and Amended.

Section 53-8-107, Utah Code Annotated 1953, which is renumbered from Section 27-10-6, Utah Code Annotated 1953, is amended to read:

[~~27-10-6~~] 53-8-107. **Cooperation with other officers.**

[~~The state~~] To secure information in order to achieve greater success in prevention and detection of crime and apprehension of criminals, the Highway Patrol shall cooperate and exchange information with:

(1) any other departments of the state [~~or with~~];

(2) other [~~police forces~~] law enforcement agencies, both within and outside this state[~~;~~]; and [~~with~~]

(3) federal [~~police forces, to secure information in order to achieve greater success in prevention and detection of crime and apprehension of criminals~~] law enforcement agencies.

Section 346. Section Enacted.

Section 53-8-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Motor Vehicle Safety Inspection

53-8-201. Short title.

This part is known as the "Motor Vehicle Safety Inspection Act."

Section 347. Section Enacted.

Section 53-8-202, Utah Code Annotated 1953, is enacted to read:

53-8-202. Definitions.

(1) The definitions in Section 41-6-1 apply to this part.

(2) As used in this part, "council" means the Safety Inspection Advisory Council created in Section 53-8-203.

Section 348. Section Renumbered and Amended.

Section 53-8-203, Utah Code Annotated 1953, which is renumbered from Section 41-6-160.5, Utah Code Annotated 1953, as last amended by Chapter 234, Laws of Utah 1992, is amended to read:

[~~41-6-160.5~~] 53-8-203. **Council created — Duties — Members — Term — Meetings.**

(1) [~~(a)~~] There is created [~~a hearing board consist~~] within the division the Motor Vehicle Safety Inspection Advisory Council to [~~consist~~] hear appeals of administrative actions regarding the suspension or revocation of an official inspection station license.

(2) (a) The council is comprised of:

(i) one member from the Department of Commerce[~~;~~];

(ii) one member from the Motor Vehicle Enforcement Division[~~;~~]; and

(iii) one member of the staff of the attorney general.

(b) The governor shall appoint all members for a term of four years [~~commencing July 1, 1969~~].

[~~(2) (a)~~] (3) The [~~hearing board~~] council shall be called by the superintendent [~~of the Utah Highway Patrol and shall hear all evidence and information regarding the suspension or revocation of an official inspection station license~~] as needed.

[~~(b) The hearing board shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.~~]

(4) The members of the council do not receive compensation, but may receive travel expenses as determined by the Division of Finance.

Section 349. Section Renumbered and Amended.

Section 53-8-204, Utah Code Annotated 1953, which is renumbered from Section 41-6-160, Utah Code Annotated 1953, as last amended by Chapter 11, Laws of Utah 1992, is amended to read:

[~~41-6-160~~] 53-8-204. **Division duties — Official inspection stations — Permits — Fees — Suspension or revocation — Utah-based interstate commercial motor carriers.**

(1) The [~~department~~] division shall:

(a) conduct examinations of every safety inspection station permit applicant and safety inspector certificate applicant to determine whether the applicant is properly equipped and qualified to make safety inspections;

(b) issue safety inspection station permits and safety inspector certificates to qualified applicants;

(c) establish application, renewal, and reapplication fees in accordance with Section 63-38-3 for safety inspection station permits and safety inspector certificates;

(d) provide instructions and all necessary forms, including safety inspection certificates, to [~~official~~] safety inspection stations for the inspection of motor vehicles and the issuance of [~~official~~] the safety inspection certificates [~~of inspection and approval.~~];

[~~(2) (a) The department may~~] (e) charge a [~~fee of~~] $1 fee for each safety inspection certificate;

(f) investigate complaints regarding safety inspection stations and safety inspectors;

(g) compile and publish all of the safety inspection laws, rules, instructions, and standards and distribute them to all safety inspection stations and provide updates to the compiled laws, rules, instructions, and standards as needed;

(h) establish a fee in accordance with Section 63-38-3 to cover the cost of compiling and publishing the safety inspection laws, rules, instructions, and standards and any updates; and

(i) assist the council in conducting its meetings and hearings.

[~~(b)~~] (2) (a) Receipts from the [~~fee~~] fees established in accordance with Subsection (1) are fixed collections to be used by the department for all expenses

of the [~~Safety Inspection Section of the Utah Highway Patrol~~] division.

[~~(c)~~] (b) Funds received in excess of these expenses shall be deposited in the Transportation Fund.

[~~(3) (a) Application for a permit shall be made upon an official form and granted only when the department is satisfied that the applicant station is properly equipped and has competent personnel to make inspections and adjustments.~~]

[~~(b) Before~~] (3) The division may:

(a) before issuing a safety inspection permit, [~~the department may~~] require [~~the~~] an applicant, other than a fleet station or government station, to file a bond that will provide a guarantee that the applicant safety inspection station will make compensation for any damage to a motor vehicle during an inspection or adjustment due to negligence on the part of an applicant or his employees[~~.~~];

(b) establish procedures governing the issuance of safety inspection certificates to Utah-based interstate commercial motor carriers; and

[~~(4) (a) The department shall supervise and inspect the stations.~~]

[~~(b) The department may~~] (c) suspend [~~or~~], revoke, or refuse renewal of any safety inspection station permit issued [~~to a station that it~~] when the division finds that the safety inspection station is not:

(i) properly equipped; or

(ii) complying with rules made by the [~~commissioner of public safety~~] division; and

(d) suspend, revoke, or refuse renewal of any safety inspection station permit or safety inspector certificate issued when the station or inspector has violated any safety inspection law or rule.

[~~(c)~~] (4) The [~~department~~] division shall maintain a record of safety inspection station permits and safety inspector certificates issued, suspended, [~~or~~] revoked, or refused renewal under Subsection (3)(c).

[~~(5) (a) Upon receiving notice of the suspension or revocation of his permit, the operator shall immediately terminate all inspection activities and on demand by the department return all certificates of inspection, license, and supplies.~~]

[~~(b) The department shall issue a receipt for all unused certificates of inspection.~~]

[~~(6) The commissioner of public safety may establish procedures governing the issuance of Utah safety inspection certificates to Utah-based interstate commercial motor carriers.~~]

Section 350. Section Renumbered and Amended.

Section 53-8-205, Utah Code Annotated 1953, which is renumbered from Section 41-6-158, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

[~~41-6-158~~] 53-8-205. Safety inspection required — Safety inspection certificate required — Out of state permits.

[~~(1) At least once each year the department shall require that every motor vehicle registered in this state or bearing temporary permits or Utah plates, except off-highway vehicles, be inspected and that an official safety inspection certificate and approval be obtained for each vehicle.~~]

[~~(2) The safety inspection shall be made and certificate obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the department under this section.~~]

[~~(3) The department may establish rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the administration and enforcement of this section.~~]

(1) (a) Except as provided in Subsection (b), a person may not operate on a highway a motor vehicle required to be registered in this state unless the motor vehicle has passed a safety inspection.

(b) Subsection (a) does not apply to:

(i) vehicles exempt from registration under Section 41-1a-205; and

(ii) off-highway vehicles.

(2) the safety inspection shall:

(a) be made at least once each year;

(b) be made by a safety inspector certified by the division at a safety inspection station authorized by the division; and

(c) cover an inspection of the motor vehicle mechanism, brakes, and equipment to ensure proper adjustment and condition as required by department rules.

(3) A safety inspection station shall issue a safety inspection certificate to the owner of each motor vehicle that passes a safety inspection under this section.

(4) The [~~department~~] division may:

(a) authorize the acceptance in this state of a safety inspection certificate [~~and approval~~] issued in another state having [~~an~~] a safety inspection law similar to [~~that of~~] this state; and [~~may~~]

(b) extend the time within which a safety inspection certificate [~~shall~~] must be obtained by the resident owner of a vehicle that was not in this state during the time a safety inspection was required.

[~~(5) A person may not drive a motor vehicle registered in this state on any highway without a safety inspection under this section unless exempted under Section 41-1a-205.~~]

Section 351. Section Renumbered and Amended.

Section 53-8-206, Utah Code Annotated 1953, which is renumbered from Section 41-6-161, Utah Code Annotated 1953, as last amended by Chapter 11, Laws of Utah 1992, is amended to read:

[~~41-6-161~~] 53-8-206. Safety inspection — Station requirements — Permits not transferable — Certificate of inspection — Fees — Unused certificates — Suspension or revocation of permits.

(1) The safety inspection required under Section 53-8-205 may only be performed:

(a) by a person certified by the division as a safety inspector; and

(b) at a safety inspection station with a valid safety inspection station permit issued by the division.

[~~(1)~~] (2) A [~~permit for an official~~] safety inspection station permit may not be assigned or transferred or used at any location other than a designated location, and every safety inspection station permit shall be posted in a conspicuous place at the location designated.

[~~(2)~~] (3) [~~The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form to the owner of a vehicle upon inspecting the vehicle and determining that its required equipment is in good condition and in proper adjustment, otherwise no certificate may be issued. When~~] If required by the [~~department~~] division, a record and report shall be made of every safety inspection and every safety inspection certificate issued.

[~~(3)~~] (4) [~~Official~~] A safety inspection [~~stations~~] station holding a safety inspection station permit issued by the [~~Department of Public Safety~~] division may charge:

(a) a $1 fee as reimbursement for the safety inspection certificate fee; and

(b) a reasonable fee for labor in performing safety inspections, not to exceed:

[~~(a)~~] (i) $5 or less for motorcycles;

[~~(b)~~] (ii) unless Subsection (i) or (iii) apply, $9 or less for [~~passenger cars and 3/4 ton pickup trucks~~] motor vehicles; or

[~~(c)~~] (iii) $12 or less for 4-wheel drive, split axle, and [~~larger trucks~~] any motor vehicles that necessitate disassembly of front hub or removal of rear axle for inspection.

[~~(4)~~] (5) [~~Official~~] A safety inspection [~~stations~~] station may return unused safety inspection certificates in a quantity of ten or more and shall be reimbursed by the [~~department~~] division for the cost of the safety inspection certificates.

(6) (a) Upon receiving notice of the suspension or revocation of a safety inspection station permit, the safety inspection station permit holder shall immediately terminate all safety inspection activities and return all safety inspection certificates and the safety inspection station permit to the division.

(b) The division shall issue a receipt for all unused safety inspection certificates.

Section 352. Section Renumbered and Amended.

Section 53-8-207, Utah Code Annotated 1953, which is renumbered from Section 41-6-162, Utah Code Annotated 1953, as last amended by Chapter 242, Laws of Utah 1979, is amended to read:

[~~41-6-162~~] 53-8-207. Falsely representing to be official station or safety inspector.

[~~(a) No~~] (1) A person [~~shall~~] may not in any manner represent any place as [~~an official~~] a safety inspection station unless [~~such~~] the station is operating under a valid permit issued by the [~~department~~] division.

[~~(b) No~~] (2) A person [~~shall~~] may not issue a safety inspection certificate [~~of inspection and approval~~] unless [~~then holding~~] the person:

(a) is a safety inspector certified by the division;

(b) is operating under a valid safety inspection station permit [~~hereunder~~] issued by the division; and

(c) performs the safety inspection on the motor vehicle in compliance with Section 53-8-205.

[~~(c) No~~] (3) An unauthorized person [~~shall~~] may not knowingly possess [~~official~~] safety inspection certificates [~~of inspection~~].

Section 353. Section Renumbered and Amended.

Section 53-8-208, Utah Code Annotated 1953, which is renumbered from Section 41-6-163, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1986, is amended to read:

[~~41-6-163~~] 53-8-208. Counterfeit certificates of inspection.

[~~(a) No~~] (1) A person may not make, issue, or knowingly use any imitation or counterfeit of [~~an official~~] a safety inspection certificate [~~of inspection~~].

[~~(b) No~~] (2) A person may not present or cause or permit to be presented [~~in order to obtain or renew the registration on any motor vehicle~~] any safety inspection certificate [~~of inspection and approval~~] knowing [~~the same~~] the certificate to be fictitious [~~or~~], issued for another motor vehicle, or issued without [~~an~~] a safety inspection having been made and passed.

Section 354. Section Renumbered and Amended.

Section 53-8-209, Utah Code Annotated 1953, which is renumbered from Section 41-6-156, Utah Code Annotated 1953, as last amended by Chapter 242, Laws of Utah 1979, is amended to read:

[~~41-6-156~~] 53-8-209. Inspection by officers — Certificate of inspection.

[~~(a)~~] (1) [~~The members of the state highway patrol or other~~] A peace [~~officers,~~] officer may stop, inspect, and test a vehicle at any time upon reasonable cause to believe that:

(a) a vehicle is unsafe or not equipped as required by law[~~;~~]; or

(b) that its equipment is not in proper adjustment or repair[~~, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate~~].

[~~(b) In the event such~~] (2)(a)(i) If a vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the [~~department~~] division. [~~Said~~]

(ii) The notice shall:

(A) require that [~~such~~] the vehicle be placed in safe condition and its equipment in proper repair and adjustment[~~, specifying~~];

(B) specify the [~~particulars with reference thereto~~] repairs and adjustments needed; and

(C) require that a safety inspection certificate [~~of inspection and approval~~] be obtained within five days.

[~~(c) In the event any such~~] (b) If a vehicle is, in the reasonable judgment of the peace officer, [~~in such condition that further operation would be~~] hazardous to operate, the peace officer may require [~~in addition~~] that the vehicle:

(i) not be operated under its own power; or [~~that it~~]

(ii) be driven to the nearest garage or other place of safety.

[~~(d) Every owner or driver shall~~] (c) If the owner or driver does not comply with the notice requirements and secure [~~an official~~] a safety inspection certificate [~~of inspection and approval~~] within [~~5~~] five days [~~or~~], the vehicle [~~shall~~] may not be operated on the highways of this state.

Section 355. Section Renumbered and Amended.

Section 53-8-210, Utah Code Annotated 1953, which is renumbered from Section 41-6-157, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1957, is amended to read:

[~~41-6-157~~] 53-8-210. Enforcement of inspection requirements.

[~~(a) No~~] (1) A person [~~driving~~] operating a vehicle shall [~~refuse to~~] submit [~~such~~] the vehicle to [~~an~~] a safety inspection [~~and test~~] when required to do so by [~~an authorized officer of the department or any~~] a peace officer.

[~~(b) Every~~] (2)(a) An owner or driver, upon receiving a notice as provided in Section [~~41-6-156~~] 53-8-209, shall [~~comply therewith and shall~~] within five days secure [~~an official~~] a safety inspection certificate [~~of inspection and approval~~], which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the [~~department~~] division.

(b) In lieu of compliance with this subsection, the vehicle [~~shall~~] may not be operated, except as provided in [~~the next succeeding~~] Subsection (3).

[~~(c) No~~] (3)(a) A person [~~shall~~] may not operate any vehicle after receiving a notice [~~with reference thereto as above provided~~] from a peace officer that the vehicle is in need of repair or adjustment, except that [~~the members of the department and other~~] a peace [~~officers~~] officer may[~~, when to do so is reasonable and not excessively dangerous,~~] allow the vehicle to be driven to the residence or place of business of the owner or driver or to the nearest garage where repairs are available[~~, and not thereafter, until said~~] if driving the vehicle is not excessively dangerous.

(b) The vehicle [~~and~~] may not be operated again on the highways until its equipment has been placed in proper repair and adjustment and otherwise [~~made to conform~~] conforms to the requirements of this [~~act~~] part and Title 41, Chapter 6, Traffic Rules and Regulations, and a safety inspection certificate [~~of inspection and approval shall be~~] is obtained as promptly as possible [~~thereafter~~].

[~~(d) In the event~~] (4) If repair or adjustment of any vehicle or its equipment is [~~found~~] necessary [~~upon inspection~~], the owner of [~~said~~] the vehicle may obtain [~~such~~] repair or adjustment at any place he may choose[~~, but in every event an official certificate of inspection and approval must be obtained, otherwise such vehicle shall not be operated upon the highways of this state~~].

Section 356. Section Renumbered and Amended.

Section 53-8-211, Utah Code Annotated 1953, which is renumbered from Section 41-7-3, Utah Code Annotated 1953, as last amended by Chapter 62, Laws of Utah 1986, is amended to read:

[~~41-7-3~~] 53-8-211. Safety inspection of school buses and other vehicles.

(1) The [~~Department of Public Safety shall require the safety inspection section of the Utah~~] Highway Patrol [~~to~~] shall safety inspect at least twice each school year all school buses operated by the school districts and private schools of the state for the transportation of students and cause to be removed from the public highways any vehicle found to have mechanical or other defects endangering the safety of passengers and the public until the defects have been remedied.

(2) Motor vehicles operated by private schools or school districts, and not used for the transportation of students, are subject to [~~the provisions of~~] Section [~~41-6-158~~] 53-8-205.

Section 357. Section Renumbered and Amended.

Section 53-8-212, Utah Code Annotated 1953, which is renumbered from Section 41-6-159, Utah Code Annotated 1953, as last amended by Chapter 68, Laws of Utah 1986, is amended to read:

[~~41-6-159~~] 53-8-212. Suspension of registration.

The State Tax Commission [~~may~~] shall suspend the registration of any vehicle [~~which it~~] the division determines is in an unsafe condition or which after notice and demand is not equipped as required in this [~~act~~] part and Title 41, Motor Vehicles.

Section 358. Section Amended.

Section 53A-3-410, Utah Code Annotated 1953, as last amended by Chapter 246, Laws of Utah 1992, is amended to read:

53A-3-410. Criminal background checks on school personnel — Notice — Payment of cost.

(1) A school district superintendent, the superintendent's designee, or their counterparts at a private school may require a potential employee or volunteer to submit to a criminal background check as a condition for employment or appointment and, where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(3) Fingerprints of the individual shall be taken if necessary to assure accurate identification, and the [~~Utah Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety shall release to the superintendent, the superintendent's designee, or their counterparts at a private school the person's record of all criminal convictions.

(4) The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

(5) (a) The district or private school shall pay the cost of the background check except as otherwise provided in Subsection (b), and the revenue collected shall be credited to the [~~Utah Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division to offset its expenses.

(b) The district or private school may require an applicant to pay the costs of a background check as a condition for consideration for employment, if the applicant:

(i) has passed an initial review;

(ii) is one of a pool of no more than five candidates for a position; and

(iii) has not been the subject of a criminal background check during the preceding two years that was requested by the potential employer or the State Board of Education.

(6) The [~~bureau~~] Law Enforcement and Technical Services Division shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(7) The applicant, volunteer, or employee shall have opportunity to respond to any information received as a result of the background check.

(8) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.

(9) Information obtained under this part is confidential and may only be disclosed as provided in this section.

Section 359. Section Amended.

Section 53A-6-103, Utah Code Annotated 1953, as last amended by Chapter 69, Laws of Utah 1991, is amended to read:

53A-6-103. Qualifications of applicants for certificates — Changes in qualifications — Criminal background check.

(1) The State Board of Education shall establish the scholarship, training, and experience required of applicants for certificates.

(2) The board shall announce any increase in the requirements when made, and they become effective not less than one year from the date of the announcement.

(3) The board may determine by examination or otherwise the qualifications of applicants for certificates.

(4) (a) The State Office of Education, hereafter referred to as "office," shall require an applicant for certification to submit to a criminal background check as a condition for certification. As used in this section, certification includes reinstatement of a lapsed, suspended, or revoked certificate.

(b) The office shall establish a procedure for fingerprinting the applicant and submitting the prints to the [~~Utah Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files. The [~~bureau~~] Law Enforcement and Technical Services Division shall release to the office the applicant's record of all criminal convictions.

(c) An applicant shall have opportunity to respond to any information received as a result of the background check.

(d) In preparing recommendations concerning certification for submission to the state board, the office shall consider only those convictions which are relevant to the level of certification sought by the applicant. This subsection applies to convictions occurring both before and after the effective date of this subsection.

(e) If a recommendation is made for denial of certification because of information obtained through a criminal background check, the person shall receive written notice of the reasons for the recommendation and have an opportunity to respond in accordance with procedures set forth in Title 63, Chapter 46b, Administrative Procedures Act.

(f) Information obtained under this section is confidential and may only be disclosed as provided in this part.

(g) The applicant shall pay the costs of conducting the background check.

Section 360. Section Amended.

Section 53A-11-501, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

53A-11-501. Definitions.

As used in this chapter:

(1) [~~"Bureau" means the Bureau of Criminal Identification within~~] "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety.

(2) "Missing child" means a person under the age of 18 who is the subject of a custody dispute, who has been missing for at least 48 hours from his home environment or a temporary placement facility and whose whereabouts cannot be determined by the person responsible for the child's care.

(3) "State registrar" means the State Registrar of Vital Statistics within the Department of Health.

Section 361. Section Amended.

Section 53A-11-502, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

53A-11-502. Identifying records — Reporting requirements.

(1) Upon notification by the [~~bureau~~] division of a missing child in accordance with Section [~~77-26-23~~] 53-5-204, a school in which that child is currently or was previously enrolled shall flag the record of that child in [~~such~~] a manner that whenever a copy of or information regarding the record is requested, the school [~~shall be~~] is alerted to the fact that the record is that of a missing child.

(2) The school shall immediately report any request concerning flagged records or knowledge as to the whereabouts of any missing child to the [~~bureau~~] division.

(3) Upon notification by the [~~bureau~~] division that a missing child has been recovered, the school shall remove the flag from that child's record.

Section 362. Section Amended.

Section 53A-11-503, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

53A-11-503. Requirement of birth certificate for enrollment of students — Procedures.

(1) Upon enrollment of a student for the first time in a particular school, that school shall notify in writing the person enrolling the student that within 30 days he must provide either a certified copy of the student's birth certificate, or other reliable proof of the student's identity and age, together with an affidavit explaining the inability to produce a copy of the birth certificate.

(2) (a) Upon the failure of a person enrolling a student to comply with Subsection (1), the school shall notify that person in writing that unless he complies within ten days the case shall be referred to the local law enforcement authority for investigation.

(b) If compliance is not obtained within that ten day period, the school shall refer the case to the [~~bureau~~] division.

(3) The school shall immediately report to the [~~bureau~~] division any affidavit received pursuant to this subsection which appears inaccurate or suspicious.

Section 363. Section Amended.

Section 53A-11-504, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1988, is amended to read:

53A-11-504. Requirement of school record for transfer of student — Procedures.

(1) Within 14 days after enrolling a transfer student, a school shall request, directly from the student's previous school, a certified copy of his record.

(2) The requesting school shall exercise due diligence in obtaining that record.

(3) Any school requested to forward a copy of a transferring student's record to the new school shall comply unless the record has been flagged pursuant to Section 53A-11-502, in which case the copy shall not be forwarded and the requested school shall notify the [~~bureau~~] division of the request.

Section 364. Section Amended.

Section 53A-13-208, Utah Code Annotated 1953, as last amended by Chapter 8, Laws of Utah 1991, is amended to read:

53A-13-208. Driver education teachers certified as license examiners.

(1) The Driver License Division of the Department of Public Safety and the State Board of Education through the State Office of Education shall establish procedures and standards to certify teachers of driver education classes under this part [~~as driver license examiners~~] to administer written and driving tests.

(2) The division is the certifying authority.

(3) (a) A teacher certified under this section shall give written and driving tests designed for driver education classes authorized under this part.

(b) The Driver License Division shall, in conjunction with the State Office of Education, establish minimal standards for the driver education class tests that are at least as difficult as those required to receive a class D operator's license under Title [~~41~~] 53, Chapter [~~2~~] 3.

(c) A student who passes the written test but fails the driving test given by a teacher certified under this section may apply for a class D operator's license under Section [~~41-2-111~~] 53-3-210 and complete the driving test at a Driver License Division office.

(4) (a) A certified driver education teacher may issue a practice permit to a student who:

(i) passes the written test given by the teacher under this section; and

(ii) has been issued an instruction permit under Subsection [~~41-2-111~~] 53-3-210 (2).

(b) The State Office of Education shall supply the practice permit form. The form shall include the following information:

(i) the student's full name, date of birth, sex, home address, height, weight, and eye color;

(ii) the name of the school providing the driver education program;

(iii) the name and signature of the driver education teacher;

(iv) the dates of issuance and expiration of the permit;

(v) the statutory citation authorizing the permit; and

(vi) the conditions and restrictions contained in this section for operating a class D motor vehicle.

(c) The practice permit is valid for up to 60 days from the date of issuance. The practice permit allows the student to operate only a class D motor vehicle when the student's parent, legal guardian, or adult husband or wife, who must be a licensed driver, is occupying a seat next to the student and no other passengers are in the vehicle.

(d) A student shall have the practice permit in his immediate possession at all times when operating a motor vehicle under this section.

(e) A student operating a class D motor vehicle under [~~Subsection (4)~~] this subsection is considered a licensed driver.

(5) A student who successfully passes the tests given by [~~an examiner~~] a certified driver education teacher under this section satisfies the written and driving parts of the test required for a class D operator's license.

(6) The Driver License Division and the State Board of Education shall establish procedures to enable school districts to administer or process any tests for students to receive a class D operator's license.

(7) The division and board shall establish the standards and procedures required under this section by rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 365. Section Amended.

Section 54-11-10, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

54-11-10. Vehicles used and drivers excluded from definitions for regulatory purposes.

(1) A motor vehicle used in a ride-sharing arrangement is not a bus or commercial vehicle under:

(a) Title 41, Chapter 6, Traffic Rules and Regulations, relating to equipment requirements and rules of the road; and

(b) Title 41, Chapter 1a, Motor Vehicle Act, relating to registration.

(2) The driver of a vehicle used in a ride-sharing arrangement is not a chauffeur and he is not transporting persons for compensation under the driver licensing provisions of Title [~~41~~] 53, Chapter [~~2~~] 3, [~~Operators'~~] Uniform Driver License Act.

Section 366. Section Amended.

Section 62A-4-514, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1992, is amended to read:

62A-4-514. Placement of children — Determination of no report of child abuse.

(1) As of July 1, 1990, each public or private agency or individual licensed by the department to provide day care services, child placing services, youth programs, substitute, foster, or institutionalized care to children shall, in order to obtain or renew a license under Section 62A-2-108, submit to the department the name and other identifying information, including fingerprints, of new and proposed:

(a) employees;

(b) providers of care; and

(c) volunteers, except parents of children enrolled in the programs.

The [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety shall process that information to determine whether the individual has been convicted of any crime.

(2) An employee, provider of care, or volunteer who has a felony conviction may not provide child care, child placing services, foster care, substitute care, or institutionalized care for children in facilities or programs licensed by the department.

(3) With regard to an employee or provider of care who has a misdemeanor conviction, the executive director has discretion to determine whether or not that person may be employed by any child care, child placing, foster care, substitute care, or institutionalized care for children in a facility or program licensed by the department.

Section 367. Section Amended.

Section 63-5-5, Utah Code Annotated 1953, as last amended by Chapter 112, Laws of Utah 1991, is amended to read:

63-5-5. Hazardous Chemical Emergency Response Commission — Designation of responsibilities — Local planning committees — Specified federal law considered law of state — Application to federal agencies and facilities.

(1) The [executive director] commissioner of the Department of Public Safety and the executive director of the Department of Environmental Quality, or their respective designees, are designated as the state's Hazardous Chemical Emergency Response Commission for purposes of carrying out all requirements of the federal Emergency Planning and Community Right To Know Act of 1986.

(2) The Department of Public Safety has primary responsibility for all emergency planning activities under the federal Emergency Planning and Community Right To Know Act of 1986, [~~including preparation of~~] and shall prepare policy and procedure[;] and [~~promulgation of~~] make rules necessary for implementation of that act in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) The Department of Environmental Quality has primary responsibility for receiving, processing, and managing hazardous chemical information and notifications under the federal Emergency Planning and Community Right To Know Act of 1986, including preparation of policy and procedure, and promulgation of rules necessary for implementation of that act. Funding for this program must be from the appropriation acts.

(4) [~~No later than April 15, 1991, the~~] The Department of Public Safety and the Department of Environmental Quality shall enter into an interagency agreement providing for exchange of information and coordination of their respective duties and responsibilities under this section.

(5) The Hazardous Chemical Emergency Response Commission shall appoint a local planning committee for each local planning district [~~which~~] that it establishes, as required by the federal Emergency Planning and Community Right To Know Act of 1986, and to the extent possible, shall use an existing local governmental organization as the local planning committee.

(6) Requirements of the federal Emergency Planning and Community Right To Know Act of 1986 pertaining to notification and submission of information are the law of this state, and apply equally to federal agencies, departments, installations, and facilities located in this state, as well as to other facilities [~~which~~] that are subject to that act.

Section 368. Section Amended.

Section 63-5b-102, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1992, is amended to read:

63-5b-102. Definitions.

(1) (a) "Absent" means:

(i) not physically present or not able to be communicated with for 48 hours; or

(ii) for local government officers, as defined by local ordinances.

(b) "Absent" does not include a person who can be communicated with via telephone, radio, or telecommunications.

(2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(3) "Department" means the Department of Administrative Services, the Department of Agriculture, the Alcoholic Beverage Control Commission, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Resource Management, the Industrial Commission of Utah, the National Guard, the Department of Insurance, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Department of Human Services, the State Tax Commission, the Department of Transportation, any other major administrative subdivisions of state government, the State Board of Education, the State Board of Regents, the Utah Housing Finance Agency, the Utah Technology Finance Corporation, the Workers' Compensation Fund, the State Retirement Board, and each institution of higher education within the system of higher education.

(4) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomenon, or technological hazard.

(5) "Division" means the [~~Division of~~] Comprehensive Emergency Management Division established [~~by~~] in Title [~~63~~] 53, Chapter [~~5~~] 2, Comprehensive Emergency Management Act.

(6) "Emergency interim successor" means a person designated by this chapter to exercise the powers and discharge the duties of an office when the person legally exercising the powers and duties of the office is unavailable.

(7) "Executive director" means the person with ultimate responsibility for managing and overseeing the operations of each department, however denominated.

(8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

(9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

(10) (a) "Office" includes all state and local offices, the powers and duties of which are defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

(b) "Office" does not include the office of governor or the legislative or judicial offices.

(11) "Place of governance" means the physical location where the powers of an office are being exercised.

(12) "Political subdivision" includes counties, cities, towns, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(13) "Political subdivision officer" means a person holding an office in a political subdivision.

(14) "State officer" means the attorney general, the state treasurer, the state auditor, and the executive director of each department.

(15) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

(16) "Unavailable" means:

(a) absent from the place of governance during a disaster that seriously disrupts normal governmental operations, whether or not that absence or inability would give rise to a vacancy under existing constitutional or statutory provisions; or

(b) as otherwise defined by local ordinance.

Section 369. Section Amended.

Section 63-55-241, Utah Code Annotated 1953, as last amended by Chapters 7 and 234, Laws of Utah 1992, is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Chapter [~~1~~] 1a, the Motor Vehicle Division, is repealed July 1, 1999.

[~~(2) The Driver License Medical Advisory Board, created in Section 41-2-202, is repealed July 1, 1997.~~]

[~~(3)~~] (2) Chapter 3, the Motor Vehicle Enforcement Division, is repealed July 1, 1997.

[~~(4) The hearing board for motor vehicle inspection station licensing, created in Section 41-6-160.5, is repealed July 1, 1993.~~]

[~~(5)~~] (3) Section 41-6-163.6, the emissions inspection program for motor vehicles, is repealed July 1, 1999.

[~~(6) Chapter 13, the Department of Public Safety, is repealed July 1, 1993.~~]

[~~(7) Chapter 13a, the Security Personnel Licensing and Regulation Act, is repealed July 1, 1995.~~]

[~~(8)~~] (4) The Off-highway Vehicle Advisory Council, created in Section 41-22-10, is repealed July 1, 1997.

[~~(9)~~] (5) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.

Section 370. Section Enacted.

Section 63-55-253.5, Utah Code Annotated 1953, is enacted to read:

63-55-253.5. Repeal dates, Title 53.

The following provisions of Title 53 are repealed on the following dates:

(1) Title 53, the Department of Public Safety, is repealed July 1, 2003.

(2) Chapter 1, Part 2, the Administrative Services Division, is repealed July 1, 2003.

(3) Chapter 1, Part 3, the Management Information Services Division, is repealed July 1, 2003.

(4) Chapter 2, the Comprehensive Emergency Management Division, is repealed July 1, 2001.

(5) Chapter 3, the Driver License Division, is repealed July 1, 1997.

(6) Chapter 4, the Investigations Division, is repealed July 1, 1999.

(7) Chapter 5, the Law Enforcement and Technical Services Division, is repealed July 1, 1995.

(8) Chapter 6, the Peace Officer Standards and Training Division, is repealed July 1, 2001.

(9) Chapter 7, the State Fire Marshal Division, is repealed July 1, 1999.

(10) Chapter 8, the Utah Highway Patrol Division, is repealed July 1, 1997.

Section 371. Section Amended.

Section 63-55-263, Utah Code Annotated 1953, as last amended by Chapters 7 and 241, Laws of Utah 1992, is amended to read:

63-55-263. Repeal dates, Title 63.

(1) Sections 63-1-50 and 63-1-50.1, authorizing the Risk Management Fund to provide coverage to non-state entities, are repealed July 1, 1996.

(2) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(3) Title 63, Chapter 25, [~~State~~] Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(4) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 1994.

[~~(5) The Utah Fire Prevention Board, created in Section 63-27-104, is repealed July 1, 1993.~~]

[~~(6) The Liquefied Petroleum Gas Board, created in Section 63-29a-103, is repealed July 1, 1997.~~]

[~~(7)~~] (5) (a) The Department of Natural Resources, created in Section 63-34-3, is repealed July 1, 1999.

(b) The Board of Water Resources, created in Sections 63-34-3 and 73-10-1.5, is repealed July 1, 2001.

(c) The Board of State Lands and Forestry, created in Sections 63-34-3 and 65A-1-2, is repealed July 1, 1999.

(d) The Board of Oil, Gas and Mining, created in Sections 40-6-4 and 63-34-3, is repealed July 1, 1993.

(e) The Board of Parks and Recreation, created in Sections 63-11-12 and 63-34-3, is repealed July 1, 1997.

(f) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(g) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

(h) The Riverway Enhancement Advisory Council, created in Section 63-34-3, is repealed July 1, 1999.

(i) The Great Salt Lake Advisory Council, created in Sections 63-34-3 and 65A-10-5, is repealed July 1, 1999.

(j) The Board of the Utah Geological Survey, created in Sections 63-34-3 and 63-73-2, is repealed July 1, 1999.

(k) The Water Development Coordinating Council, created in Sections 63-34-3 and 73-10c-3, is repealed July 1, 2001.

(l) The Division of Water Rights, created in Sections 63-34-3 and 73-2-1.1, is repealed July 1, 2001.

(m) The Division of Water Resources, created in Sections 63-34-3 and 73-10-18, is repealed July 1, 2001.

(n) The Division of Parks and Recreation, created in Section 63-34-3, is repealed July 1, 1997.

(o) The Division of Oil, Gas and Mining, created in Sections 63-34-3 and 40-6-15, is repealed July 1, 1993.

(p) The Division of Geological Survey, created in Section 63-34-3 and Title 63, Chapter 73, is repealed July 1, 1999.

(q) The Division of Energy, created in Sections 63-34-3 and 63-53-2, is repealed July 1, 2001.

(r) The Energy Advisory Council, created in Sections 63-34-3 and 63-53-4, is repealed July 1, 2001.

[~~(8)~~] (6) (a) The Office of Internal Audit, created in Section 63-49-7, is repealed July 1, 2001.

(b) The Office of Comptroller, created in Section 63-49-7, is repealed July 1, 2001.

(c) The Office of Planning and Programming, created in Section 63-49-7, is repealed July 1, 2001.

(d) The Office of Community Relations, created in Section 63-49-7, is repealed July 1, 2001.

(e) The Maintenance Division, created in Section 63-49-8, is repealed July 1, 1995.

(f) The Construction Division, created in Section 63-49-8, is repealed July 1, 1997.

(g) The Preconstruction Division, created in Section 63-49-8, is repealed July 1, 1997.

(h) The Safety Division, created in Section 63-49-8, is repealed July 1, 1999.

(i) The Right-of-way Division, created in Section 63-49-8, is repealed July 1, 1995.

(j) The Aeronautical Operations Division and [~~Utah~~] Aeronautical Committee, created in Sections 2-1-12 and 63-49-8, are repealed July 1, 1995.

(k) District management offices, created in Section 63-49-9, are repealed July 1, 2001.

(l) The [~~Utah~~] Transportation Commission, created in Section 63-49-10, is repealed July 1, 1995.

[~~(9)~~] (7) The Utah Constitutional Revision Study Commission, created in Section 63-54-1, is repealed July 1, 1993.

[~~(10)~~] (8) The Crime Victims' Reparations Board, created in Section 63-63-4, is repealed July 1, 1997.

Section 372. Section Amended.

Section 63-63a-4, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-63a-4. Reparation fund — Victim reparation and specific appropriations.

(1) (a) There is created an expendable trust fund known as the Crime Victim Reparation Trust Fund, referred to in this chapter as the reparation fund, to be administered and distributed as provided in this chapter by the Reparations Office under Title 63, Chapter 63, Crime Victims' Reparations Act, in cooperation with the Division of Finance.

(b) Monies deposited in this fund are for victim reparations and, as appropriated, administrative costs of the Reparations Office under Title 63, Chapter 63.

(2) (a) There is created a restricted revenue fund in the General Fund known as the Public Safety Support Fund, referred to in this chapter as the safety fund, to be administered and distributed by the Department of Public Safety in cooperation with the Division of Finance as provided in this chapter.

(b) Monies deposited in this fund shall be appropriated to:

(i) the Peace Officer Standards and Training [~~(P.O.S.T.)~~] Division (POST) as described in Title [~~67~~] 53, Chapter [~~15~~] 6; and

(ii) the Office of the Attorney General for the support of the Utah Prosecution Council established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

(3) The funds created under this section shall be funded by the surcharge imposed under Section 63-63a-1, as provided under this chapter.

(4) After the amount is recorded for the EMS account under Section 63-63a-3, the Division of Finance shall allocate the remainder of the $3.8 million or 40% of the surcharge monies referred to in Subsection 63-63a-2 (3), 60% to the reparation fund, and 40% to the safety fund.

(5) When adequate funding is available, [~~P.O.S.T.~~] POST and the Office of the Attorney General may not receive less funding from the safety fund than in the previous fiscal year.

(6) In addition to the funding provided by the other provisions of this chapter, any funds earned by inmates working for correctional industries under Title 64, Chapter 13a, for the purpose of victim reparations in Utah shall also be deposited in the reparation fund.

(7) Proceeds received under Section 78-11-12.5 shall be deposited in the reparation fund.

(8) (a) In addition to the money collected from the surcharge, judges are encouraged to, and may in

their discretion, impose additional reparations to be paid into the reparation fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by the Criminal Code for that offense.

Section 373. Section Amended.

Section 63-63a-9, Utah Code Annotated 1953, as enacted by Chapter 233, Laws of Utah 1992, is amended to read:

63-63a-9. Statewide Warrant Operations Account — Funding — Use.

(1) There is created a restricted account within the General Fund known as the Statewide Warrant Operations Account.

(2) The Division of Finance shall allocate 1.88% of the collected surcharge established under Section 63-63a-1 to this account.

(3) The Legislature may appropriate money from the restricted account to the Department of Public Safety to pay for statewide warrant system costs as incurred under Subsection [~~77-26-9~~] 53-5-209(2).

Section 374. Section Amended.

Section 64-13-27, Utah Code Annotated 1953, as last amended by Chapter 224, Laws of Utah 1989, is amended to read:

64-13-27. Records — Access.

(1) (a) The [~~State Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety, county attorneys' offices, and state and local law enforcement agencies shall furnish to the department upon request a copy of records of any person arrested in this state.

(b) The department shall maintain centralized files on all offenders under the jurisdiction of the department and make the files available for review by other criminal justice agencies upon request in cases where offenders are the subject of active investigations.

(2) All records maintained by programs under contract to the department providing services to public offenders are the property of the department.

Section 375. Section Amended.

Section 67-19-27, Utah Code Annotated 1953, as enacted by Chapter 139, Laws of Utah 1979, is amended to read:

67-19-27. Leave of absence with pay for disabled employees covered under other civil service systems.

[~~Any current or future~~] (1)(a) An employee in a position covered by the Highway Patrol or operator and chauffeur license examiners civil service systems [~~at the time of the effective date of this act~~], who is injured in the course of employment shall be given a leave of absence with full pay during the period of temporary disability.

(b) This compensation [~~shall be~~] is in lieu of all other compensation provided by law except hospital and medical services which are [~~now or may hereafter be~~] provided by law.

[~~Any current or future~~] (2) An employee in a position covered by the Highway Patrol civil service system [~~at the time of the effective date of this act~~], who is 100% disabled through a criminal act upon his person by the use of a deadly weapon while in the lawful discharge of his duties, shall be given a leave of absence with full compensation until he reaches the retirement age of 62 years.

Section 376. Section Amended.

Section 67-22-2, Utah Code Annotated 1953, as last amended by Chapter 206, Laws of Utah 1992, is amended to read:

67-22-2. Compensation — Other state officers.

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
Commissioner of Agriculture	$45,100 - $61,000
Commissioner of Insurance	$45,100 - $61,000
Director, Alcoholic Beverage Control Commission	$45,100 - $61,000
Chairman, Industrial Commission	$48,200 - $65,200
Commissioners, Industrial Commission	$48,200 - $65,200
Members, Board of Pardons	$48,200 - $65,200
Executive Director, Department of Commerce	$48,200 - $65,200
Executive Director, Commission on Criminal and Juvenile Justice	$48,200 - $65,200
Adjutant General	$48,200 - $65,200
Chairman, Tax Commission	$52-100 - $70,500
Commissioners, Tax Commission	$52,100 - $70,500
Executive Director, Department of Community and Economic Development	$52,100 - $70,500
Executive Director, Department of Corrections	$52,100 - $70,500
Director, Office of Planning and Budget	$52,100 - $70,500
Commissioner, Department of Public Safety	$52,100 - $70,500
Chairman, Public Service Commission	$52,100 - $70,500
Commissioner, Public Service Commission	$52,100 - $70,500
Commissioner, Department of Financial Institutions	$52,100 - $70,500
Executive Director, Tax Commission	$56,800 - $76,700
Executive Director, Department of Natural Resources	$56,800 - $76,700
Executive Director, Department of Human Services	$56,800 - $76,700
Executive Director, Department of Transportation	$56,800 - $76,700
Executive Director, Department of Administrative Services	$56,800 - $76,700

Executive Director, Department of Human Resource Management	$56,800 - $76,700
Executive Director, Department of Environmental Quality	$56,800 - $76,700
Executive Director, Department of Health	$61,700 - $83,400

(2) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(a) the option of participating in a state retirement system established by Title 49 or in a deferred compensation plan administered by the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(b) health insurance;

(c) dental insurance;

(d) basic life insurance;

(e) unemployment compensation;

(f) workers' compensation;

(g) required employer contribution to Social Security;

(h) long-term disability insurance;

(i) the same annual leave, sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees;

(j) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;

(k) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and

(l) professional memberships if being a member of the professional organization is a requirement of the position.

(3) The Legislature fixes the following additional benefits:

(a) for the executive director of the State Tax Commission a vehicle for official and personal use;

(b) for the executive director of the Department of Transportation a vehicle for commute and official use;

(c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;

(d) for the Commissioner of Public Safety:

(i) an accidental death insurance policy if [~~post~~] POST certified; and

(ii) a public safety vehicle for official and personal use;

(e) for the executive director of the Department of Corrections:

(i) an accidental death insurance policy if [~~post~~] POST certified; and

(ii) a public safety vehicle for official and personal use;

(f) for the Adjutant General a vehicle for official and personal use; and

(g) for each member of the Board of Pardons a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 377. Section Amended.

Section 73-18-20.5, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, is amended to read:

73-18-20.5. Reporting of theft and recovery of vessels.

(1) (a) Any peace officer upon receiving reliable information that any vessel or outboard motor has been stolen shall immediately report the theft to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety.

(b) Any peace officer upon receiving information that any vessel or outboard motor which was previously reported as stolen has been recovered shall immediately report the recovery to his law enforcement agency and to the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division.

(2) The reporting and recovery procedures for vessels and outboard motors shall be the same as those specified in Section 41-1a-1401 for motor vehicles.

Section 378. Section Amended.

Section 76-6-601, Utah Code Annotated 1953, as last amended by Chapter 93, Laws of Utah 1990, is amended to read:

76-6-601. Definitions.

As used in this chapter:

(1) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.

(2) "Merchant" means an owner or operator of any retail mercantile establishment where merchandise is displayed, held or offered for sale and includes the merchant's employees, servants or agents.

(3) "Minor" means any unmarried person under 18 years of age.

(4) "Peace officer" [means an officer] has the same meaning as [described] provided in Section 77-1a-1[, including a member of the Highway Patrol].

(5) "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.

(6) "Retail mercantile establishment" means any place where merchandise is displayed, held, or offered for sale to the public.

(7) "Retail value" means the merchant's stated or advertised price of the merchandise.

(8) "Shopping cart" means those push carts of the types which are commonly provided by grocery stores, drug stores, or other mercantile establishments or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.

(9) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

Section 379. Section Amended.

Section 76-6-607, Utah Code Annotated 1953, as enacted by Chapter 78, Laws of Utah 1979, is amended to read:

76-6-607. Report of arrest to division.

Any arrest made for a violation of this [act] part shall be reported by the appropriate jurisdiction to the [state bureau of criminal identification] Law Enforcement and Technical Services Division of the Department of Public Safety, which shall keep a record [thereof] of the arrest together with the disposition [thereof] of the arrest for purposes of inquiry by any law enforcement agency.

Section 380. Section Amended.

Section 76-8-707, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-8-707. Assistance by local authorities.

(1) If, in the judgment of the chief administrative officer of any institution of higher education, or in the judgment of any officer or employee designated by him to maintain order on a campus or related facility, the [police] law enforcement agency or security department of that institution lacks sufficient manpower to deal effectively with any condition of unrest existing or developing on a campus or related facility of the institution, he may call for assistance from the county sheriff of the county or [the city police department of] any city law enforcement agency or from the [Utah Highway Patrol] Department of Public Safety.

(2) Upon receipt of the request, the county sheriff, city [police department] law enforcement agency, or [Highway Patrol] Department of Public Safety must render all necessary assistance without expense to the institution of higher education.

(3) All personnel while rendering assistance shall serve under the general direction of the chief administrative officer of the institution or the officer or employee designated by him to maintain order on the campus or related facility.

Section 381. Section Amended.

Section 76-10-501, Utah Code Annotated 1953, as last amended by Chapter 10, Laws of Utah 1991, is amended to read:

76-10-501. Uniform law — Definitions.

(1)(a) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state.

(b) [The provisions of this] This part [are] is uniformly applicable throughout this state and in all its political subdivisions and municipalities. [No] A local authority may not enact or enforce any rule in conflict with [the provisions of] this part.

(2) [For the purpose of] As used in this part:

[(a) "Bureau" means the Utah State Bureau of Criminal Identification.]

[(b)] (a) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or an attempt to commit any of these offenses.

[(c)] (b) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. [In construing] The following factors shall be used in determining whether an item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon[;]:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any; and

(iii) the manner in which the instrument, object, or thing was used [are determinative].

(c) "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety, created in Section 53-5-103.

(d) ["Firearms"] "Firearm" means [pistols] a pistol, [revolvers] revolver, shotgun, sawed-off [shotguns] shotgun, rifle or sawed-off [rifles] rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by any force.

(e) "Prohibited area" means any place where it is unlawful to discharge a [weapon] firearm.

(f) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

Section 382. Section Amended.

Section 76-10-505.5, Utah Code Annotated 1953, as enacted by Chapter 101, Laws of Utah 1992, is amended to read:

76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises — Penalty.

(1) [~~Any~~] A person [~~who possesses~~] may not possess any dangerous weapon, firearm, or sawed-off shotgun at a place that the person knows, or has reasonable cause to believe, is on or about school premises [~~is guilty of an offense~~].

(2) (a) Possession of a[~~: (a)~~] dangerous weapon on or about school premises is a class B misdemeanor[~~; or~~].

(b) Possession of a firearm or sawed-off shotgun on or about school premises is a class A misdemeanor.

(3) This section [~~shall apply~~] applies to any person, except persons authorized to possess a firearm as provided under Sections 53-5-704, 53-5-705, 53A-3-502, 76-10-510, 76-10-511, [~~76-10-513, 76-10-513.5,~~] 76-10-523, and Subsection 76-10-504(2) and as otherwise authorized by law.

(4) This section [~~shall~~] does not prohibit prosecution of a more serious weapons offense [~~which~~] that may occur on or about school premises.

Section 383. Section Amended.

Section 76-10-511, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-511. Possession of loaded weapon at residence authorized.

[~~Nothing in this part shall prevent any person, except~~] Except for persons described in Section 76-10-503, [~~from having~~] a person may have a loaded [~~weapon~~] firearm at his place of residence, including any temporary residence or camp.

Section 384. Section Amended.

Section 76-10-520, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-520. Number or mark assigned to pistol or revolver by Department of Public Safety.

The [~~bureau~~] Department of Public Safety upon request may assign a distinguishing number or mark of identification to any pistol or revolver whenever it is without a manufacturer's number, or other mark of identification or whenever the manufacturer's number or other mark of identification or the distinguishing number or mark assigned by the [bureau] Department of Public Safety has been destroyed or obliterated.

Section 385. Section Amended.

Section 76-10-521, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-521. Unlawful marking of pistol or revolver.

(1) Any person who places or stamps on any pistol or revolver any number except one assigned to it by the [~~bureau~~] Department of Public Safety is guilty of a class A misdemeanor.

(2) This section does not prohibit restoration by the owner of the name of the maker, model, or of the original manufacturer's number or other mark of identification when the restoration is authorized by the [~~bureau~~] Department of Public Safety, nor prevent any manufacturer from placing in the ordinary course of business the name of the make, model, manufacturer's number, or other mark of identification upon a new pistol or revolver.

Section 386. Section Amended.

Section 76-10-522, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-522. Alteration of number or mark on pistol or revolver.

Any person who changes, alters, removes, or obliterates the name of the maker, the model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the [~~bureau~~] Department of Public Safety, on any pistol or revolver, without first having secured written permission from the [~~bureau~~] Department of Public Safety to make the change, alteration, or removal, [~~shall be~~] is guilty of a class A misdemeanor.

Section 387. Section Amended.

Section 76-10-523, Utah Code Annotated 1953, as enacted by Chapter 196, Laws of Utah 1973, is amended to read:

76-10-523. Persons exempt from weapons laws.

[~~The provisions of this~~] This part [~~shall~~] and Title 53, Chapter 5, Part 7, Concealed Weapon Act, do not apply to any of the following:

(1) United States marshals while engaged in the performance of their official duties[~~:~~];

(2) federal officials required to carry firearms while [~~engages~~] engaged in the performance of their official duties[~~:~~];

(3) law enforcement officials of this or any other jurisdiction while engaged in the performance of their official duties[~~:~~];

(4) common carriers while engaged in the regular and ordinary transport of firearms as merchandise[~~:~~]; and

(5) nonresidents traveling in or through the state, provided that any firearm is:

(a) unloaded; and

(b) (i) enclosed in a case, gun box, or securely tied package [~~or~~];

(ii) held securely in a gun rack; or

(iii) locked in the trunk of an automobile in which the nonresident is transporting the firearm.

Section 388. Section Amended.

Section 77-1a-1, Utah Code Annotated 1953, as last amended by Chapter 234, Laws of Utah 1992, is amended to read:

77-1a-1. Peace officer.

(1) "Peace officer" means any employee of a [~~police or~~] law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(a) "Peace officer" specifically includes the following:

(i) any sheriff or deputy sheriff, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any [~~sworn~~] member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Section 23-20-1.5;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators for the attorney general and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law; and

(viii) school district police officers as designated by the board of education for the school district.

(b) Any [~~police force~~] law enforcement agency established by a private college or university shall, prior to exercising its police power, apply to and be certified by the commissioner of public safety according to the rules of the Department of Public Safety.

(2) Peace officers have statewide peace officer authority, but the authority extends to other counties, cities, or towns only when they are acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit. This limitation does not apply to any peace officer employed by the state.

(3) (a) [Peace officers] A peace officer shall, prior to exercising peace officer authority, satisfactorily complete the basic course at a certified peace officer training academy or pass a certification examination as provided in Section [~~67-15-8~~] 53-6-206, and be certified.

(b) In addition, a peace [~~officers~~] officer shall satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the [~~Division of~~] Peace Officer Standards and Training Division, with the advice and consent of the [~~Council on~~] Peace Officer Standards and Training Council.

Section 389. Section Amended.

Section 77-18-2, Utah Code Annotated 1953, as last amended by Chapters 164 and 290, Laws of Utah 1992, is amended to read:

77-18-2. Expungement and sealing of records — Procedures.

(1) (a) A person convicted of any crime, except a capital felony, first degree felony, or second degree forcible felony as defined in Subsection 76-2-402 (3), within this state may petition the convicting court for an expungement and for sealing of his record in that court.

(i) The person shall file both the petition and a certificate issued by the [~~Utah Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety, hereafter referred to as [~~"bureau"~~] the "division" in this section, indicating that there is no record with the [~~bureau~~] division of an expungement regarding the petitioner.

(ii) Both documents shall be served upon the prosecuting attorney.

(iii) A victim shall receive notice of a petition for expungement if the victim, or in the case of a minor or a person who is incapacitated or deceased the victim's next of kin, prior to the entry of an expungement order, submits a written and signed request for notice to the office of the Department of Corrections in the judicial district in which the crime occurred, and judgment was entered.

(iv) The Department of Corrections shall serve notice of the expungement request by first class mail to the victim at the most recent address of record with the department.

(v) The notice shall include a copy of the petition and of the statutes and rules applicable to the petition.

(vi) The court in its discretion may request a written evaluation by the Adult Parole and Probation Section of the Department of Corrections, except that a written evaluation is required for any conviction of a sexual offense under Title 76.

(vii) The evaluation shall include a recommendation concerning the requested expungement.

(viii) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

(ix) The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and to the prosecuting attorney.

(x) If the prosecuting attorney or the victim submits a written objection to the court concerning the petition within 30 days after service of the notice, or if the petitioner objects to the conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions and recommendations, then the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

(xi) Persons having relevant information about the petitioner may testify at the hearing.

(xii) If an objection is not received under Subsection [~~(ix)~~] (x), then expungement may be granted without a hearing.

(b) A person who at the time of petition for expungement has two or more convictions for any type of felony offense on his record, not arising out of a single criminal episode, or whose felony criminal record has been previously expunged is not eligible for expungement of any of those offenses regardless of type or degree of offense.

(c) The court shall enter an order to seal all records in the petitioner's case in the custody of that court or in the custody of any other court, agency, or official if the court finds that:

(i) the petitioner has not been convicted of a felony or of a misdemeanor for a period of seven years in the case of a felony, six years in the case of an alcohol-related traffic offense under Title 41, five years in the case of a class A misdemeanor, or three years in the case of all other misdemeanors or an infraction under Title 76 after his release from incarceration, parole, or probation, whichever occurs last;

(ii) no proceeding involving a crime is pending or being instituted against the petitioner;

(iii) the petitioner has presented to the court a certificate issued by the [~~bureau~~] division as described in Subsection (1)(a); and

(iv) the petitioner has not engaged in any conduct similar to that involved in the offense petitioned for expungement.

(d) The court shall issue to the petitioner a certificate stating the court's finding that he has satisfied the statutory requirements for expungement.

(e) The court may not expunge a capital felony, first degree felony, second degree forcible felony conviction, or a conviction involving a sexual act against a minor.

(2) (a) When a person has been arrested with or without a warrant, that individual, after one month if there have been no intervening arrests, may petition the court in which the proceeding occurred, or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging and sealing any and all records of arrest and detention which may have been made, if any of the following occurred:

(i) he was released without the filing of formal charges;

(ii) proceedings against him were dismissed, he was discharged without a conviction and no charges were refiled against him within 30 days, or he was acquitted at trial; or

(iii) the record of any proceedings against him has been sealed under Subsection (1).

(b) If the court finds that the petitioner is eligible for relief under this subsection, it shall issue its order granting the expungement and sealing.

(c) This subsection applies to all arrests and any proceedings which occurred before, as well as those which may occur after, April 27, 1987.

(d) The court shall enter an order to seal all records in the petitioner's case which are in the custody of that court, or any other court, or any state, county, or local entity, agency, or official.

(e) The petitioner shall distribute the orders of expungement and sealing to all affected agencies and officials including the court, the arresting agency, booking agency, Department of Corrections, and the [~~bureau~~] division.

(f) The [~~bureau~~] division shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(g) The [~~bureau~~] division shall provide a list of the agencies named in this subsection and clear written directions regarding the requirements of this section to the petitioner.

(3) The person who has received expungement and sealing of an arrest or conviction may answer an inquiring employer as though the arrest or conviction did not occur.

(4) The court may permit inspection of the sealed records only upon petition by the person who is the subject of those records and only to the persons named in the petition.

(5) (a) (i) The [~~bureau~~] division shall keep, index, and maintain all expunged and sealed records of arrests and convictions.

(ii) Any agency or its employee who receives an expungement order may not divulge any information in the sealed expunged records.

(iii) Employees of the [~~bureau~~] division may not divulge any information contained in its index to any person or agency without a court order, except for certification of an applicant for peace officer status, for use by the Board of Pardons, or after notice is given to the subject of the record by the State Board of Education, for use by the State Board of Education.

(b) (i) Records released to the State Board of Education under this section are confidential and accessible for official purposes only to the board, the Professional Practices Commission, the subject of the record, and counsel for the board, the commission, and the subject.

(ii) A person whose records are released to the board or commission under this subsection shall be

given a reasonable opportunity to challenge and explain any information in the records, and to challenge the relevancy of that information to any question of certification or employment before a final determination is made by the board or commission.

(c) (i) For judicial sentencing, a court may order any records sealed under this section to be opened and admitted into evidence.

(ii) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(iii) At the end of the action or proceeding, the court shall order the records sealed again.

(6) A person who willfully violates any provision of this section is guilty of a class B misdemeanor.

(7) The [~~bureau~~] division may charge a reasonable fee for processing the expungement order under Section 63-38-3.

Section 390. Section Amended.

Section 78-3a-39.5, Utah Code Annotated 1953, as last amended by Chapter 78, Laws of Utah 1992, is amended to read:

78-3a-39.5. Suspension of license for certain offenses.

(1) This section applies to persons who are younger than 18 years of age but are at least 13 years of age when found by the court to be within its jurisdiction by the commission of any offense under Section 58-37-8 or 32A-12-209, or Title 58, Chapter 37a or 37b.

(2) If the court hearing the case determines that the person committed an offense under Section 58-37-8 or Title 58, Chapter 37a or 37b, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that person's driving privileges.

(3) If the court hearing the case determines that the person violated Section 32A-12-209 and the violation is the offender's:

(a) first violation, the court may suspend the person's driving privileges; or

(b) second or subsequent violation, the court shall suspend the person's driving privileges.

(4) When a court has issued an order suspending a person's driving privileges for a violation of Section 32A-12-209 or 58-37-8 or Title 58, Chapter 37a or 37b, the person's license shall be suspended under Section [~~41-2-126.5~~] 53-3-219.

(5) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while his license is suspended under this section, the department shall extend the suspension for a like period of time.

Section 391. Section Amended.

Section 78-3a-44, Utah Code Annotated 1953, as last amended by Chapter 77, Laws of Utah 1991, is amended to read:

78-3a-44. Children's cases deemed civil proceedings — Adjudication of jurisdiction by juvenile court not conviction of crime, exception — Record and evidence inadmissible in other proceedings, exception — Child not to be charged with crime, exception — Traffic violation cases, abstracts to Department of Public Safety.

(1) Proceedings in children's cases shall be regarded as civil proceedings, with the court exercising equitable powers.

(2) An adjudication by a juvenile court that a child is within its jurisdiction under Section 78-3a-16 is not considered a conviction of a crime, except in cases involving traffic violations. [~~No such~~] An adjudication [~~shall~~] may not operate to impose any civil disabilities upon the child nor to disqualify the child for any civil service or military service or appointment.

(3) [~~Neither the~~] The record in the juvenile court [nor] and any evidence given in the juvenile court [is] are not admissible as evidence against the child in any proceedings in any other court, with the exception of cases involving traffic violations.

(4) [No] A child [~~shall~~] may not be charged with a crime [~~nor be~~] or convicted in any court except as provided in Section 78-3a-25 and in cases involving traffic violations. When a petition has been filed in the juvenile court, the child may not thereafter be subjected to criminal prosecution based on the same facts except as provided in Section 78-3a-25.

(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section [~~41-3-126~~] 53-3-218.

(6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78-3a-39.

Section 392. Section Amended.

Section 78-5-105, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1991, is amended to read:

78-5-105. Jurisdiction of justice court and juvenile court.

(1) Justice courts have jurisdiction over traffic misdemeanors and infractions committed by persons 16 or 17 years of age and that occur within the territorial jurisdiction of the court, except those offenses exclusive to the juvenile court under Subsection 78-3a-16 (1)(a).

(2) If the traffic offense involves the conviction of a person 16 years of age or older but younger than 18 years of age for an offense under Section 78-3a-39.5 the justice court judge shall notify the juvenile court of the conviction.

(3) The justice court has authority to take the juvenile's driver license and return it to the Driver License Division, Department of Public Safety, for suspension under Section [~~41-2-128~~] 53-3-221.

(4) Justice court judges may transfer matters within the court's jurisdiction under this section to the juvenile court for postjudgment proceedings according to rules of the Judicial Council.

Section 393. Section Amended.

Section 78-30-3.5, Utah Code Annotated 1953, as enacted by Chapter 167, Laws of Utah 1992, is amended to read:

78-30-3.5. Preplacement adoptive study required — Exception.

(1) (a) A child may not be placed in an adoptive home until a preplacement adoptive study, evaluating the petitioner as a prospective adoptive parent and the petitioner's home as a prospective adoptive home, has been conducted in accordance with the requirements of this section. The court may authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive study in accordance with this section.

(b) Subsection (a) does not apply if a birth parent has legal custody of the child to be adopted and the petitioner is related to that birth parent as a spouse, parent, step-parent, sibling by half or whole blood or by adoption, aunt, uncle, or first cousin.

(c) The requirements of Subsection (a) are satisfied by a previous preplacement adoptive homestudy conducted within three years prior to placement of the child, or an annual updated adoptive study conducted after that three-year period or within one year after finalization of a previous adoption.

(2) With regard to adoption proceedings in which a licensed child placing agency has not placed the child, the preplacement adoptive study shall include:

(a) criminal history record information received from the [~~Bureau of Criminal Identification~~] Law Enforcement and Technical Services Division of the Department of Public Safety in accordance with Subsection [~~77-26-16(2)~~] 53-5-214(1), regarding each petitioner;

(b) a report from the Department of Human Services' child abuse database, obtained pursuant to a waiver executed by each petitioner; and

(c) a homestudy conducted by an expert in family relations approved by the court or a certified social worker licensed under Title 58, Chapter 35, in a form approved by the Department of Human Services, and certified as having been received by the Division of Family Services [~~within that department~~], Department of Human Services.

(3) A copy of each preplacement adoptive study shall be submitted to the Division of Family Services [~~within the Department of Human Services~~]. Through random screening, that department shall assess the quality and competence of preplacement adoptive studies conducted.

(a) Prior to the final hearing in an adoption proceeding, a post-placement adoptive study shall be conducted and submitted to the court.

(b) With regard to adoption proceedings in which a licensed child placing agency has not placed the child, the post-placement study shall be conducted by an expert in family relations approved by the court or a certified social worker licensed under Title 58, Chapter 35, and shall include:

(i) verification of the allegations of fact contained in the petition for adoption, attachments to the petition, and in the report of expenditures required by Section 78-30-15.5;

(ii) an evaluation of the progress of the child's placement in the adoptive home; and

(iii) a recommendation regarding whether the adoption is in the best interest of the child.

(4) If the person or agency conducting the study disapproves the petitioner either in the preplacement or post-placement adoptive study, the court may dismiss the petition. Upon request of the petitioner, the court shall order an additional preplacement adoptive study and hold a hearing on the suitability of the adoption, including testimony of interested parties.

(5) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement and post-placement adoptive studies required by this section.

Section 394. Repealer.

Section 11-3-5, Safety rules, Utah Code Annotated 1953, as last amended by Chapters 30 and 268, Laws of Utah 1992;

Section 11-3-7, Time for use of fireworks, Utah Code Annotated 1953, as last amended by Chapter 268, Laws of Utah 1992;

Section 13-18-1.5, Procedures — Adjudicative proceedings, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 17-39-2, Rules of the Department of Public Safety, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990;

Section 17-39-4, Registration, insurance contracts, and indemnification, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990;

Section 17-39-5, Identification labels, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990;

Section 17-39-6, Acts prohibited, Utah Code Annotated 1953, as enacted by Chapter 278, Laws of Utah 1990;

Section 17-39-8, Violations and penalties, Utah Code Annotated 1953, as last amended by Chapter 241, Laws of Utah 1991;

Section 27-10-3, State purchasing agent to purchase supplies, Utah Code Annotated 1953;

Section 27-10-8, Field strength of highway patrol, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1974;

Section 32A-15-101, Creation of Bureau of Narcotics and Alcoholic Beverage Law Enforcement, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990;

Section 32A-15-103, Director, Utah Code Annotated 1953, as renumbered and amended by Chapter 23 and last amended by Chapter 261, Laws of Utah 1990;

Section 32A-15-105, Supplies and equipment, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990;

Section 32A-15-107, Bureau to cooperate with other agencies, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990;

Section 34-37-14, Examiner on effective date entitled to license — Effective date of amendment, Utah Code Annotated 1953, as last amended by Chapter 98, Laws of Utah 1981;

Section 41-2-102.5, Administrative hearing procedure to be followed, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 41-2-106, Employees to operate motor vehicles must be licensed, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987;

Section 41-2-107, Exemptions, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989;

Section 41-2-108, Nonresidents under 18 licensed in home state — Limitations on classes of operation, Utah Code Annotated 1953, as last amended by Chapter 209, Laws of Utah 1989;

Section 41-2-119, Driving records available for fee — Certified copy admissible in court, Utah Code Annotated 1953, as last amended by Chapter 190, Laws of Utah 1991;

Section 41-2-304, Instructor license required — Contents of rules, Utah Code Annotated 1953, as last amended by Chapter 162, Laws of Utah 1990;

Section 41-2-505, 'Executive head' defined, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987;

Section 41-2-607, Effective date of compact, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1987;

Section 41-6-164, Violation of act — Misdemeanor, Utah Code Annotated 1953;

Section 41-13-3, Vacancy — How filled, Utah Code Annotated 1953;

Section 41-13-4, Powers and duties of commissioner — Fees, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session;

Section 41-13-5, Subordinate officers and employees — Construction of act, Utah Code Annotated 1953;

Section 41-13-6, Training school, Utah Code Annotated 1953;

Section 41-13-7, Allocation of duties, Utah Code Annotated 1953, as last amended by Chapter 40, Laws of Utah 1985;

Section 41-13-8, Co-operation with other agencies, Utah Code Annotated 1953;

Section 41-13-9, Division headquarters, Utah Code Annotated 1953;

Section 63-5-1, Legislative findings — Purposes, Utah Code Annotated 1953, as enacted by Chapter 254, Laws of Utah 1981;

Section 63-27-102, Purposes of act, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991;

Section 63-27-105, Procedures — Adjudicative proceedings, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991;

Section 63-27-107, Meetings of board, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991;

Section 63-27-108, Reimbursement of expenses of board members, Utah Code Annotated 1953, as renumbered and amended by Chapter 220, Laws of Utah 1991;

Section 63-55-267, Repeal dates, Title 67, Utah Code Annotated 1953, as enacted by Chapter 137, Laws of Utah 1990;

Section 67-15-2.1, Procedures — Adjudicative proceedings, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 67-15-3, Director to be full-time state officer — Director's staff, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1988;

Section 67-15-12, Terms of office of council members — Vacancies, Utah Code Annotated 1953, as enacted by Chapter 211, Laws of Utah 1983;

Section 67-15-13, Termination of council members — Filling vacancies, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983;

Section 67-15-14, Council officers — Quorum — Meetings, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983;

Section 67-15-15, Compensation of council members, Utah Code Annotated 1953, as last amended by Chapter 211, Laws of Utah 1983;

Section 67-15-16, Holding of other public office or employment by council members, Utah Code Annotated 1953, as enacted by Chapter 103, Laws of Utah 1967;

Section 67-15-17.5, Recommendations and reports by council, Utah Code Annotated 1953, as enacted by Chapter 211, Laws of Utah 1983;

Section 67-15-18, Additional powers of council, Utah Code Annotated 1953, as enacted by Chapter 103, Laws of Utah 1967;

Section 77-26-1, Duties of board and director transferred to commissioner, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26-2, Control by commissioner — Compensation — Employment of personnel, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26-4, Identification systems, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26-6, Regulations governing administration of bureau, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26-7, Peace officer status of commissioner and bureau employees, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26-11, Adult probation and parole section to supply information, Utah Code Annotated 1953, as last amended by Chapter 212, Laws of Utah 1985;

Section 77-26-11.5, Board of Pardons — Notification of action on a warrant, Utah Code Annotated 1953, as enacted by Chapter 72, Laws of Utah 1989;

Section 77-26-16.5, Procedures — Adjudicative proceedings, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 77-26-20, Unauthorized removal, destruction, alteration or disclosure of records — Misdemeanor, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980;

Section 77-26a-1, Purpose, Utah Code Annotated 1953, as enacted by Chapter 121, Laws of Utah 1983;

Section 77-26a-3, Establishment — Contents, Utah Code Annotated 1953, as enacted by Chapter 121, Laws of Utah 1983; and

Section 77-26a-4, Confidentiality of inquiries, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1988, are repealed.

Section 395. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 235
S. B. No. 30
Passed February 11, 1993
Approved March 18, 1993
Effective May 3, 1993

CERTIFICATION OF COUNTY ASSESSORS

By Lyle W. Hillyard
Robert F. Montgomery

AN ACT RELATING TO PROPERTY TAXES; AMENDING COUNTY ASSESSOR CERTIFICATION REQUIREMENTS; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17-17-2, AS ENACTED BY CHAPTER 194, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 17-17-2, Utah Code Annotated 1953, as enacted by Chapter 194, Laws of Utah 1992, is amended to read:

17-17-2. Assessor to be registered appraiser.

(1) In addition to the requirements of Section 17-16-1, any person elected to the office of county assessor after November 1, [~~1992~~] 1993, shall be a state-registered appraiser as defined in Title 61, Chapter 2b, prior to the expiration of 18 months from the day on which his term of office begins.

(2)(a) If an assessor fails to meet the requirement of this section, the [~~county governing body shall contract with a state-registered appraiser to assist the county assessor with the appraisal functions of the office~~] assessor's office is automatically vacant.

(b)(i) In the event of a vacancy under this section, the county governing body shall fill the vacancy in the manner provided for in Section 17-5-21. However, a person selected to fill the vacancy must be a state-registered appraiser within six months after assuming the office of county assessor.

(ii) If a state-registered appraiser cannot be found to fill a vacancy which resulted from the requirements of this section, the county governing body may contract with a state-registered appraiser from outside the county to fill the remainder of the term in the office of county assessor.

CHAPTER 236
S. B. No. 34
Passed February 15, 1993
Approved March 18, 1993
Effective May 3, 1993

CHIROPRACTOR LICENSING AMENDMENTS

By David H. Steele

AN ACT RELATING TO HEALTH; AMENDING THE QUALIFICATIONS PROCEDURES FOR LICENSURE OF CHIROPRACTORS LICENSED IN ANOTHER STATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-12-51.10, AS ENACTED BY CHAPTER 125, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 58-12-51.10, Utah Code Annotated 1953, as enacted by Chapter 125, Laws of Utah 1988, is amended to read:

58-12-51.10. Chiropractic Improvements Act — Qualifications for licensure for holders of non-Utah licenses.

A chiropractor [~~who is~~] licensed in another state may obtain a license to practice chiropractic in the state by meeting the following requirements:

(1) [~~The~~] the applicant has held a license to practice chiropractic in another state for five continuous years and has a current license from that state[~~.~~];

(2) [~~At~~] at the time the applicant's license to practice in another state was issued, that state's license qualifications, including academic and testing standards, were substantially the same as the current Utah standards for obtaining a chiropractor's license, as determined by the division and board[~~.~~]; and

(3) [~~The~~] the applicant:

(a) passes an oral professional competence review, demonstrating clinical skills, administered by the division with the approval of the board; or

(b) the applicant has passed within the 12 months prior to the date of application, an examination the board and division recognize by rule to be a competent evaluation of clinical skills.

CHAPTER 237
S. B. No. 68
Passed March 1, 1993
Approved March 18, 1993
Effective July 1, 1993

UCC AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE; AMENDING PROVISIONS RELATED TO LEASES; REVISING PROVISIONS TO ACCOMMODATE NEW TECHNOLOGIES AND PRACTICES IN PAYMENT SYSTEMS; AMENDING PROVISIONS RELATING TO COLLECTION ON CERTAIN NEGOTIABLE INSTRUMENTS; AMENDING FUNDS TRANSFER PROVISIONS; CLARIFYING DEFINITIONS; MAKING STYLISTIC, TECHNICAL, AND CONFORMING AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
70A-1-201, AS LAST AMENDED BY CHAPTERS 197 AND 294, LAWS OF UTAH 1990
70A-1-207, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
70A-2-511, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-2A-103, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-104, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-209, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-303, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-304, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-307, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-309, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-407, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-501, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-503, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-507, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-508, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-516, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-517, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-518, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-519, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-523, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-525, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-527, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-528, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-2A-529, AS ENACTED BY CHAPTER 197, LAWS OF UTAH 1990
70A-4-101, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-4-103, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-4-204, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-4-206, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-4-301, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-4-302, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-4-401, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-4-403, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-4A-204, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
70A-4A-205, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991

70A-4A-207, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
70A-4A-208, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
70A-4A-209, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
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70A-4A-212, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
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70A-4A-303, AS ENACTED BY CHAPTER 294, LAWS OF UTAH 1990
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70A-2A-311, UTAH CODE ANNOTATED 1953
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70A-3-309, UTAH CODE ANNOTATED 1953
70A-3-310, UTAH CODE ANNOTATED 1953
70A-3-311, UTAH CODE ANNOTATED 1953
70A-3-420, UTAH CODE ANNOTATED 1953
70A-4-110, UTAH CODE ANNOTATED 1953
70A-4-111, UTAH CODE ANNOTATED 1953
70A-4-215, UTAH CODE ANNOTATED 1953
70A-4-216, UTAH CODE ANNOTATED 1953

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70A-3-101, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-3-102, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-3-103, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-3-120, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-3-606, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-3-701, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
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70A-3-803, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-3-804, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965
70A-3-805, AS ENACTED BY CHAPTER 154, LAWS OF UTAH 1965

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

Section 1. Section Amended.

Section 70A-1-201, Utah Code Annotated 1953, as last amended by Chapters 197 and 294, Laws of Utah 1990, is amended to read:

70A-1-201. General definitions.

In addition to definitions contained in the subsequent chapters of this title and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts as provided in

Section 70A-1-103. Compare the definition of "contract" in Subsection (11).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like, including oil and gas, at wellhead or minehead are considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals such as: NONNEGOTIABLE BILL OF LADING is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. In a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. Compare the definition of "agreement" in Subsection (3).

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately representing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible are considered fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to [~~an~~] a negotiable instrument, certificated security, or document of title means the person in possession if:

(a) in the case of [~~an~~] a negotiable instrument[~~, it is~~] payable to bearer or to [~~the order of~~] an identified person, the identified person is in possession;

(b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or if he is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) (a) A person has "notice" of a fact when:

(i) he has actual knowledge of it;

(ii) he has received a notice or notification of it; or

(iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

(b) A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.

(c) "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know.

(d) The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) (a) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.

(b) A person "receives" a notice or notification when:

(i) it comes to his attention; or

(ii) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this title.

(30) "Person" includes an individual or an organization as provided in Section 70A-1-102.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods, notwithstanding shipment or delivery to the buyer as provided in Section 70A-2-401, is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 70A-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions. Unless a consignment is intended as security, reservation of title under the consignment is not a "security interest." A consignment in any event is subject to the provisions on consignment sales provided in Section 70A-2-326.

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to

or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subsection:

(i) Additional consideration is not nominal if, when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(ii) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(iii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iv) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or the cost of the transmission provided for and properly addressed, and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature [~~or indorsement~~]" means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections as in Sections 70A-3-303, 70A-4-208, and 70A-4-209, a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a preexisting claim;

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

Section 2. Section Amended.

Section 70A-1-207, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

70A-1-207. Performance or acceptance under reservation of rights.

(1) A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction [~~governed by Section 70A-3-607~~].

Section 3. Section Amended.

Section 70A-2-511, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-2-511. Tender of payment by buyer — Payment by check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation, [(]Section [~~70A-3-802~~)] 70A-3-310, payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 4. Section Amended.

Section 70A-2a-103, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-103. Definitions — Index of definitions.

(1) In this chapter, unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale, but does not include a transfer in bulk, or as security for, or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means a unit of goods which by commercial usage is a single whole for purposes of lease, and the division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, such as a machine, or a set of articles, such as a suite of furniture or a line of machinery, or a quantity, such as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming goods or performance under a lease contract" means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor, regularly engaged in the business of leasing or selling, makes to a lessee, who is [~~a natural person and~~] an individual and who takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease in which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) [either] the lessee receives a copy of the contract [evidencing the lessor's purchase] by which the lessor acquired the goods or the right to possession and use of the goods [~~on or~~] before signing the lease contract;

(B) the lessee's approval of the contract [~~evidencing the lessor's purchase~~] by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

[~~(C) the lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract; or~~]

[~~(D) only if the lease is not a consumer lease, on or before the signing of the lease contract by the lessee, the lessor:~~]

[~~(I) informs the lessee in writing of the identity of the supplier unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier;~~]

[~~(II) informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods; and~~]

[~~(III) advises the lessee, in writing, to contact the supplier for a description of any such rights.~~]

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures. The term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil

and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause stating "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term, in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease. But a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease.

(k) "Lease agreement" with respect to the lease, means the bargain of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights, security interest, or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting lease contract. "Leasing" does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods, the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party, pursuant to a power created by agreement or law, puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions," [~~in~~] Section 70A-2a-310;

(b) "Construction mortgage," [~~in~~] Section 70A-2a-309;

(c) "Encumbrance," [in] Section 70A-2a-309;

(d) "Fixtures," [~~in~~] Section 70A-2a-309;

(e) "Fixture filing," [~~in~~] Section 70A-2a-309; and

(f) "Purchase money lease," [~~in~~] Section 70A-2a-309.

(3) The following definitions in other chapters apply to this chapter:

(a) "[~~accounts~~] Account," [~~in~~] Section 70A-9-106;

(b) "Between merchants," [in] Section 70A-2-104;

(c) "Buyer," [in] Section 70A-2-103;

(d) "Chattel paper," [~~in~~] Section 70A-9-105;

(e) "Consumer goods," [~~in~~] Section 70A-9-109;

(f) "Document," [~~in~~] Section 70A-9-105;

(g) "Entrusting," [~~in~~] Section 70A-2-403;

(h) "General intangibles," [~~in~~] Section 70A-9-106;

(i) "Good faith," [in] Section 70A-2-103;

(j) "Instrument," [in] Section 70A-9-105;

(k) "Merchant," [in] Section 70A-2-104;

(l) "Mortgage," [in] Section 70A-9-105;

(m) "Pursuant to commitment," [in] Section 70A-9-105;

(n) "Receipt," [in] Section 70A-2-103;

(o) "Sale," [in] Section 70A-2-106;

(p) "Sale on approval," [in] Section 70A-2-326;

(q) "Sale or return," [in] Section 70A-2-326; and

(r) "Seller," [in] Section 70A-2-103.

(4) In addition, Title 70A, Chapter 1, Uniform Commercial Code — General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 5. Section Amended.

Section 70A-2a-104, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-104. Leases subject to other law.

(1) A lease, although subject to this chapter, is also subject to any applicable:

[~~(a) statute of the United States;~~]

[~~(b)~~] (a) certificate of title statute of this state;

[~~(c)~~] (b) certificate of title statute of another jurisdiction as provided in Section 70A-2a-105; [~~or~~]

[~~(d)~~] (c) consumer protection statute of this state; or

(d) final consumer protection decision of a court of this state as of July 1, 1993.

(2) In case of conflict between [~~the provisions of~~] this chapter[~~;~~] (other than Section 70A-2a-105[~~;~~] and Subsections 70A-2a-304 (3) and 70A-2a-305 (3)[~~;~~]) and [~~any~~] a statute or decision referred to in Subsection (1), the [~~provisions of that~~] statute [~~control~~] or decision controls.

(3) Failure to comply with any applicable [statute] law has only the effect specified [therein] in that law.

Section 6. Section Amended.

Section 70A-2a-209, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-209. Lessee under finance lease as beneficiary of supply contract.

(1) The benefit of [the] a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, [under] including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and the supply contract and all [~~of the supplier's~~] defenses or claims arising therefrom.

(2) The extension of the benefit of [the] a supplier's promises and of warranties to the lessee as provided in Subsection (1) does not:

(a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective [~~against~~] between the supplier and the lessee unless, prior to the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. [~~If the supply contract is modified or rescinded after the lessee enters the finance lease, the lessee has a cause of action against the lessor, and against the supplier if the supplier has notice of the lessee's entering the finance lease when the supply contract is modified or rescinded. The lessee's recovery from the action shall put the lessee in as good a position as if the modification or rescission had not occurred.~~] If the modification or rescission is effective between the supplier and the lessee, the lessor is considered to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and warranties to the lessee under Subsection (1), the lessee retains all rights and remedies which the lessee may have against the supplier that arise from any agreement between the lessee and the supplier or from any other law.

Section 7. Section Amended.

Section 70A-2a-303, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods — Delegation of performance — Assignment of rights.

[~~(1) Any interest of a party under a lease contract and the lessor's residual interest in the goods may be transferred unless:~~]

[~~(a) except as provided in Subsection (3)(a), the transfer is voluntary and the lease contract prohibits the transfer; or~~]

[~~(b) except as provided in Subsection (3)(c) or (d), the transfer materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, and within a reasonable time after notice of the transfer, the other party demands that the transferee comply with Subsection (2) and the transferee fails to comply.~~]

[~~(2) Within a reasonable time after demand pursuant to Subsection (1)(b), the transferee shall:~~]

[~~(a) cure or provide adequate assurance that he will promptly cure any default other than one arising from the transfer;~~]

[~~(b) compensate or provide adequate assurance that he will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer;~~]

[~~(c) provide adequate assurance of future due performance under the lease contract; and~~]

[~~(d) assume the lease contract.~~]

[~~(3) (a) No prohibition upon transfer of any interest of a party under a lease contract or the lessor's residual interest in the goods shall invalidate the creation or enforcement of a security interest in any interest of the lessor under a lease contract or the lessor's residual interest in the goods.~~]

[~~(b) Demand pursuant to Subsection (1)(b) is without prejudice to the other party's rights against the transferee and the party whose interest is transferred.~~]

[~~(c) Subsection (1)(b) shall not apply to:~~]

[~~(i) the creation of a security interest in:~~]

[~~(A) the interest of the lessor under the lease contract; or~~]

[~~(B) the lessor's residual interest in the goods; or~~]

[~~(ii) the exercise of rights as a secured party pursuant to the security interest other than a transfer of the interest of the lessor under the lease contract or the lessor's residual interest in the goods pursuant to Sections 70A-9-504 and 70A-9-505.~~]

[~~(d) Subsection (1)(b) shall not affect the validity of a provision in a lease contract obligating the lessee to keep the lessee's interest in the lease contract or the goods free from liens or encumbrances.~~]

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract subject to Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions, by reason of Section 70A-9-102.

(2) Except as provided in Subsections (3) and (4), a provision in a lease agreement that prohibits the voluntary or involuntary transfer (including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process) of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or that makes such a transfer an event of default, gives rise to the rights and remedies provided in Subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement that either prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision, or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in either the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of Subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of Subsection (5).

(5) Subject to Subsections (3) and (4):

(a) if a transfer is made that is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 70A-2a-501; and

(b) if Subsection (5)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement, or materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer, and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

[~~(4)~~] (6) [~~An assignment~~] A transfer of "the lease" or of "all my rights under the lease" or [~~an assignment~~] a transfer in similar general terms, is a transfer of rights, and unless the language or the circumstances, as in [~~an assignment~~] a transfer for security, indicate the contrary, the [~~assignment~~] transfer is a delegation of duties by the [~~assignor to the assignee and acceptance~~] transferor to the transferee. Acceptance by the [~~assignee~~] transferee constitutes a promise by [him] the transferee to perform those duties. [~~This~~] The promise is enforceable by either

the [assignor] transferor or the other party to the lease contract.

[(5)] (7) Unless otherwise agreed by the lessor and the lessee, [no] a delegation of performance [relieves] does not relieve the [assignor] transferor as against the other party of any duty to perform or any liability for default.

[(6) A right to damages for default with respect to the whole lease contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.]

[(7)] (8) [To] In a consumer lease, to prohibit the transfer of an interest of a party under [a] the lease contract, or to make a transfer an event of default, the language [of prohibition] must be specific, by writing, and conspicuous.

Section 8. Section Amended.

Section 70A-2a-304, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-304. Subsequent lease of goods by lessor.

(1) Subject to [the provisions of] Section 70A-2a-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in Subsection (2) and Subsection 70A-2a-527 (4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. [When] If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale;" or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against the lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 9. Section Amended.

Section 70A-2a-307, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(1) Except as otherwise provided in Section 70A-2a-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in Subsections (3) and (4) [of this section] and in Sections 70A-2a-306 and 70A-2a-308, a creditor of a lessor takes subject to the lease contract unless:

(a) [unless] the creditor holds a lien that attached to the goods before the lease contract became enforceable; [or]

(b) [unless] the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) [unless] the creditor holds a security interest in the goods that [attached and] was perfected before[:] the lease contract became enforceable.

[(i) the lease contract became enforceable;]

[(ii) the lessee gave value and received delivery of the goods; or]

[(iii) in the case of a purchase money security interest, the date that is ten days after the date that the lessor received possession of the goods or the date that the lessee received possession of the goods, whichever is earlier.]

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 10. Section Amended.

Section 70A-2a-309, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-309. Lessor's and lessee's rights when goods become fixtures.

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law; [and]

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed, re-

corded, or registered, of a financing statement [concerning] covering goods that are or are to become fixtures and conforming to the requirements of Subsection 70A-9-402 (5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed or recorded before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding Subsection (4)(a), but otherwise subject to Subsections (4) and (5), the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrances of the real estate, the lessor or the lessee may:

(a) on default, expiration, termination, or cancellation of the lease agreement [~~by the other party~~] but subject to the [~~provisions of the~~] lease agreement and this chapter; or

(b) if necessary to enforce [~~his~~] other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrances of the real estate, but [~~he~~] the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove the goods until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions.

Section 11. Section Enacted.

Section 70A-2a-311, Utah Code Annotated 1953, is enacted to read:

70A-2a-311. Priority subject to subordination.

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

Section 12. Section Amended.

Section 70A-2a-407, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-407. Irrevocable promises — Finance leases.

(1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under Subsection (1):

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section [~~shall~~] does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

Section 13. Section Amended.

Section 70A-2a-501, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-501. Default — Procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in Subsection 70A-1-106, in this chapter, or in the lease agreement, the rights and remedies referred to in Subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this section as to the goods, or under other applicable law as to both the real property and the goods in accordance with [~~his~~] that person's rights and remedies in respect of the real property, in which case this section does not apply.

Section 14. Section Amended.

Section 70A-2a-503, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-503. Modification or impairment of rights and remedies.

(1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under Section 70A-2a-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

Section 15. Section Amended.

Section 70A-2a-507, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-507. Proof of market rent — Time and place.

(1) Damages based on market rent as provided in Section 70A-2a-519 or 70A-2a-528 are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the [~~time of default~~] times specified in Sections 70A-2a-519 and 70A-2a-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until he has given the other

party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

Section 16. Section Amended.

Section 70A-2a-508, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-508. Lessee's remedies.

(1) If a lessor fails to deliver the goods in conformity to the lease contract as provided in Section 70A-2a-509 or repudiates the lease contract as provided in Section 70A-2a-402, or a lessee rightfully rejects the goods as provided in Section 70A-2a-509 or justifiably revokes acceptance of the goods as provided in Section 70A-2a-517, then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired as provided in Section 70A-2a-510, the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract as provided in Subsection 70A-2a-505 (1);

(b) recover so much of the rent and security as has been paid[~~, but in the case of an installment lease contract, the recovery is that which~~] and is just under the circumstances; [~~or~~]

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract as provided in Sections 70A-2a-518 and 70A-2a-520, or recover damages for nondelivery as provided in Sections 70A-2a-519 and 70A-2a-520[~~;~~]; or

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them as provided in Section 70A-2a-522; or

(b) in a proper case, obtain specific performance or replevy the goods as provided in Section 70A-2a-521.

(3) If a lessor is in default under the lease contract [~~pursuant to Subsection (1) or (2) or is otherwise in default under the lease contract~~], the lessee may exercise [~~any of~~] the rights and pursue the remedies[~~: (a) provided for in this chapter if not effectively excluded or modified by the lease contract; or (b) effectively~~] provided for in the lease contract, which may include the right to cancel the lease, and in Section 70A-2a-519.

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages as provided in Subsection 70A-2a-519 (4).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of Subsection 70A-2a-527 (5).

(6) Subject to the provisions of Section 70A-2a-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Section 17. Section Amended.

Section 70A-2a-516, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-516. Effect of acceptance of goods — Notice of default — Burden of establishing default after acceptance — Notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default[~~; (i)~~], the lessee shall notify the lessor, or be barred from any remedy against the lessor, and, in addition, [~~(ii)~~] in the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier;

(b) within a reasonable time after the lessee receives notice of litigation for infringement or the like, as provided in Section 70A-2a-211, the lessee shall notify the lessor or be barred from any remedy [~~over~~] for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so, he will be bound in any action against him by the lessee by any determination of fact common to the two litigations, [then] unless the lessor or the supplier, after seasonable receipt of the notice, does come in and so defend [he is so bound].

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like as provided in Section 70A-2a-211, or else be barred from any remedy [over]. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then, unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) [The provisions of] Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like as provided in Section 70A-2a-211.

Section 18. Section Amended.

Section 70A-2a-517, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-517. Revocation of acceptance of goods.

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if [he] the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

[(2)] (4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

[(3)] (5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Section 19. Section Amended.

Section 70A-2a-518, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-518. Cover — Substitute goods.

(1) After default by a lessor under the lease contract [as provided] of the type described in Section 70A-2a-508, or if agreed after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined [by] pursuant to agreement of the parties as provided in Subsection 70A-1-102 (3) and Section 70A-2a-503, if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of [the difference between] the [total] rent [for the lease term of] under the new lease agreement [and] applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement, minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that qualifies for treatment under Subsection (2), the lessee may elect to proceed under Subsection (2) or Section 70A-2a-519. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor under Section 70A-2a-519 as if the lessee had elected not to cover.

Section 20. Section Amended.

Section 70A-2a-519, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined [by] pursuant to agreement of the parties as provided in Subsection 70A-1-102 (3) and Section 70A-2a-503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement whether or not the lease agreement qualifies for treatment under Subsection 70A-2a-518 (2), or is by purchase or otherwise, the measure of damages for default by the lessor under [(]Section

70A-2a-508[)] is the present value, as of the date of the default, of the [difference between the] then market rent [and] minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) [If] Except as otherwise agreed, if the lessee has accepted goods and given notification as provided in Subsection 70A-2a-516 (3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) [~~The~~] Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 21. Section Amended.

Section 70A-2a-523, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-523. Lessor's remedies.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired as provided in Section 70A-2a-510, the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract as provided in Subsection 70A-2a-505 (1);

(b) proceed respecting goods not identified to the lease contract as provided in Section 70A-2a-524;

(c) withhold delivery of the goods and take possession of goods previously delivered as provided in Section 70A-2a-525;

(d) stop delivery of the goods by any bailee as provided in Section 70A-2a-526; [or]

(e) dispose of the goods and recover damages as provided in Section 70A-2a-527, or retain the goods and recover damages as provided in Section 70A-2a-528, or in a proper case recover rent as provided in Section 70A-2a-529[.]; or

[~~(2) If a lessee is in default under a lease contract~~ pursuant to Subsection ~~(1)~~ or is otherwise in default ~~under the lease contract, the lessor may exercise any of the rights and remedies:~~]

[~~(a) provided for in this chapter if not effectively excluded or modified by the lease contract; or~~]

[~~(b) effectively provided for in the lease contract.~~]

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under Subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in a reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in Subsections (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in Subsection (2).

Section 22. Section Amended.

Section 70A-2a-525, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-525. Lessor's right to possession of goods.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) [~~The lessor has on~~] After a default by the lessee under the lease contract of the type described in Section 70A-2a-523, or if agreed, after the default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises as provided in Section 70A-2a-527.

(3) The lessor may proceed under Subsection (2) without judicial process if [~~that~~] it can be done without breach of the peace or the lessor may proceed by action.

Section 23. Section Amended.

Section 70A-2a-527, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract [~~as provided~~] of the type described in Section 70A-2a-523 or after the lessor refuses to deliver or takes possession of goods as provided in Section 70A-2a-525 or 70A-2a-526, or if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined [~~by~~] pursuant to agreement of the parties as provided in Subsection 70A-1-102 (3) and Section 70A-2a-503, if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the date of the commencement of the term of the new lease agreement, of the difference between the total rent for the then remaining lease term of the original lease agreement [~~and the total rent for the lease term of~~] minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that qualifies for treatment under Subsection (2), the lessor may elect to proceed under Subsection (2) or Section 70A-2a-528. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2), or is by sale or otherwise, the lessor may recover from the lessee under Section 70A-2a-528 as if the lessor had elected not to dispose of the goods.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest as provided in Subsection 70A-2a-508 (5).

Section 24. Section Amended.

Section 70A-2a-528, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement as provided in Section 70A-2a-504 or otherwise determined [~~by~~] pursuant to agreement of the parties as provided in Subsection 70A-1-102 (3) and Section 70A-2a-503, if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement whether or not the lease agreement qualifies for treatment under Subsection 70A-2a-527 (2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default [~~by~~] of the type described in Section 70A-2a-523 or, if agreed, for any other default of the lessee [~~(Section 70A-2a-523)~~]:

(a) accrued and unpaid rent as of the date of default if the [~~lessor obtained possession of the goods or such earlier date as the lessee has made an effective tender of possession of the goods back to the lessor~~] lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under Subsection (1)(a) of default of the [~~difference between the~~] total rent for the then remaining lease term of the original lease agreement and minus the present value as of the same date of the market rent [~~on the date determined under Subsection (1)(a) and~~] at the place where the goods [~~were~~] are located [~~on that date~~] computed for the same lease term; and

(c) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in Subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 70A-2a-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Section 25. Section Amended.

Section 70A-2a-529, Utah Code Annotated 1953, as enacted by Chapter 197, Laws of Utah 1990, is amended to read:

70A-2a-529. Lessor's damages for lessee's default.

(1) After default by the lessee under the lease contract [~~as provided~~] of the type described in [~~Section~~] Subsection 70A-2a-523 (1) or (3)(a), or, if agreed, after any other default by the lessee, if the lessor complies with Subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or [~~effectively~~] tendered back to the lessor and for conforming goods lost or damaged after risk

of loss passes to the lessee as provided in Section 70A-2a-219:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the date determined under Subsection (i) of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the date determined under Subsection (i) of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in Subsection (3), the lessor shall hold for the lessee for the remaining [~~lease~~] term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to Subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages will be governed by Section 70A-2a-527 or 70A-2a-528, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under Section 70A-2a-527 or 70A-2a-528.

(4) Payment of the judgment for damages obtained pursuant to Subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement if the lessee complies with all other terms and conditions of the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated as provided in Section 70A-2a-402, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 70A-2a-527 and 70A-2a-528.

Section 26. Section Repealed and Reenacted.

Section 70A-3-101, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 1. General Provisions and Definitions

70A-3-101. Short title.

This chapter is known as Uniform Commercial Code — Negotiable Instruments.

Section 27. Section Repealed and Reenacted.

Section 70A-3-102, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-102. Subject matter.

(1) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by Title 70A, Chapter 4a, Uniform Commercial Code — Funds Transfers, or to securities governed by Title 70A, Chapter 8, Uniform Commercial Code — Investment Securities.

(2) If there is conflict between this chapter and Title 70A, Chapter 4 or 9, Title 70A, Chapters 4 and 9, govern.

(3) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

Section 28. Section Repealed and Reenacted.

Section 70A-3-103, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-103. Definitions.

(1) In this chapter:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact in the conduct or transaction concerned.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative, but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from

general banking usage not disapproved by this chapter or Title 70A, Chapter 4, Uniform Commercial Code — Bank Deposits and Collections.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in Subsection 70A-1-201 (8).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Acceptance," Section 70A-3-409;

(b) "Accommodated party," Section 70A-3-419;

(c) "Accommodation party," Section 70A-3-419;

(d) "Alteration," Section 70A-3-407;

(e) "Anomalous indorsement," Section 70A-3-205;

(f) "Blank indorsement," Section 70A-3-205;

(g) "Cashier's check," Section 70A-3-104;

(h) "Certificate of deposit," Section 70A-3-104;

(i) "Certified check," Section 70A-3-409;

(j) "Check," Section 70A-3-104;

(k) "Consideration," Section 70A-3-303;

(l) "Draft," Section 70A-3-104;

(m) "Holder in due course," Section 70A-3-302;

(n) "Incomplete instrument," Section 70A-3-115;

(o) "Indorsement," Section 70A-3-204;

(p) "Indorser," Section 70A-3-204;

(q) "Instrument," Section 70A-3-104;

(r) "Issue," Section 70A-3-105;

(s) "Issuer," Section 70A-3-105;

(t) "Negotiable instrument," Section 70A-3-104;

(u) "Negotiation," Section 70A-3-201;

(v) "Note," Section 70A-3-104;

(w) "Payable at a definite time," Section 70A-3-108;

(x) "Payable on demand," Section 70A-3-108;

(y) "Payable to bearer," Section 70A-3-109;

(z) "Payable to order," Section 70A-3-109;

(aa) "Payment," Section 70A-3-602;

(bb) "Person entitled to enforce," Section 70A-3-301;

(cc) "Presentment," Section 70A-3-501;

(dd) "Reacquisition," Section 70A-3-207;

(ee) "Special indorsement," Section 70A-3-205;

(ff) "Teller's check," Section 70A-3-104;

(gg) "Transfer of instrument," Section 70A-3-203;

(hh) "Traveler's check," Section 70A-3-104;

(ii) "Value," Section 70A-3-303;

(3) The following definitions in other chapters apply to this chapter:

(a) "Bank," Section 70A-4-105;

(b) "Banking day," Section 70A-4-104;

(c) "Clearing house," Section 70A-4-104;

(d) "Collecting bank," Section 70A-4-105;

(e) "Depositary bank," Section 70A-4-105;

(f) "Documentary draft," Section 70A-4-104;

(g) "Intermediary bank," Section 70A-4-105;

(h) "Item," Section 70A-4-104;

(i) "Payor bank," Section 70A-4-105;

(j) "Suspends payments," Section 70A-4-104;

(4) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 29. Section Repealed and Reenacted.

Section 70A-3-104, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-104. Negotiable instrument.

(1) Except as provided in Subsections (3) and (4), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) is payable on demand or at a definite time; and

(c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(i) an undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of Subsection (1), except Subsection (1)(a), and other-

wise falls within the definition of "check" in Subsection (6) is a negotiable instrument and a check.

(4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(6) (a) "Check" means:

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(ii) a cashier's check or teller's check.

(b) An instrument may be a check even though it is described on its face by another term, such as "money order."

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank either on another bank, or payable at or through a bank.

(9) "Traveler's check" means an instrument that:

(a) is payable on demand;

(b) is drawn on or payable at or through a bank;

(c) is designated by the term "traveler's check" or by a substantially similar term; and

(d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

Section 30. Section Repealed and Reenacted.

Section 70A-3-105, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-105. Issue of instrument.

(1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

Section 31. Section Repealed and Reenacted.

Section 70A-3-106, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-106. Unconditional promise or order.

(1) Except as provided in this section, for the purposes of Subsection 70A-3-104 (1), a promise or order is unconditional unless it states an express condition to payment, that the promise or order is subject to or governed by another writing, or that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself mako the promise or order conditional.

(2) A promise or order is not made conditional by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or because payment is limited to resort to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Subsection 70A-3-104 (1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Subsection 70A-3-104 (1). However, if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Section 32. Section Repealed and Reenacted.

Section 70A-3-107, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-107. Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

Section 33. Section Repealed and Reenacted.

Section 70A-3-108, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-108. Payable on demand or at definite time.

(1) A promise or order is "payable on demand" if it states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or does not state any time of payment.

(2) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(3) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

Section 34. Section Repealed and Reenacted.

Section 70A-3-109, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-109. Payable to bearer or to order.

(1) A promise or order is payable to bearer if it:

(a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) does not state a payee; or

(c) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is payable to order if it is payable to the order of an identified person, or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Subsection 70A-3-205 (1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Subsection 70A-3-205 (2).

Section 35. Section Repealed and Reenacted.

Section 70A-3-110, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-110. Identification of person to whom instrument is payable.

(1) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Section 36. Section Repealed and Reenacted.

Section 70A-3-111, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-111. Place of payment.

Except as otherwise provided for items in Title 70A, Chapter 4, Uniform Commercial Code — Bank

Deposits and Collections, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Section 37. Section Repealed and Reenacted.

Section 70A-3-112, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-112. Interest.

(1) Unless otherwise provided in the instrument, an instrument is not payable with interest, and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Section 38. Section Repealed and Reenacted.

Section 70A-3-113, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-113. Date of instrument.

(1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after the date. Except as provided in Subsection 70A-4-401 (3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

Section 39. Section Repealed and Reenacted.

Section 70A-3-114, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-114. Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Section 40. Section Repealed and Reenacted.

Section 70A-3-115, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-115. Incomplete instrument.

(1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to Subsection (3), if an incomplete instrument is an instrument under Section 70A-3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 70A-3-104, but, after completion, the requirements of Section 70A-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 70A-3-407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Section 41. Section Repealed and Reenacted.

Section 70A-3-116, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-116. Joint and several liability — Contribution.

(1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in Subsection 70A-3-419 (5) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under Subsection (2) of a party having the same joint and several liability to receive contribution from the party discharged.

Section 42. Section Repealed and Reenacted.

Section 70A-3-117, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements,

the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Section 43. Section Repealed and Reenacted.

Section 70A-3-118, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-118. Statute of limitations.

(1) Except as provided in Subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(2) Except as provided in Subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in Subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(6) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or like action based on conversion, for breach of warranty, or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three years after the cause of action accrues.

Section 44. Section Repealed and Reenacted.

Section 70A-3-119, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Title 70A, Chapter 4, Uniform Commercial Code — Bank Deposits and Collections, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend, and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Section 45. Section Repealed and Reenacted.

Section 70A-3-201, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 2. Negotiation, Transfer, and Indorsement

70A-3-201. Negotiation.

(1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Section 46. Section Repealed and Reenacted.

Section 70A-3-202, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-202. Negotiation subject to rescission.

(1) Negotiation is effective even if obtained from an infant, a corporation exceeding its powers, a person without capacity, by fraud, duress, or mistake, or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Section 47. Section Repealed and Reenacted.

Section 70A-3-203, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-203. Transfer of instrument — Rights acquired by transfer.

(1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

Section 48. Section Repealed and Reenacted.

Section 70A-3-204, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-204. Indorsement.

(1) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Section 49. Section Repealed and Reenacted.

Section 70A-3-205, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-205. Special indorsement — Blank indorsement — Anomalous indorsement.

(1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 70A-3-110 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

Section 50. Section Repealed and Reenacted.

Section 70A-3-206, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-206. Restrictive indorsement.

(1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) If an instrument bears an indorsement described in Subsection 70A-4-201 (2), or in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(a) A person, other than a bank, who purchases the instrument when so indorsed converts the in-

strument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in Subsection (c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by Subsection (3), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(a) Unless there is notice of breach of fiduciary duty as provided in Section 70A-3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under Subsection (3) or has notice or knowledge of breach of fiduciary duty as stated in Subsection (4).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

Section 51. Section Repealed and Reenacted.

Section 70A-3-207, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-207. Reacquisition.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

Section 52. Section Repealed and Reenacted.

Section 70A-3-301, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 3. Enforcement of Instruments

70A-3-301. Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 70A-3-309 or Subsection 70A-3-418 (4). A person may be a person entitled to enforce the instrument even though he is not the owner of the instrument or is in wrongful possession of the instrument.

Section 53. Section Repealed and Reenacted.

Section 70A-3-302, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-302. Holder in due course.

(1) Subject to Subsection (3) and Subsection 70A-3-106 (4), "holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument for value, in good faith, without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, without notice that the instrument contains an unauthorized signature or has been altered, without notice of any claim to the instrument described in Section 70A-3-306, and without notice that any party has a defense or claim in recoupment described in Subsection 70A-3-305 (1).

(2) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under Subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding;

(b) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) as the successor in interest to an estate or other organization.

(4) If, under Subsection 70A-3-303 (1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If the person entitled to enforce an instrument has only a security interest in the instrument, and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

Section 54. Section Repealed and Reenacted.

Section 70A-3-303, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-303. Value and consideration.

(1) An instrument is issued or transferred for value if:

(a) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(c) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

(e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in Subsection (1), the instrument is also issued for consideration.

Section 55. Section Repealed and Reenacted.

Section 70A-3-304, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-304. Overdue instrument.

(1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) on the day after the day demand for payment is duly made;

(b) if the instrument is a check, 90 days after its date; or

(c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(2) With respect to an instrument payable at a definite time the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Section 56. Section Repealed and Reenacted.

Section 70A-3-305, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-305. Defenses and claims in recoupment.

(1) Except as stated in Subsection (2), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(a) a defense of the obligor based on:

(i) infancy of the obligor to the extent it is a defense to a simple contract;

(ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor;

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) discharge of the obligor in insolvency proceedings;

(b) a defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(c) (i) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument;

(ii) but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in Subsection (1)(a), but is not subject to defenses of the obligor stated in Subsection (1)(b) or claims in recoupment stated in Subsection (1)(c) against a person other than the holder.

(3) Except as stated in Subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument under Section 70A-3-306, of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under Subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

Section 57. Section Repealed and Reenacted.

Section 70A-3-306, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-306. Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

Section 58. Section Repealed and Reenacted.

Section 70A-3-307, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-307. Notice of breach of fiduciary duty.

(1) In this section:

(a) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(b) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in Subsection (a) is owed.

(2) If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(c) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(d) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Section 59. Section Enacted.

Section 70A-3-308, Utah Code Annotated 1953, is enacted to read:

70A-3-308. Proof of signatures and status as holder in due course.

(1) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Subsection 70A-3-402 (1).

(2) If the validity of signatures is admitted or proved and there is compliance with Subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 70A-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that he has rights of a holder in due course which are not subject to the defense or claim.

Section 60. Section Enacted.

Section 70A-3-309, Utah Code Annotated 1953, is enacted to read:

70A-3-309. Enforcement of lost, destroyed, or stolen instrument.

(1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(c) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under Subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 70A-3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Section 61. Section Enacted.

Section 70A-3-310, Utah Code Annotated 1953, is enacted to read:

70A-3-310. Effect of instrument on obligation for which taken.

(1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in Subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(a) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(b) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(c) Except as provided in Subsection (d), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(d) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(3) If an instrument other than one described in Subsection (1) or (2) is taken for an obligation, the effect is that stated in Subsection (1) if the instrument is one on which a bank is liable as maker or acceptor, or that stated in Subsection (2) in any other case.

Section 62. Section Enacted.

Section 70A-3-311, Utah Code Annotated 1953, is enacted to read:

70A-3-311. Accord and satisfaction by use of instrument.

(1) If a person against whom a claim is asserted proves that that person in good faith tendered an in-

strument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following subsections apply.

(2) Unless Subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to Subsection (4), a claim is not discharged under Subsection (2) if either of the following applies:

(a) The claimant, if an organization, proves that:

(i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted, which states that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and

(ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection does not apply if the claimant is an organization that sent a statement complying with Subsection (a)(i).

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

Section 63. Section Repealed and Reenacted.

Section 70A-3-401, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 4. Liability of Parties

70A-3-401. Signature.

(1) A person is not liable on an instrument unless:

(a) the person signed the instrument; or

(b) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 70A-3-402.

(2) A signature may be made:

(a) manually or by means of a device or machine; and

(b) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Section 64. Section Repealed and Reenacted.

Section 70A-3-402, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-402. Signature by representative.

(1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to Subsection (3), if the form of the signature does not show unambiguously that the signature is made in a representative capacity or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Section 65. Section Repealed and Reenacted.

Section 70A-3-403, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-403. Unauthorized signature.

(1) Unless otherwise provided in this chapter or Title 70A, Chapter 4, Uniform Commercial Code — Bank Deposits and Collections, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(2) If the signature of more than one person is required to constitute the authorized signature of an

organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter which makes the unauthorized signature effective for the purposes of this chapter.

Section 66. Section Repealed and Reenacted.

Section 70A-3-404, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-404. Impostors — Fictitious payees.

(1) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) If a person whose intent determines to whom an instrument is payable, Subsection 70A-3-110(1) or (2) does not intend the person identified as payee to have any interest in the instrument, or the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(3) Under Subsection (1) or (2), an indorsement is made in the name of a payee if it is made in a name substantially similar to that of the payee, or the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which Subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Section 67. Section Repealed and Reenacted.

Section 70A-3-405, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-405. Employer's responsibility for fraudulent indorsement by employee.

(1) In this section:

(a) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(c)(i) "Responsibility" with respect to instruments means authority to sign or indorse instruments on behalf of the employer, to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, to prepare or process instruments for issue in the name of the employer, to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, to control the disposition of instruments to be issued in the name of the employer, or to act otherwise with respect to instruments in a responsible capacity.

(ii) "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under Subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if it is made in a name substantially similar to the name of that person, or the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

Section 68. Section Repealed and Reenacted.

Section 70A-3-406, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-406. Negligence contributing to forged signature or alteration of instrument.

(1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an

instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) Under Subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under Subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under Subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

Section 69. Section Repealed and Reenacted.

Section 70A-3-407, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-407. Alteration.

(1) "Alteration" means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(2) Except as provided in Subsection (3), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(3) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument according to its original terms, or in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Section 70. Section Repealed and Reenacted.

Section 70A-3-408, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-408. Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Section 71. Section Repealed and Reenacted.

Section 70A-3-409, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-409. Acceptance of draft — Certified check.

(1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in Subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Section 72. Section Repealed and Reenacted.

Section 70A-3-410, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-410. Acceptance varying draft.

(1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

Section 73. Section Repealed and Reenacted.

Section 70A-3-411, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-411. Refusal to pay cashier's checks, teller's checks, and certified checks.

(1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under Subsection (2) are not recoverable if the refusal of

the obligated bank to pay occurs because the bank suspends payments, the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or payment is prohibited by law.

Section 74. Section Repealed and Reenacted.

Section 70A-3-412, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-412. Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 70A-3-415.

Section 75. Section Repealed and Reenacted.

Section 70A-3-413, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-413. Obligation of acceptor.

(1) The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 70A-3-414 or 70A-3-415.

(2) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised, and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Section 76. Section Repealed and Reenacted.

Section 70A-3-414, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-414. Obligation of drawer.

(1) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(2) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 70A-3-415.

(3) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Subsections 70A-3-415 (1) and (3).

(5) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under Subsection (2) to pay the draft if the draft is not a check. A disclaimer of the liability stated in Subsection (2) is not effective if the draft is a check.

(6) If a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, the drawee suspends payments after expiration of the 30-day period without paying the check, and because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Section 77. Section Repealed and Reenacted.

Section 70A-3-415, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-415. Obligation of indorser.

(1) Subject to Subsections (2), (3), and (4) and to Subsection 70A-3-419 (4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed, or if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by Section 70A-3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under Subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under Subsection (1) is discharged.

(5) If an indorser of a check is liable under Subsection (1) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under Subsection (a) is discharged.

Section 78. Section Repealed and Reenacted.

Section 70A-3-416, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-416. Transfer warranties.

(1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) the warrantor is a person entitled to enforce the instrument;

(b) all signatures on the instrument are authentic and authorized;

(c) the instrument has not been altered;

(d) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under Subsection (1) are made and who took the instrument in good faith may recover from the warrantor, as damages for breach of warranty, an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 79. Section Repealed and Reenacted.

Section 70A-3-417, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-417. Presentment warranties.

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or that the drawer is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:

(a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (2) or (4) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 80. Section Repealed and Reenacted.

Section 70A-3-418, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-418. Payment or acceptance by mistake.

(1) Except as provided in Subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped pursuant to Section 70A-4-403, or the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in Subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by Subsection (1), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, recover the payment from the person to whom or for whose benefit payment was made, or in the case of acceptance, may revoke the acceptance.

(3) The remedies provided by Subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 70A-3-417 or 70A-4-407.

(4) Notwithstanding Section 70A-4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under Subsection (1) or (2), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Section 81. Section Repealed and Reenacted.

Section 70A-3-419, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-419. Instruments signed for accommodation.

(1) If an instrument is issued for value given for the benefit of a party to the instrument, the "accommodated party," and another party to the instrument, the "accommodation party," signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to Subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 70A-3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if execution of judgment against the other party has been returned unsatisfied, the other party is insolvent or in an insolvency proceeding, the other party cannot be served with process, or it is otherwise apparent that payment cannot be obtained from the other party.

(5) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Section 82. Section Enacted.

Section 70A-3-420, Utah Code Annotated 1953, is enacted to read:

70A-3-420. Conversion of instrument.

(1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument, or a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.

(2) In an action under Subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

Section 83. Section Repealed and Reenacted.

Section 70A-3-501, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 5. Dishonor

70A-3-501. Presentment.

(1) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or to accept a draft made to the drawee.

(2) The following rules are subject to Title 70A, Chapter 4, Uniform Commercial Code — Bank Deposits and Collections agreement of the parties, clearinghouse rules, and the like:

(a) Presentment:

(i) may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States;

(ii) may be made by any commercially reasonable means, including an oral, written, or electronic communication;

(iii) is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and

(iv) is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(b) Upon demand of the person to whom presentment is made, the person making presentment must:

(i) exhibit the instrument;

(ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(c) Without dishonoring the instrument, the party to whom presentment is made may:

(i) return the instrument for lack of a necessary indorsement; or

(ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(d) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

Section 84. Section Repealed and Reenacted.

Section 70A-3-502, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-502. Dishonor.

(1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and Subsection (b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 70A-4-301 or 70A-4-302, or becomes accountable for the amount of the check under Section 70A-4-302.

(b) If a draft is payable on demand and Subsection (a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(c) If a draft is payable on a date stated in the draft, the draft is dishonored if presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in Subsection (2)(b), (c), and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 70A-3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of accentance the draft is treated as never having been dishonored.

Section 85. Section Repealed and Reenacted.

Section 70A-3-503, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-503. Notice of dishonor.

(1) The obligation of an indorser stated in Subsection 70A-3-415 (1) and the obligation of a drawer stated in Subsection 70A-3-414 (4) may not be enforced unless the indorser or drawer is given notice of dishonor of the instrument complying with this section or notice of dishonor is excused under Subsection 70A-3-504 (2).

(2) Notice of dishonor may be given by any person, may be given by any commercially reasonable means, including an oral, written, or electronic communication, and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(3) Subject to Subsection 70A-3-504 (3), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

Section 86. Section Repealed and Reenacted.

Section 70A-3-504, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-504. Excused presentment and notice of dishonor.

(1) Presentment for payment or acceptance of an instrument is excused if:

(a) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation to pay the instrument, is dead, or is in insolvency proceedings;

(c) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;

(d) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or

(e) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(2) Notice of dishonor is excused if by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(3) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Section 87. Section Repealed and Reenacted.

Section 70A-3-505, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-505. Evidence of dishonor.

(1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) a document regular in form as provided in Subsection (2) which purports to be a protest;

(b) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused, unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or

(c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul, a notary public, or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

Section 88. Section Repealed and Reenacted.

Section 70A-3-601, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

Part 6. Discharge and Payment

70A-3-601. Discharge and effect of discharge.

(1) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

Section 89. Section Repealed and Reenacted.

Section 70A-3-602, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-602. Payment.

(1) Subject to Subsection (2), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 70A-3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under Subsection (1) if:

(a) a claim to the instrument under Section 70A-3-306 is enforceable against the party receiving payment, and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

Section 90. Section Repealed and Reenacted.

Section 70A-3-603, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-603. Tender of payment.

(1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Section 91. Section Repealed and Reenacted.

Section 70A-3-604, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-604. Discharge by cancellation or renunciation.

(1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(2) Cancellation or striking out of an indorsement pursuant to Subsection (1) does not affect the status and rights of a party derived from the indorsement.

Section 92. Section Repealed and Reenacted.

Section 70A-3-605, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-3-605. Discharge of indorsers and accommodation parties.

(1) In this section, the term "indorser" includes a drawer having the obligation described in Subsection 70A-3-414 (4).

(2) Discharge, under Section 70A-3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(4) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the

modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(5) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(6) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under Subsection (5), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(7) Under Subsection (5) or (6), impairing value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value, failure to perform a duty to preserve the value of collateral owed, under Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions, or other law, to a debtor or surety or other person secondarily liable, or failure to comply with applicable law in disposing of collateral.

(8) An accommodation party is not discharged under Subsection (3), (4), or (5) unless the person entitled to enforce the instrument knows of the accommodation or has notice under Subsection 70A-3-419 (3) that the instrument was signed for accommodation.

(9) A party is not discharged under this section if the party asserting discharge consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

Section 93. Section Amended.

Section 70A-4-101, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-101. Short title.

This chapter [~~shall be~~] is known [~~and may be cited~~] as Uniform Commercial Code — Bank Deposits and Collections.

Section 94. Section Amended.

Section 70A-4-102, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-102. Applicability.

(1) To the extent that items within this chapter are also within the scope of Title 70A, Chapters 3 and 8, they are subject to [~~the provisions of~~] those chapters. [~~In the event of~~] If there is a conflict [~~the provisions of~~], this chapter [~~govern those of~~] governs Title 70A, Chapter 3 [~~but the provisions of~~] and Title 70A, Chapter 8 [~~govern those of~~] governs this chapter.

(2) The liability of a bank for action or nonaction with respect to [~~any~~] an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Section 95. Section Amended.

Section 70A-4-103, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-103. Variation by agreement — Measure of damages — Certain action constituting ordinary care.

(1) The effect of the provisions of this chapter may be varied by agreement [~~except that no agreement can~~] but the parties to the agreement may not disclaim a bank's responsibility for its [~~own~~] lack of good faith or failure to exercise ordinary care, or [~~can~~] limit the measure of damages for [~~such~~] the lack or failure[~~; but~~]. However, the parties may determine by agreement [~~determine~~] the standards by which [~~such~~] the bank's responsibility is to be measured if [~~such~~] those standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating [~~letters~~] circulars, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to Federal Reserve regulations or operating [~~letters constitutes~~] circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking

usage not disapproved by this chapter, is prima facie [~~constitutes the~~] exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter [~~does~~] is not [~~constitute~~] disapproval of other procedures [~~which~~] that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount [~~which~~] that could not have been realized by the [~~use~~] exercise of ordinary care[~~, and where~~]. If there is bad faith, it includes any other damages[~~, if any, suffered by~~] the party suffered as a proximate consequence.

Section 96. Section Amended.

Section 70A-4-104, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-104. Definitions and index of definitions.

(1) In this chapter, unless the context otherwise requires:

(a) "Account" means any deposit or credit account with a bank [~~and includes~~] including a [~~checking~~] demand, time, [~~interest or~~] savings, passbook, share draft, or similar account[;], other than the account evidenced by a certificate of deposit.

(b) "Afternoon" means the period of a day between noon and midnight[;].

(c) "Banking day" means [~~that~~] the part of [~~any~~] a day on which a bank is open to the public for carrying on substantially all of its banking functions[;] other than a Saturday, a Sunday, or a legal holiday.

(d) "Clearinghouse" means [~~any~~] an association of banks or other payors regularly clearing items[;].

(e) "Customer" means [~~any~~] a person having an account with a bank or for whom a bank has agreed to collect items [~~and includes~~] including a bank [~~carrying~~] that maintains an account [~~with~~] at another bank[;].

(f) "Documentary draft" means [~~any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;~~] a draft to be presented for acceptance or payment if specified documents, certificated securities, Section 70A-8-102, instructions for uncertificated securities, Section 70A-8-308, other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(g) "Draft" means a draft as defined in Section 70A-3-104 or an item, other than an instrument, that is an order.

(h) "Drawee" means a person ordered in a draft to make payment.

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Title 70A, Chapter 4A, Uniform Commercial Code — Funds Transfers, or a credit or debit card slip.

[~~(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;~~]

[~~(h)~~] (j) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later[;].

[~~(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;~~]

[~~(j)~~] (k) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as [~~instructed~~] agreed. A settlement may be either provisional or final[;].

[~~(k)~~] (l) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Agreement for electronic presentment," Section 70A-4-110;

(b) "Bank," Section 70A-4-105;

(c) "Collecting bank," Section 70A-4-105[.];

(d) "Depositary bank," Section 70A-4-105[.];

(e) "Intermediary bank," Section 70A-4-105[.];

(f) "Payor bank," Section 70A-4-105[.];

(g) "Presenting bank," Section 70A-4-105[.]; and

[~~"Remitting bank" Section 70A-4-105.~~]

(h) "Presentment notice," Section 70A-4-110.

(3) The following definitions in other chapters apply to this chapter:

(a) "Acceptance," Section [~~70A-3-410.~~] 70A-3-409;

(b) "Alteration," Section 70A-3-407;

(c) "Cashier's check," Section 70A-3-104;

(d) "Certificate of deposit," Section 70A-3-104[.];

[~~"Certification" Section 70A-3-411.~~]

(e) "Certified check," Section 70A-3-409;

(f) "Check," Section 70A-3-104[.];

[~~"Draft" Section 70A-3-104.~~]

(g) "Good faith," Section 70A-3-103;

(h) "Holder in due course," Section 70A-3-302[.];

(i) "Instrument," Section 70A-3-104;

(j) "Notice of dishonor," Section [~~70A-3-508.~~] 70A-3-503;

(k) "Order," Section 70A-3-103;

(l) "Ordinary care," Section 70A-3-103;

(m) "Person entitled to enforce," Section 70A-3-301;

(n) "Presentment," Section [~~70A-3-504.~~] 70A-3-501;

[~~"Protest" Section 70A-3-509.~~]

(o) "Promise," Section 70A-3-103;

[~~"Secondary party" Section 70A-3-102.~~]

(p) "Prove," Section 70A-3-103;

(q) "Teller's check," Section 70A-3-104; and

(r) "Unauthorized signature," Section 70A-3-403.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 97. Section Amended.

Section 70A-4-105, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-105. "Bank" — "Depositary bank" — "Intermediary bank" — "Collecting bank" — "Payor bank" — "Presenting bank."

In this chapter [~~unless the context otherwise requires~~]:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

[~~(a)~~] (2) "Depositary bank" means the first bank to [~~which~~] take an item [~~is transferred for collection~~] even though it is also the payor bank[;] unless the item is presented for immediate payment over the counter.

[~~(b)~~] (3) "Payor bank" means a bank [~~by which an item is payable as drawn or accepted;~~] that is the drawee of a draft.

[~~(c)~~] (4) "Intermediary bank" means [~~any~~] a bank to which an item is transferred in course of collection except the depository or payor bank[;].

[~~(d)~~] (5) "Collecting bank" means [~~any~~] a bank handling [~~the~~] an item for collection except the payor bank[;].

[~~(e)~~] (6) "Presenting bank" means [~~any~~] a bank presenting an item except a payor bank[;].

[~~(f) "Remitting bank" means any payor or intermediary bank remitting for an item.~~]

Section 98. Section Repealed and Reenacted.

Section 70A-4-106, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-106. Payable through or payable at bank — Collecting bank.

(1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(3) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

Section 99. Section Repealed and Reenacted.

Section 70A-4-107, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-107. Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which, and determining the place at or to which, action may be taken or notices or orders shall be given under this chapter and under Title 70A, Chapter 3, Uniform Commercial Code — Negotiable Instruments.

Section 100. Section Repealed and Reenacted.

Section 70A-4-108, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-108. Time of receipt of items.

(1) For the purpose of allowing time to process items, prove balances, and make the necessary entries on the books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(2) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Section 101. Section Repealed and Reenacted.

Section 70A-4-109, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-109. Delays.

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with

or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this act for a period not exceeding two additional banking days without discharge of drawers, indorsers, or liability to its transferor or a prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if:

(a) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank; or

(b) the bank exercises such diligence as the circumstances require.

Section 102. Section Enacted.

Section 70A-4-110, Utah Code Annotated 1953, is enacted to read:

70A-4-110. Electronic presentment.

(1) "Agreement for electronic presentment" means an agreement, clearinghouse rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item, a "presentment notice," rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(2) Presentment of an item in accordance with an agreement for presentment is made when the presentment notice is received.

(3) If presentment is made by presentment notice, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

Section 103. Section Enacted.

Section 70A-4-111, Utah Code Annotated 1953, is enacted to read:

70A-4-111. Statute of limitations.

An action to enforce an obligation, duty, or right arising under this chapter must be commenced within three years after the cause of action accrues.

Section 104. Section Amended.

Section 70A-4-201, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-201. Status of collecting bank as agent and provisional status of credits — Applicability of chapter — Item indorsed "pay any bank."

(1) Unless a contrary intent clearly appears and [~~prior to~~] before the time that a settlement given by a collecting bank for an item is or becomes final [~~(subsection (3) of section 70A-4-211 and sections 70a-4-212 and 70A-4-213)~~], the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and [~~valid~~] rights of recoupment or setoff. [~~When~~] If an item is handled by banks for purposes of presentment, payment [~~and~~], collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(a) [~~until the item has been~~] returned to the customer initiating collection; or

(b) [~~until the item has been~~] specially indorsed by a bank to a person who is not a bank.

Section 105. Section Amended.

Section 70A-4-202, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-202. Responsibility for collection or return — When action timely.

(1) A collecting bank must [~~use~~] exercise ordinary care in:

(a) presenting an item or sending it for presentment; [~~and~~]

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor [~~or directly to the depositary bank under subsection (2) of section 70A-4-212~~] after learning that the item has not been paid or accepted, as the case may be; [~~and~~]

(c) settling for an item when the bank receives final settlement; and

[~~(d) making or providing for any necessary protest; and~~]

[~~(e)~~] (d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under Subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice, or [~~payment acts seasonably; taking~~] settlement. Taking proper action within a reasonably longer time may [~~be seasonable~~] constitute the exercise of ordinary care, but the bank has the burden of [~~so~~] establishing timelines.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit [~~or in the possession of others~~].

Section 106. Section Amended.

Section 70A-4-203, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-203. Effect of instructions.

Subject to [~~the provisions of~~] Title 70A, Chapter 3, Uniform Commercial Code — Negotiable Investments, concerning conversion of instruments, [~~(~~]Section [~~70A-3-419)~~] 70A-3-420, and [~~the provisions of both chapter 3 and this chapter concerning~~] restrictive indorsements only, Section 70A-3-206, a collecting bank's transferor can give instructions [~~which~~] that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to [~~such~~] the instructions or in accordance with any agreement with its transferor.

Section 107. Section Amended.

Section 70A-4-204, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-204. Methods of sending and presenting — Sending directly to payor bank.

(1) A collecting bank [~~must~~] shall send items by a reasonably prompt method, taking into consideration [~~any~~] relevant instructions, the nature of the item, the number of [~~such~~] those items on hand, [~~and~~] the cost of collection involved, and the method generally used by it or others to present [~~such~~] those items.

(2) A collecting bank may send:

(a) [~~any~~] an item [~~direct~~] directly to the payor bank;

(b) [~~any~~] an item to [~~any~~] a nonbank payor if authorized by its transferor; and

(c) [~~any~~] an item other than documentary drafts to [~~any~~] a nonbank payor, if authorized by Federal Reserve regulation or operating [~~letter~~] circular, clearinghouse rule, or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Section 108. Section Repealed and Reenacted.

Section 70A-4-205, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-205. Depository bank holder of unindorsed item.

If a customer delivers an item to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 70A-3-302, it is a holder in due course; and

(2) the depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Section 109. Section Amended.

Section 70A-4-206, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-206. Transfer between banks.

Any agreed method [~~which~~] that identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 110. Section Repealed and Reenacted.

Section 70A-4-207, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-207. Transfer warranties.

(1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) the warrantor is a person entitled to enforce the item;

(b) all signatures on the item are authentic and authorized;

(c) the item has not been altered;

(d) the item is not subject to a defense or claim in recoupment, Section 70A-3-305, of any party that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred, or if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 70A-3-115 and 70A-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under Subsection (1) are made and who took the item in good faith may recover from the warrantor, as damages for breach of warranty, an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in Subsection (1) cannot be disclaimed with respect to checks. Unless notice

of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 111. Section Repealed and Reenacted.

Section 70A-4-208, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-208. Presentment warranties.

(1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) breach of warranty is a defense to the obligation of the acceptor; and

(b) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under Subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 70A-3-404 or 70A-3-405, or the drawer is precluded under Section 70A-3-406 or 70A-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser, or any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in Subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 112. Section Repealed and Reenacted.

Section 70A-4-209, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-209. Encoding and retention warranties.

(1) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Section 113. Section Repealed and Reenacted.

Section 70A-4-210, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Title 70A, Chapter 9, Uniform Commercial Code — Secured Transactions, but:

(a) no security agreement is necessary to make the security interest enforceable, Subsection 70A-9-203 (1)(a);

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Section 114. Section Repealed and Reenacted.

Section 70A-4-211, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-211. When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent that it has a security interest in an item if the bank otherwise complies with the requirements of Section 70A-3-302 on what constitutes a holder in due course.

Section 115. Section Repealed and Reenacted.

Section 70A-4-212, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-212. Presentment of notice of item not payable by, through, or at bank — Liability of drawer or indorser.

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 70A-3-501 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 70A-3-501 is received by the close of business on the day after maturity, or in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

Section 116. Section Repealed and Reenacted.

Section 70A-4-213, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-213. Medium and time of settlement by bank.

(1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearinghouse rules, and the like, or agreement. In the absence of such prescription:

(a) the medium of settlement is cash or credit to an account in a federal reserve bank of, or specified by, the person to receive settlement; and

(b) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 70A-4a-406 to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by Subsection (1) or the time of settlement is not fixed by Subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(a) presents or forwards the check for collection, settlement is final when the check is finally paid; and

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of item.

Section 117. Section Repealed and Reenacted.

Section 70A-4-214, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is repealed and reenacted to read:

70A-4-214. Right of charge-back or refund — Liability of collecting bank — Return of item.

(1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(2) A collecting bank returns an item when it is sent or delivered to the bank's customers or transferor or pursuant to its instructions.

(3) A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books, Section 70A-4-301.

(4) The right to charge-back is not affected by:

(a) previous use of a credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 118. Section Enacted.

Section 70A-4-215, Utah Code Annotated 1953, is enacted to read:

70A-4-215. Final payment of item by payor bank — When provisional debits and credits become final — When certain credits become available for withdrawal.

(1) An item is finally paid by a payor bank when the bank has first done any of the following:

(a) paid the item in cash;

(b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(2) If provisional settlement for an item does not become final, the item is not finally paid.

(3) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(4) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(5) Subject to applicable law stating a time for availability of funds, and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; and

(b) if the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(6) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

Section 119. Section Enacted.

Section 70A-4-216, Utah Code Annotated 1953, is enacted to read:

70A-4-216. Insolvency and preference.

(1) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and

the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the time with its customer or the presenting bank, which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlements becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(4) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final, and the bank suspends payments without making a settlement for the item with its customer, which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

Section 120. Section Amended.

Section 70A-4-301, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-301. Deferred posting — Recovery of payment by return of items — Time of dishonor — Return of item by payor bank.

(1) [~~Where an authorized settlement~~] If a payor bank settles for a demand item [~~(~~], other than a documentary draft[~~) received by a payor bank~~] presented otherwise than for immediate payment over the counter [~~has been made~~] before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover [~~any payment~~] if, before it has made final payment [~~(subsection (1) of section 70A-4-213)~~] and before its midnight deadline, it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is [~~held for protest or is otherwise~~] unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books, it may return [~~such~~] the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in [~~the preceding~~] Subsection (1).

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item [~~received~~] presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with [its] clearinghouse rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

Section 121. Section Amended.

Section 70A-4-302, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-302. Payor bank's responsibility for late return of item.

(1) [~~In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 70A-4-207), settlement effected or the like, if~~] If an item is presented [~~on~~] to and received by a payor bank, the bank is accountable for the amount of:

(a) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case [~~where~~] in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, [~~regardless of~~] whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to Subsection (1) is subject to defenses based on breach of a presentment warranty, Section 70A-4-208, or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

Section 122. Section Amended.

Section 70A-4-303, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-303. When items subject to notice, stop payment order, legal process or setoff — Order in which items may be charged or certified.

(1) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank, [~~whether or not effective under other rules of law~~] comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item[~~, comes too late to so terminate, suspend or modify such right or duty~~] if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the [~~bank has done any~~] earliest of the following:

(a) [~~accepted or certified~~] the bank accepts or certifies the item;

(b) [~~paid~~] the bank pays the item in cash;

(c) [settled] the bank settles for the item without [reserving] having a right to revoke the settlement [and without having such right] under statute, clearinghouse rule, or agreement;

[(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or]

[(e) become] (d) the bank becomes accountable for the amount of the item under [subsection (1)(d) of section 70A-4-213 and] Section 70A-4-302 dealing with the payor bank's responsibility for late return of items; or

(e) with respect to checks, a cutoff hour is earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day, or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to [the provisions of] Subsection (1), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order [convenient to the bank].

Section 123. Section Amended.

Section 70A-4-401, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-401. When bank may charge customer's account.

(1) [As against its customer, a] A bank may charge against [his] the account [any] of a customer an item [which] that is [otherwise] properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 70A-4-403 for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 70A-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 70A-4-402.

[(2)] (4) A bank [which] that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original [tenor] terms of [his] the altered item; or

(b) the [tenor] terms of [his] the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Section 124. Section Amended.

Section 70A-4-402, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-402. Bank's liability to customer for wrongful dishonor — Time of determining insufficiency of account.

(1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. [When the dishonor occurs through mistake liability] Liability is limited to actual damages proved[. If so proximately caused and proved damages] and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Section 125. Section Amended.

Section 70A-4-403, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-403. Customer's right to stop-payment — Burden of proof of loss.

(1) A customer [may by order to his bank stop payment of any item payable for his account but the order must be] or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at [such] a time and in [such] a manner [as to afford] that affords the bank a reasonable opportunity to act on it [prior to] before any action by the bank with respect to the item described in

Section 70A-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

[~~(2) No revocation, countermand or stop payment order relating to the payment of any check against an account of a depositor in any bank or trust company doing business in this state shall remain in effect for more than six months after the service thereof on the bank, unless the same is renewed. Renewals shall be in writing and shall be in effect for not more than six months from date of service thereof on the bank or trust company, but such renewals may be made from time to time. No order stopping payment on a check shall be valid unless the same be in writing specifically describing the check ordered stopped.~~]

(2) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a [~~binding~~] stop-payment order or order to close account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items and Section 70A-4-402.

Section 126. Section Amended.

Section 70A-4-405, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-405. Death or incompetence of customer.

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes [~~such~~] the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or [~~prior to~~] before that date unless ordered to stop payment by a person claiming an interest in the account, and [~~Section 7-3-50, Utah Code Annotated, 1953,~~] Subsection 70A-4-403 (2) shall not be applicable to the stop payment order of such person.

Section 127. Section Amended.

Section 70A-4-406, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-406. Customer's duty to discover and report unauthorized signature or alteration.

[~~(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.~~]

(1) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item, or if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to Subsection (1), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

[~~(2)~~] (4) If the bank [~~establishes~~] proves that the customer failed with respect to an item, to comply with the duties imposed on the customer by Subsection [~~(1)~~] (3), the customer is precluded from asserting against the bank:

(a) [~~his~~] the customer's unauthorized signature or any alteration on the item if the bank also [~~establishes~~] proves that it suffered a loss by reason of [~~such~~] the failure; and

(b) [~~an~~] the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank [~~after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.~~] if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the cus-

tomer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(5) If Subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with Subsection (3) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under Subsection (4) does not apply.

[~~(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).~~]

[~~(4)~~] (6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year [~~from the time~~] after the statement [~~and~~] or items are made available to the customer, [~~(~~]Subsection (1)[~~)~~], discover and report [his] the customer's unauthorized signature or any alteration on the [~~face or back of the item or does not within three years from that time discover and report any unauthorized indorsement~~] item is precluded from asserting against the bank [~~such~~] the unauthorized signature [~~or indorsement~~] or [~~such~~] alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 70A-4-207 with respect to the unauthorized signature or alteration to which the preclusion applies.

[~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.~~]

Section 128. Section Amended.

Section 70A-4-407, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-407. Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the [stop payment] order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank [shall be] is subrogated to the rights:

[~~(a)~~] (1) of any holder in due course on the item against the drawer or maker; [and]

[~~(b)~~] (2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

[~~(c)~~] (3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Section 129. Section Amended.

Section 70A-4-501, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-501. Handling of documentary drafts - Duty to send for presentment and to notify customer of dishonor.

A bank [~~which~~] that takes a documentary draft for collection [~~must~~] shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course [~~must~~], shall seasonably notify its customer of [~~such~~] the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Section 130. Section Amended.

Section 70A-4-502, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-502. Presentment of "on arrival" drafts.

[~~When~~] If a draft or the relevant instructions require presentment "on arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of [~~such~~] the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 131. Section Amended.

Section 70A-4-503, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-503. Responsibility of presenting bank for documents and goods — Report of reasons for dishonor — Referee in case of need.

(1) Unless otherwise instructed and except as provided in Title 70A, Chapter 5, Uniform Commercial Code — Letters of Credit a bank presenting a documentary draft:

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment[;], otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft, or if the presenting bank does not choose to utilize [his] the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. [But]

(2) However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for [~~such~~] those expenses.

Section 132. Section Amended.

Section 70A-4-504, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read:

70A-4-504. Privilege of presenting bank to deal with goods — Security interest for expenses.

(1) A presenting bank [~~which~~] that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under Subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Section 133. Section Amended.

Section 70A-4a-103, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-103. Payment order — Definitions.

[~~(6)~~] (1) "Beneficiary" means the person to be paid by the beneficiary's bank.

[~~(7)~~] (2) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

[~~(1)~~] (3) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(a) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(b) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(c) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

[~~(5)~~] (4) "Receiving bank" means the bank to which the sender's instruction is addressed.

[~~(4)~~] (5) "Sender" means the person giving the instruction to the receiving bank.

[~~(2)~~] (6) If an instruction complying with Subsection (3) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each of the payments.

[~~(3)~~] (7) A payment order is issued when it is sent to the receiving bank.

Section 134. Section Amended.

Section 70A-4a-104, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-104. Funds transfer — Definitions.

(1) "Funds transfer" means the series of transactions, [~~commencing~~] beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order[~~, and~~]. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

[~~(4)~~] (2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

[~~(2)~~] (3) "Originator" means the sender of the first payment order in a funds transfer.

[~~(3)~~] (4) "Originator's bank" means:

(a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(b) the originator if the originator is a bank.

Section 135. Section Amended.

Section 70A-4a-105, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-105. Other definitions.

(1) In this chapter:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means [~~any~~] a person engaged in the business of banking, and includes a savings bank, savings and loan association, credit union, [~~or~~] and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact under Subsection 70A-1-201 (8).

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Acceptance," Section 70A-4a-209;

(b) "Beneficiary," Section 70A-4a-103;

(c) "Beneficiary's bank," Section 70A-4a-103;

(d) "Executed," Section 70A-4a-301;

(e) "Execution date," Section 70A-4a-301;

(f) "Funds transfer system rule," Section 70A-4a-501;

(g) "Funds transfer," Section 70A-4a-104;

(h) "Intermediary bank," Section 70A-4a-104;

(i) "Originator," Section 70A-4a-104;

(j) "Originator's bank," Section 70A-4a-104;

(k) "Payment by beneficiary's bank to beneficiary," Section 70A-4a-405;

(l) "Payment by originator to beneficiary," Section 70A-4a-406;

(m) "Payment by sender, to receiving bank," Section 70A-4a-403;

(n) "Payment date," Section 70A-4a-401;

(o) "Payment order," Section 70A-4a-103;

(p) "Receiving bank," Section 70A-4a-103;

(q) "Security procedure," Section 70A-4a-201; and

(r) "Sender," Section 70A-4a-103.

(3) The following definitions in Chapter 4 apply to this chapter:

(a) "Clearinghouse," Section 70A-4-104;

(b) "Item," Section 70A-4-104; and

(c) "Suspends payments," Section 70A-4-104.

(4) In addition, Title 70A, Chapter 1, Uniform Commercial Code — General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 136. Section Amended.

Section 70A-4a-106, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-106. Time payment order is received.

(1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Subsection 70A-1-201 (27). A receiving bank may fix a cutoff time or times on a funds transfer business day, as a cutoff time for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to receipt of payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds transfer business day or after the appropriate cutoff time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

(2) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take any action, and the date or day does not fall on a funds transfer business day, the next day [~~which~~] that is a funds transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

Section 137. Section Amended.

Section 70A-4a-204, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(1) (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is[~~: (i)~~] not authorized and not effective as the order of the customer under Section 70A-4a-202[;], or [~~(ii)~~] not enforceable, in whole or in part, against the customer under Section 70A-4a-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment, and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund.

(b) However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not [~~to exceed~~] exceeding 90 days [from] after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order.

(c) The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under Subsection (1) may be fixed by agreement as stated in Subsection 70A-1-204 (1), but the obligation of a receiving bank to refund payment as stated in Subsection (1) may not otherwise be varied by agreement.

Section 138. Section Amended.

Section 70A-4a-205, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

70A-4a-205. Erroneous payment orders.

(1) [~~This section applies to~~] The rules listed in Subsections (2) through (5) apply if an accepted payment order was transmitted pursuant to a security procedure for the detection of error[~~, if the~~] and payment order:

(a) erroneously instructed payment to a beneficiary not intended by the sender;

(b) erroneously instructed payment in an amount greater than the amount intended by the sender; or

(c) is an erroneously transmitted duplicate of a payment order previously sent by the sender.

(2) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 70A-4a-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in [~~Subsection~~] Subsections (3) and (4).

(3) If the funds transfer is completed on the basis of an erroneous payment order described in Subsection (1)(a) or (c), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) If the funds transfer is completed on the basis of a payment order described in Subsection (1)(b), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

[~~(4)~~] (5) This subsection applies if the sender of an erroneous payment order described in Subsection (1) is not obliged to pay all or part of the order, and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order. The sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time not [~~to exceed~~] exceeding 90 days after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is obliged to reimburse the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

[~~(5)~~] (6) This section applies to amendments to payment orders to the same extent it applies to payment orders.

Section 139. Section Amended.

Section 70A-4a-207, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-207. Misdescription of beneficiary.

(1) Subject to Subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) [~~This subsection applies if~~] If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons then the following rules apply.

[~~(a)~~] (3) Except as otherwise provided in Subsection [~~(3)~~] (5), the beneficiary's bank may treat the person identified by number as the beneficiary of the order if the bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. [~~If the~~] The beneficiary's bank [~~pays the person identified by number, it has no duty to~~] need not determine whether the name and number refer to the same person.

[~~(b)~~] (4) If the beneficiary's bank pays the person identified by name or [~~if it~~] knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

[~~(3) This subsection applies to a funds transfer in which a payment order described in Subsection (2) is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number. If the originator is a bank, the originator is obliged to pay its order. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that, before acceptance of the originator's order, the originator had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence, but in any event the originator's bank satisfies the burden~~

~~of proof if it proves that, before the payment order was accepted, the originator signed a writing stating the information to which the notice relates.~~]

[~~(4) In a case governed by Subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, there is a right to recover from that person the amount paid to the extent allowed by the law governing mistake and restitution. If the originator is obliged to pay its payment order as stated in Subsection (3), the originator has the right to recover. If the originator is not obliged to pay its payment order, the originator's bank has the right to recover.~~]

(5) If the conditions listed in Subsections (5)(a), (b), and (c) are present, the rules listed in Subsections (6) and (7) apply:

(a) a payment order described in Subsection (2) is accepted;

(b) the originator's payment order described the beneficiary inconsistently by name and number; and

(c) the beneficiary's bank pays the person identified by number as permitted by Subsection (2) (a).

(6) If the originator is a bank, the originator is obliged to pay its order.

(7) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof it if proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(8) In a case governed by Subsection (2) (a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and rescission as follows:

(a) If the originator is obliged to pay its payment order as stated in Subsection (5), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 140. Section Amended.

Section 70A-4a-208, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-208. Misdescription of intermediary bank or beneficiary's bank.

(1) This [~~section~~] subsection applies [~~if~~] to a payment order [~~identifies~~] identifying an intermediary bank or beneficiary's bank by an identifying number [~~and:~~].

[~~(a) the bank is also identified by name and the name and number identify different persons; or~~]

[~~(b) the number identifies a person that is not a bank.~~]

[~~(2) This subsection applies if the payment order identifies the intermediary or beneficiary's bank only by number.~~] (a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and [~~has no duty to~~] need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

[~~(3)~~] (2) This subsection applies [~~if the~~] to a payment order [~~identifies the~~] identifying an intermediary bank or beneficiary's bank both by [~~number and~~] name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, [~~at the time~~] when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank [~~has no duty to~~] need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by Subsection [~~(3)~~] (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence[~~, but in any event the~~]. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank [~~has no duty to~~] need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Subsection 70A-4a-302 (1)(a).

Section 141. Section Amended.

Section 70A-4a-209, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-209. Acceptance of payment order.

(1) Subject to Subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to Subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) [~~the time~~] when the bank:

(i) pays the beneficiary as stated in Subsection 70A-4a-405 (1) or (2); or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) [~~the time~~] when the bank receives payment of the entire amount of the sender's order pursuant to Subsection 70A-4a-403 (1)(a) or (b); or

(c) the opening of the next funds transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within:

(i) one hour after that time; or

(ii) one hour after the opening of the next business day of the sender following the payment date if that time is later.

(d) If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day.

(e) If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. [~~No acceptance occurs~~] Acceptance does not occur under Subsection (2)(b) or (c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) (a) A payment order issued to the originator's bank cannot be accepted until:

(i) the payment date if the bank is the beneficiary's bank; or

(ii) the execution date if the bank is not the beneficiary's bank.

(b) If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Subsection 70A-4a-211 (2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Section 142. Section Amended.

Section 70A-4a-210, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-210. Rejection of payment order.

(1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender [~~by an oral, written, or electronic communication~~] orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute[~~,~~] or pay[~~, or otherwise act to carry out~~] the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not commercially reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(a) any means complying with the agreement is commercially reasonable; and

(b) any means not complying is not commercially reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order [~~notwithstanding that on the execution date~~] despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender [~~has a withdrawable credit balance~~] sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 70A-4a-211 or the day the sender receives notice or learns that the order was not executed, counting [~~that~~] the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to the bank are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 143. Section Amended.

Section 70A-4a-211, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-211. Cancellation and amendment of payment order.

(1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing[~~, or electronically~~]. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to Subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds transfer system rule allows cancellation or amendment without agreement of the bank:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order:

(i) that is a duplicate of a payment order previously issued by the sender;

(ii) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is [~~obliged~~] liable to [~~compensate~~] the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by death or legal incapacity of the sender unless the receiving bank [~~has knowledge~~] knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds transfer system rule is not effective to the extent it conflicts with Subsection (3)(b).

Section 144. Section Amended.

Section 70A-4a-212, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-212. Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank [~~may be held~~] is liable for breach of the agreement to the extent as provided in the agreement or in this chapter, but does not otherwise have any duty to accept a payment order [~~and~~] or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section [~~70A-4a-207~~] 70A-4a-209 and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

Section 145. Section Amended.

Section 70A-4a-302, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-302. Obligations of receiving bank in execution of payment order.

(1) [~~This subsection is subject to Subsections (2) through (4). If a~~] Except as provided in Subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Subsection 70A-4a-209(1), the bank has the following obligations in executing the order:

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning[~~: (i)~~] any intermediary bank or funds transfer system to be used in carrying out the funds transfer[~~;~~], or [~~(ii)~~] the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. [~~Any~~] An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order [~~that~~] it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) (a) Unless otherwise instructed, a receiving bank executing a payment order may:

(i) use any funds transfer system if use of that system is reasonable in the circumstances; and

(ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank.

(b) A receiving bank is not required to follow an instruction of the sender designating a funds transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless Subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means that are reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated if the means used are reasonable in the circumstances.

(4) Unless instructed by the sender:

(a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

Section 146. Section Amended.

Section 70A-4a-303, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-303. Erroneous execution of payment order.

(1) [~~(a)~~] A receiving bank that[~~: (i)~~] executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order[~~;~~], or [~~(ii)~~] issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order in accordance with Subsection 70A-4a-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2)(a) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order in accordance with Subsection 70A-4a-402 (3) if:

(i) that subsection is otherwise satisfied; and

(ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order.

(b) If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to [~~Subsection 70A-4a-302 (4)~~] instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Section 147. Section Amended.

Section 70A-4a-304, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-304. Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in Section 70A-4a-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not [~~to exceed~~] exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount that is refundable to the sender under Subsection 70A-4a-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Section 148. Section Amended.

Section 70A-4a-305, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-305. Liability for late or improper execution or failure to execute payment order.

(1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 70A-4a-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in Subsection (3), additional damages are not recoverable.

(2)(a) If execution of a payment order by a receiving bank in breach of Section 70A-4a-302 results in[~~: (i)~~] noncompletion of the funds transfer[~~; (ii)~~], failure to use an intermediary bank designated by the originator[~~;~~], or [~~(iii)~~] issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is [~~obliged~~] liable to [~~compensate~~] the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by Subsection (1), resulting from the improper execution.

(b) Except as provided in Subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under Subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is obliged to compensate the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under Subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of the agreement under Subsection (4) and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under Subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under Subsections (1) and (2) may not be varied by agreement.

Section 149. Section Amended.

Section 70A-4a-401, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-401. Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date [~~can~~] may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Section 150. Section Amended.

Section 70A-4a-402, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-402. Obligation of sender to pay receiving bank.

(1) This section is subject to Section 70A-4a-205.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to Subsection (5) and to Section 70A-4a-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order[~~, but that obligation is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of the sender's order~~]. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of the sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount

paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in [~~Section~~] Sections 70A-4a-204 and [~~Section~~] 70A-4a-304, interest is payable on the refundable amount from the date of payment.

(5) [~~This subsection applies if~~] If a funds transfer is not completed as stated in Subsection (3) and an intermediary bank is obliged to refund payment as stated in Subsection (4), but is unable to do so because not permitted by applicable law or because the bank suspends payments[~~.~~ A], a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Subsection 70A-4a-302 (1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain [~~or enforce~~] payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in Subsection (4).

(6) [~~Excuse of~~] The right of the sender of a payment order to be excused from the obligation [~~of the sender of a payment order~~] to pay the order as stated in Subsection (3) or to receive refund under Subsection (4) may not be varied by agreement.

Section 151. Section Amended.

Section 70A-4a-404, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

(1) Subject to Subsection 70A-4a-211 (5) and Subsections 70A-4a-405 (4) and (5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds transfer business day of the bank, payment is due on the next funds transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to give notice to the beneficiary of receipt of the order before midnight of the next funds transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to [~~give the notice to~~] notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice as required by this subsection, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in Subsection (1) may not be varied by agreement or a funds transfer system rule. The right of a beneficiary to be [~~given notice~~] notified as stated in Subsection (2) may be varied by agreement of the beneficiary or by a funds transfer system rule if the beneficiary is given notice of the rule before initiation of the funds transfer.

Section 152. Section Amended.

Section 70A-4a-405, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-405. Payment by beneficiary's bank to beneficiary.

(1) If a beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Subsection 70A-4a-404 (1) occurs when and to the extent:

(a) the beneficiary is [~~given notice~~] notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Subsection 70A-4a-404 (1) is governed by applicable principles of law that determine when an obligation is satisfied.

(3) Except as stated in Subsections (4) and (5), if [a] the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 70A-4a-406.

(5)(a) This subsection applies [if] to a funds transfer that includes a payment order transmitted over a funds transfer system that:

(i) nets obligations multilaterally among participants; and

(ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations.

(b) If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(ii) the beneficiary's bank is entitled to recover payment from the beneficiary;

(iii) no payment by the originator to the beneficiary occurs under Section 70A-4a-406; and

(iv) subject to Subsection 70A-4a-402 (5), each sender in the funds transfer is excused from its obligation to pay its payment order under Subsection 70A-4a-402 (3) because the funds transfer has not been completed.

Section 153. Section Amended.

Section 70A-4a-406, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-406. Payment by originator to beneficiary — Discharge of underlying obligation.

(1) Subject to Subsection 70A-4a-211 (5) and Subsections 70A-4a-405 (4) and (5), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2)(a) If payment under Subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(i) the payment under Subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

(b) If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank [~~pursuant to~~] under Subsection 70A-4a-404 (1).

(3) For the purpose of determining whether discharge of an obligation occurs under Subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Section 154. Section Amended.

Section 70A-4a-501, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-501. Variation by agreement and effect of funds transfer system rule.

(1) Except as otherwise provided in this chapter, rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2)(a) "Funds transfer system rule" means a rule of an association of banks:

(i) [~~an association of banks~~] governing transmission of payment orders by means of a funds transfer system of the association or rights and obligations with respect to those orders; or

(ii) [~~an association of banks~~] to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) [~~Unless the contrary is stated~~] Except as otherwise provided in this chapter, a funds transfer system rule governing rights and obligations between participating banks [utilizing] using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds transfer system rule may also govern rights and obligations of parties other than participating banks [utilizing] using the system to the extent stated in Subsection 70A-4a-404 (3), Subsection 70A-4a-405 (4), and Subsection 70A-4a-507 (3).

Section 155. Section Amended.

Section 70A-4a-502, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-502. Creditor process served on receiving bank — Setoff by beneficiary's bank.

(1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies [~~if~~] to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) [~~This subsection applies if~~] If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank the rules listed in Subsections (4) through (6) apply.

[~~(a)~~] (4) The bank may credit the beneficiary's account and the amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

[~~(b)~~] (5) The bank may credit the beneficiary's account and may allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

[~~(c)~~] (6) If creditor process with respect to the account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

[~~(4)~~] (7) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Section 156. Section Amended.

Section 70A-4a-506, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-506. Rate of interest.

(1) If, [~~pursuant to~~] under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) if the payment order is transmitted through a funds transfer system, by a funds transfer system rule.

(2) If the amount of interest is not determined by an agreement or rule as stated in Subsection (1), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 157. Section Amended.

Section 70A-4a-507, Utah Code Annotated 1953, as enacted by Chapter 294, Laws of Utah 1990, is amended to read:

70A-4a-507. Choice of law.

(1) The following rules apply unless the affected parties otherwise agree or Subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in [~~each of the subparagraphs of Subsection~~] Subsections (1)(a), (b), and (c) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3)(a) A funds transfer system rule may select the law of a particular jurisdiction to govern:

(i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer, any part of which is carried out by means of the system.

(b) A choice of law made pursuant to Subsection (a)(i) is binding on participating banks. A choice of law made pursuant to Subsection (a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, at the time the funds transfer is initiated, the beneficiary has notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under Subsection (2) and a choice of law rule under Subsection (3), the agreement under Subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds transfer system and there is inconsistency between choice of law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction [which] that has the most significant relationship to the matter in issue.

Section 158. Repealer.

Section 70A-3-120, Instruments "payable through" bank, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-121, Instruments payable at bank, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-122, Accrual of cause of action, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-208, Reacquisition, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-506, Time allowed for acceptance or payment, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-507, Dishonor — Holder's right of recourse — Term allowing representment, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-508, Notice of dishonor, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-509, Protest - Noting for protest, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-510, Evidence of dishonor and notice of dishonor, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-511, Waived or excused presentment, protest or notice of dishonor or delay therein, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-606, Impairment of recourse or of collateral, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-607, Accord and satisfaction, Utah Code Annotated 1953, as enacted by Chapter 312, Laws of Utah 1990;

Section 70A-3-701, Letter of advice of international sight draft, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-801, Drafts in a set, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-802, Effect of instrument on obligation for which it is given, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-803, Notice to third party, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965;

Section 70A-3-804, Lost, destroyed, or stolen instruments, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965; and

Section 70A-3-805, Instruments not payable to order or to bearer, Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, are repealed.

Section 159. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 238
S. B. No. 70
Passed February 12, 1993
Approved March 18, 1993
Effective May 3, 1993

RECOVERY OF COSTS OF CRIMINAL INVESTIGATIONS

By Lyle W. Hillyard

AN ACT RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR THE RECOVERY FOR THE COSTS OF CRIMINAL INVESTIGATIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
77-32A-2, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980

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

Section 1. Section Amended.

Section 77-32a-2, Utah Code Annotated 1953, as enacted by Chapter 15, Laws of Utah 1980, is amended to read:

77-32a-2. Costs — What constitute.

Costs shall be limited to expenses specially incurred by the state or any political subdivision [~~thereof~~] in investigating, searching for, apprehending, and prosecuting the defendant, including attorney fees of counsel assigned to represent the defendant pursuant to Section 77-32-2 and investigators' fees. Costs cannot include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Costs cannot include attorneys' fees [~~of~~] for prosecuting attorneys [~~or expenses incurred by the prosecution for investigators or witnesses~~].

CHAPTER 239
S. B. No. 89
Passed March 1, 1993
Approved March 18, 1993
Effective May 3, 1993

DRINKING AND WASTEWATER FUNDING

By Robert F. Montgomery

AN ACT RELATING TO WATER DEVELOPMENT; AMENDING DRINKING WATER AND WASTEWATER PROJECT FUNDING PROVISIONS TO ALLOW FOR HARDSHIP GRANTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
73-10C-2, AS LAST AMENDED BY CHAPTERS 112 AND 139, LAWS OF UTAH 1991
73-10C-4, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1991, FIRST SPECIAL SESSION
73-10C-5, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1991, FIRST SPECIAL SESSION

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

Section 1. Section Amended.

Section 73-10c-2, Utah Code Annotated 1953, as last amended by Chapters 112 and 139, Laws of Utah 1991, is amended to read:

73-10c-2. Definitions.

As used in this chapter:

(1) "Board" means the Board of Water Resources of the Department of Natural Resources.

(2) "Council" means the Water Development Coordinating Council created pursuant to Section 63-34-3, and this chapter.

(3) "Credit enhancement agreement" means any agreement entered into under this chapter between the Drinking Water Board or Water Quality Board, on behalf of the state, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of drinking water project obligations and wastewater project obligations.

(4) "Drinking Water Board" means the Drinking Water Board created in Title 19, Chapter 4, Safe Drinking Water Act.

[~~(4)~~] (5) "Drinking water or wastewater project obligation[;]" means, as appropriate, any bond, note, or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project or wastewater project.

[~~(5)~~] (6) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses, which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection pretreatment or storage facilities used primarily in connection with the system but not under its control.

[~~(6)~~] (7) "Financial assistance programs" means the various programs administered by the state whereby loans, grants, and other forms of financial assistance are made available to political subdivisions of this state to finance the costs of water and wastewater projects.

(8) "Hardship Grant Assessment" means the charge the Water Quality Board assesses to recipients of federal State Revolving Fund loans under 33 U.S.C.A. 1251 et seq., federal Clean Water Act, in lieu of or in addition to interest charged on these loans.

[~~(7)~~] (9) "Political subdivision" means any county, city, town, improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under the Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of this state.

[~~(8)~~] (10) "Security account" means the Water Development Security Account within the General Fund created by this chapter.

[~~(9)~~] (11) "Wastewater project" means any sewer, sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines and all similar systems, and works and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

[~~(10)~~] (12) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water whether surface, underground, natural, artificial, public, private, or other water resource of the state which is contained within or flows in or through the state.

(13) "Water Quality Board" means the Water Quality Board created in Title 19, Chapter 5, Water Quality Act.

Section 2. Section Amended.

Section 73-10c-4, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1991, First Special Session, is amended to read:

73-10c-4. Powers relating to security for drinking water and wastewater project obligations.

(1) On behalf of the state, the [~~board~~] Water Quality Board and the Drinking Water Board may each enter into credit enhancement agreements with political subdivisions containing terms and provisions [~~that~~] the acting board determines will reasonably improve the security for or marketability of drinking water and wastewater project obligations, including any of the following:

(a) a term providing security for drinking water and wastewater project obligations, as provided in

Subsection 73-10c-6(2)(b), by agreeing to purchase the drinking water or wastewater project obligations of, or to make loans to, political subdivisions from a subaccount of the security [subaccount] account for the purpose of preventing defaults in the payment of principal and interest on drinking water and wastewater project obligations;

(b) a term making loans to political subdivisions to pay the cost of obtaining:

(i) letters of credit from banks, savings and loan institutions, insurance companies, or other financial institutions;

(ii) municipal bond insurance; or

(iii) other forms of insurance or security to provide security for drinking water and wastewater project obligations; and

(c) a term providing other methods and assistance to political subdivisions which are reasonable and proper to enhance the marketability of or security for drinking water and wastewater project obligations.

(2) (a) The [board] Drinking Water Board and the Water Quality Board may each make loans from [the] a security account subaccount to political subdivisions to finance all or part of drinking water and wastewater project costs using the procedures established under Sections 73-10b-5, 73-10b-6, 73-10g-4, and 73-10g-5, as applicable.

(b) These loans may only be made after credit enhancement agreements, interest buy-down, and all other financing alternatives have been evaluated by the acting board and [the] that board is satisfied [that] those options are unavailable or unreasonably expensive for the subdivision requesting assistance.

(c) Loans may be made from the security account subaccount at interest rates determined by the board.

(d) Loans may not be made from the $5,000,000 appropriated to the security account subaccount by the Legislature for fiscal year 1983-84.

(3) The [board] Drinking Water Board and the Water Quality Board may each make loans or grants from the security account to political subdivisions for interest buy-down for drinking water or wastewater project obligations.

(4) To the extent money is available in the hardship grant subaccounts of the security account, the Drinking Water Board and the Water Quality Board may each make grants to political subdivisions that meet the drinking water or wastewater project loan considerations respectively, but whose projects are determined by the granting board to not be economically feasible unless grant assistance is provided.

(5) The Drinking Water and Water Quality Boards may at any time transfer money out of their respective hardship grant subaccounts of the security account to their respective loan program subaccounts.

Section 3. Section Amended.

Section 73-10c-5, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1991, First Special Session, is amended to read:

73-10c-5. Water Development Security Account created — Water Quality Security and Drinking Water Security Subaccounts created — Use — Revolving loan funds — Hardship grants.

(1) There is established a restricted account within the General Fund known as the Water Development Security Account which includes the Water Quality Security Subaccount and the Drinking Water Security Subaccount.

(2) The Water Quality Security Subaccount consists of three subaccounts:

(a) the Utah Wastewater Loan Program subaccount, which consists of:

[(a)] (i) money appropriated to [it] the subaccount by the Legislature;

[(b)] (ii) money received from the principal repayment of loans made by the Water Quality Board [pursuant to] under Sections 73-10b-5, 73-10c-4, 73-10c-6, [and] 73-10g-4, and 73-10h-4 from the Utah Wastewater Loan Program subaccount;

[(c)] (iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-5 [and], 73-10g-4, and 73-10h-4 from the Utah Wastewater Loan subaccount; and

[(d) money received under and subject to the restrictions of the federal Clean Water Act that is eligible for use in state revolving loan funds, established to meet the requirements of that act;]

[(e)] (iv) money deposited [to it] in the subaccount under any other law[; and].

[(f) all investment income derived from money in the subaccount.]

(b) The Utah State Revolving Fund for Wastewater Projects subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Wastewater Loan Program subaccount applied to meet match requirements for federal funds under 33 U.S.C.A 1251 et seq., federal Clean Water Act;

(iii) money received from the repayment of loans made by the Water Quality Board under this section from the Utah State Revolving Fund for Wastewater Projects subaccount;

(iv) money deposited in the subaccount under any other law;

(v) money received under and subject to the restrictions of 33 U.S.C.A. 1251 et seq., federal Clean Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

(vi) all investment income derived from money in the Utah State Revolving Fund for Wastewater Projects subaccount.

(c) The Hardship Grant Program for Wastewater Projects subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received as interest payment on loans made by the Water Quality Board under Sections 73-10b-5, 73-10c-4, 73-10c-6, 73-10g-4, and 73-10h-4, from the Utah Wastewater Loan Program subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Utah Wastewater Loan Program subaccount or the Hardship Grant Program for Wastewater Projects subaccount.

(3) The Drinking Water Security Subaccount [~~shall consist~~] consists of two subaccounts:

(a) the Drinking Water Loan Program subaccount, which consists of:

[~~(a)~~] (i) money appropriated to [~~it~~] the subaccount by the Legislature;

[~~(b)~~] (ii) money received from the principal repayment of loans made by the Drinking Water Board [~~pursuant to~~] under Sections 73-10b-6, 73-10c-4, 73-10c-6, [~~and~~] 73-10g-5, and 73-10h-5, from the Drinking Water Loan Program subaccount;

[~~(c)~~] (iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-6 [~~and~~], 73-10g-5, and 73-10h-5; and

[~~(d)~~] (iv) money deposited [~~to it~~] in the subaccount under any other law[~~; and~~].

[~~(e) all investment income derived from money in the subaccount.~~]

(b) the Hardship Grant Program for Drinking Water Projects subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the interest repayment of loans made by the Drinking Water Board under Sections 73-10b-6, 73-10c-5, 73-10c-6, 73-10g-5, and 73-10h-5, from the Drinking Water Loan Program subaccount;

(iii) money deposited in the subaccount under any other law; and

(iv) all investment income derived from money in the Drinking Water Loan Program subaccount or the Hardship Grant Program for Drinking Water Projects subaccount.

(4) State monies in the Water Quality Security Subaccount may be applied to meet match requirements for federal funds under [~~the~~] 33 U.S.C.A. 1251 et seq., federal Clean Water Act.

(5) If the money in the security account [~~at any time~~] is insufficient for the purposes for which the security account is established, the council shall ask the governor to request the Legislature to appropriate additional money to the account.

(6)(a) The Drinking Water Board and Water Quality Board may use the money in the appropriate security account subaccount [~~shall be used by the board~~] only to the extent of the money available in the account, for the support of drinking water projects and wastewater projects in accordance with the terms of credit enhancement agreements, grant agreements, and loan agreements.

(b) Repayments to the security account from loans made by the [~~boards~~] acting board, monies allocated by the Legislature, and interest accrued on these monies shall remain available for use by [~~the boards~~] that board for further project funding.

CHAPTER 240
S. B. No. 120
Passed March 2, 1993
Approved March 18, 1993
Effective July 1, 1993

ENVIRONMENTAL IMPAIRMENT FINANCIAL REMEDIES

By Stephen J. Rees
Craig A. Peterson

AN ACT RELATING TO ENVIRONMENT AND COMMERCE; PROVIDING THAT CERTAIN PERSONS HOLDING A SECURITY INTEREST IN CONTAMINATED PROPERTY ARE NOT CONSIDERED RESPONSIBLE PARTIES; PROVIDING RECOURSE IN CASE OF DEFAULT ON CONTAMINATED PROPERTY IN WHICH THERE IS A SECURITY INTEREST; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
19-6-302, AS LAST AMENDED BY CHAPTER 194 AND RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991
19-6-402, AS LAST AMENDED BY CHAPTERS 30, 214, AND 280, LAWS OF UTAH 1992

ENACTS:
78-37-1.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 19-6-302, Utah Code Annotated 1953, as last amended by Chapter 194 and renumbered and amended by Chapter 112, Laws of Utah 1991, is amended to read:

19-6-302. Definitions.

As used in this part:

(1)(a) "Abatement action" means to take steps or contract with someone to take steps to eliminate or mitigate the direct or immediate threat to the public health or the environment caused by a hazardous materials release.

(b) "Abatement action" includes control of the source of the contamination.

(2) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

(3) "Cleanup action" means action taken according to the procedures established in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous material from a facility.

(4) "Enforcement action" means the procedures contained in Section 19-6-306 to enforce orders, rules, and agreements authorized by this part.

(5)(a) "Facility" means:

(i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous material or substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(b) "Facility" does not mean any consumer product in consumer use or any vessel.

(6) "Fund" means the Hazardous Substances Mitigation Fund created by Section 19-6-307.

(7) "Hazardous materials" means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C., Section 6991(2).

(8) "Hazardous substances" means the definition of hazardous substances contained in CERCLA.

(9) "Hazardous substances priority list" means a list of facilities meeting the criteria established by Section 19-6-311 that may be addressed under the authority of this part.

(10) "National Contingency Plan" means the National Oil and Hazardous Substance Contingency plan established by CERCLA.

(11) "National Priority List" means the list established by CERCLA.

(12) "National priority list site" means a site in Utah that is listed on the National Priority List.

(13) "Proposed national priority list site" means a site in Utah that has been proposed by the Environmental Protection Agency for listing on the National Priority List.

(14)(a) "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into the environment that is not authorized under state or federal law, rule, or regulation.

(b) "Release" includes abandoning or discarding barrels, containers, and other closed receptacles containing any hazardous material or substance, unless the discard or abandonment is authorized under state or federal law, rule, or regulation.

(15) "Remedial action" means action taken consistent with the substantive requirements of CERCLA according to the procedures established by this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility on the hazardous substances priority list.

(16) "Remedial action plan" means a plan for remedial action consistent with the substantive requirements of CERCLA and approved by the executive director.

(17) "Remedial investigation" means a remedial investigation and feasibility study as defined in the National Contingency Plan established by CERCLA.

(18) (a) "Responsible party" means:

(i) the owner or operator of a facility;

(ii) any person who, at the time any hazardous substance was disposed of at the facility, owned or operated the facility;

(iii) any person who arranged for disposal or treatment, or arranged with a transporter for transport, for disposal, or treatment of hazardous materials or substances owned or possessed by the person, at any facility owned or operated by another person and containing the hazardous materials or substances; or

(iv) any person who accepts or accepted any hazardous materials or substances for transport to a facility selected by that person from which there is a release that causes the incurrence of response costs.

(b) For hazardous materials or substances that were delivered by a common or contract carrier to any facility, "responsible party" does not include the common or contract carrier, and the common or contract carrier may not be considered to have caused or contributed to any release at the facility that results from circumstances or conditions beyond its control.

(c) "Responsible party" under Subsections (18)(a)(i) and (ii) does not include:

(i) any person who does not participate in the management of a facility and who holds indicia of ownership:

(A) primarily to protect a security interest in a facility; or

(B) as a fiduciary or custodian under Title 75, Uniform Probate Code, or under an employee benefit plan; or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan.

(d) The exemption created by Subsection (c)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(e) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "foreclosure on property and postforeclosure activities," under this part shall be in accordance with 40 CFR 300.1100, National Contingency Plan.

(f) The terms "participation in management" and "indicia of ownership" as defined in 40 CFR 300.1100, National Contingency Plan, include and apply to the fiduciaries listed in Subsection (18)(c)(i)(B).

(19) "Scored site" means a facility in Utah that meets the requirements of scoring established by the National Contingency Plan for placement on the National Priority List.

Section 2. Section Amended.

Section 19-6-402, Utah Code Annotated 1953, as last amended by Chapters 30, 214, and 280, Laws of Utah 1992, is amended to read:

19-6-402. Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.

(4) "Certificate of compliance" means a certificate issued to a facility by the executive secretary:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part to be eligible for payments of costs from the fund regarding any release meeting the requirements of Section 19-6-424; and

(b) listing all tanks at the facility, specifying which tanks may receive petroleum and which tanks have not met the requirements for compliance.

(5) "Certificate of registration" means a certificate issued to a facility by the executive secretary demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

(6) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) either removed from the ground or filled with an inert solid material.

(7) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for all or any of the following:

(a) cleanup or removal of the release;

(b) containment or isolation of the release;

(c) treatment of the release;

(d) correction of the cause of the release;

(e) monitoring and maintenance of the site of the release;

(f) provision of alternative water supplies to persons whose drinking water has become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the executive secretary to be

more cost-effective, of persons whose dwellings have been determined by the executive secretary to be no longer habitable due to the release.

(8) "Costs" means any monies expended for:

(a) investigation;

(b) abatement action;

(c) corrective action;

(d) judgments, awards, and settlements for bodily injury or property damage to third parties;

(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.

(9) "Covered by the fund" means the requirements of Section 19-6-424 have been met.

(10) "Dwelling" means a building that is usually occupied by a person lodging there at night.

(11) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

(12) "Executive secretary" means the executive secretary of the board.

(13) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.

(14) "Fund" means the Petroleum Storage Tank Fund created in Section 19-6-409.

(15) "Fund surplus" means the amount of money in the Petroleum Storage Tank Fund in excess of $15,000,000 that is appropriated by the Legislature to the department under Section 19-6-409 to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(16) "Operator" means any person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.

(17) "Owner" means:

(a) in the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and

(b) in the case of any underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, any person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

(18) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

(19) "Petroleum storage tank" means a tank that:

(a) is underground;

(b) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c, et seq.; and

(c) contains petroleum.

(20) "Property damage" means physical injury to or destruction of tangible property including loss of use of that property.

(21) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(22) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or petroleum storage tank. The entire release is considered a single release.

(23) (a) "Responsible party" means any person who:

(i) is the owner or operator of a facility;

(ii) owns or has legal or equitable title in a facility or an underground storage tank;

(iii) owned or had legal or equitable title in the facility at the time any petroleum was received or contained at the facility; or

(iv) operated or otherwise controlled activities at the facility at the time any petroleum was received or contained at the facility.

(b) "Responsible party" as defined in [~~Subsection~~] Subsections (a)(i), (ii), and (iii) does not include:

(i) any person who[~~: (i)~~] is not an operator[;] and [~~(ii)~~], without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:

(A) primarily to protect his security interest in the facility [~~or underground storage tank.~~]; or

(B) as a fiduciary or custodian under Title 75, Uniform Probate Code, or under an employee benefit plan; or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Section 9601(20)(D), and 40 CFR 300.1105, National Contingency Plan.

(c) The exemption created by Subsection (b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "foreclosure on

property and postforeclosure activities," under this part shall be in accordance with 40 CFR 300.1100, National Contingency Plan.

(e) The terms "participation in management" and "indicia of ownership" as defined in 40 CFR 300.1100, National Contingency Plan, include and apply to the fiduciaries listed in Subsection (23)(b)(i)(B).

(24) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

(25) "Underground storage tank" means any tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c, et seq., including:

(a) a petroleum storage tank;

(b) underground pipes and lines connected to a storage tank; and

(c) any underground ancillary equipment and containment system.

(26) "Underground Storage Tank Account" means the account created in Section 19-6-405.5.

Section 3. Section Enacted.

Section 78-37-1.5, Utah Code Annotated 1953, is enacted to read:

78-37-1.5. Environmental impairment to real property security interest — Remedies of lender.

(1) As used in this section:

(a) "Borrower" means:

(i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and

(ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:

(i) of the making of the loan or extension of credit;

(ii) of the discovery of the release or threatened release by the secured lender; or

(iii) an action is brought under this section.

(c) "Hazardous matter" means:

(i) any hazardous substance or hazardous material as defined in Section 19-6-302; or

(ii) any waste or pollutant as defined in Section 19-5-102.

(d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:

(i) residential purposes; or

(ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.

(e) "Release" has the same meaning as in Section 19-6-302.

(f) "Secured lender" means:

(i) the trustee, the beneficiary, or both under a deed of trust against the real property security;

(ii) the mortgagee under a mortgage against the real property security; and

(iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.

(2) Under this section:

(a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.

(b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.

(c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:

(i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;

(ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or

(iii) in any list published by the Department of Environmental Quality under Section 19-6-311.

(3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(a) (i) waiver of its lien against:

(A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and

(B) all or any portion of the fixtures and personal property attached to the parcels; and

(ii) exercise of:

(A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and

(B) any other rights and remedies permitted by law; or

(b) exercise of:

(i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security; and

(ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.

(c) The provisions of this subsection take precedence over Section 78-37-1.

(4) (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:

(i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and

(ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.

(b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:

(i) any specialized knowledge or experience of the secured lender;

(ii) the relationship of the purchase price to the value of the real property security if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the real property security;

(iv) the obviousness of the presence or likely presence of contamination at the real property security; and

(v) the ability to detect the contamination by appropriate inspection.

(5)(a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the secured lender shall:

(i) provide written notice of the default to the borrower; and

(ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.

(b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.

(6) (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.

(b) Under this subsection the amount of the judgment of the secured lender under Subsection (3)(a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.

(c) The borrower may waive or modify the foreclosure requirements of this subsection if the waiver or modification is in writing and signed by the borrower after default.

(7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993.

Section 4. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 241
S. B. No. 139
Passed March 1, 1993
Approved March 18, 1993
Effective May 3, 1993

EMPLOYMENT SECURITY ACT AMENDMENTS

By Howard A. Stephenson

AN ACT RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING THE EMPLOYMENT SECURITY ACT TO BRING IT INTO CONFORMITY WITH THE ADMINISTRATIVE PROCEDURES ACT; AMENDING, TO CONFORM TO FEDERAL REQUIREMENTS, ELIGIBILITY FOR BENEFITS AFTER DISCHARGE FOR CRIMINAL MISCONDUCT; RENUMBERING SUBSECTIONS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-4-5, AS LAST AMENDED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-6, AS LAST AMENDED BY CHAPTER 255, LAWS OF UTAH 1990
35-4-7.5, AS LAST AMENDED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-9, AS LAST AMENDED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-10, AS LAST AMENDED BY CHAPTER 255, LAWS OF UTAH 1990
35-4-15, AS LAST AMENDED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-17, AS LAST AMENDED BY CHAPTERS 81 AND 92, LAWS OF UTAH 1987
35-4-22, AS LAST AMENDED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-22.3, AS ENACTED BY CHAPTER 174, LAWS OF UTAH 1991
35-4-22.4, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 35-4-5, Utah Code Annotated 1953, as last amended by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-5. Ineligibility for benefits.

An individual is ineligible for benefits or for purposes of establishing a waiting period:

[~~(a)~~] (1) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount. A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall, in cooperation with the employer, consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

Notwithstanding any other provision of this section, a claimant who has left work voluntarily to accompany, follow, or join his or her spouse to or in a new locality does so without good cause for purposes of this subsection.

[~~(b)(1)~~] (2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the commission, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

[~~(2)~~] (b) For the week in which he was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with his work as shown by the facts, together with his admission, or as shown by his conviction of that crime in a court of competent jurisdiction [~~of that crime~~] and for the 51 next following weeks [~~and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount. If by reason of his alleged dishonesty or crime in connection with his work, the individual is held in legal custody or is free on bail, any determination of his eligibility shall be held in abeyance pending his release or conviction~~]. Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

[~~(c)~~] (3) If the commission finds that the claimant has failed without good cause to properly apply for available suitable work, to accept a referral to suitable work offered by the employment office, or to accept suitable work offered by an employer or the employment office. The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount. A claimant shall not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

[~~(1)~~] (a) In determining whether or not work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safe-

ty, and morals, his physical fitness and prior training, his prior earnings and experience, his length of unemployment and prospects for securing local work in his customary occupation, the wages for similar work in the locality, and the distance of the available work from his residence.

Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The commission shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

[~~(2)~~] (b) Notwithstanding any other provision of this chapter, no work is suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

[~~(d)~~] (4) For any week in which the commission finds that his unemployment is due to a stoppage of work which exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed.

[~~(1)~~] (a) If the commission finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the commission finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state of Utah or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits.

[~~(2)~~] (b) If the commission finds that the employer, his agent or representative has conspired, planned, or agreed with any of his workers, their agents or representatives to foment a strike, that strike shall not render the workers ineligible for benefits.

[~~(3)~~] (c) A worker may receive benefits if, subsequent to his unemployment because of a strike as defined in Subsection (4), he has obtained employment and has been paid wages of not less than the amount specified in Subsection 35-4-3 (d) and has worked as specified in Subsection 35-4-4 (f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights shall not include any wages he earned from the employer involved in the strike.

[~~(e)~~] (5) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks. The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of this subsection. Each individual found in violation of this subsection shall repay to the commission the amount of benefits the claimant actually received and, as a civil penalty, an amount equal to the benefits the claimant received by direct reason of his fraud. The penalty amount shall be regarded as any other penalty under this chapter. These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35-4-17 (c) and (e). A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this subsection remains unpaid.

Determinations under this subsection shall be made only upon a sworn written admission of the claimant or after due notice and recorded hearing. If a claimant waives the recorded hearing, a determination shall be made based upon all the facts which the commission, exercising due diligence, has obtained. Determinations by the commission are appealable in the manner provided by this chapter for appeals from other benefit determinations.

[~~(f)~~] (6) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to those unemployment benefits, this disqualification does not apply.

[~~(g) (1)~~] (7) (a) For any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of school attendance, unless the major portion of his wages for insured work during his base period was for services performed while attending school. Notwithstanding the foregoing provisions of this subsection, an otherwise eligible individual is not ineligible to receive benefits while attending a part-time training course. An otherwise eligible individual shall not be denied benefits for any week because he is in training with the approval of the commission, and that individual is not ineligible to receive benefits by reason of nonavailability for work, failure to search for work, refusal of suitable work, or failure to apply for or to accept suitable work with respect to any week he is in training with the approval of the commission.

[~~(2)~~] (b) Notwithstanding any other provision of this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training approved under Section 236 (a)(1) of the Trade Act of 1974, nor shall he be denied benefits for

leaving work to enter that training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.

For purposes of this subsection, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for that work at not less than 80% of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

[~~(h)~~] (8) For any week with respect to which he is receiving, has received, or is entitled to receive remuneration in the form of:

[~~(1)~~] (a) wages in lieu of notice, or a dismissal or separation payment; or

[~~(2)~~] (b) accrued vacation or terminal leave payment.

If the remuneration is less than the benefits which would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35-4-3 (c).

[~~(i)(1)~~] (9) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in any such capacity for an educational institution in the second of the academic years or terms.

[~~(2)~~] (b) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and which week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

[~~(3)~~] (c) With respect to any services described in Subsection [~~(i)(1) or (2)~~] (9)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

[~~(4)~~] (d) With respect to services described in Subsection [~~(i)(1) or (2)~~] (9)(a) or (b), compensation payable on the basis of those services as provided in Subsection [~~(i)(1), (2), or (3)~~] (9)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this Subsection [~~(i)(4)~~] (9)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection [~~(i)(1) or (2)~~] (9)(a) or (b) to an educational institution.

Benefits based on service in employment, defined in [~~Section~~] Subsections 35-4-22.3(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter.

[~~(j)~~] (10) For any week which commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to participate in the first of those seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

[~~(k)(1)~~] (11)(a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or, was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of [~~Subsection 203(a)(7) or~~] Subsection 212 (d)(5) of the Immigration and Nationality Act.

[~~(2)~~] (b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

[~~(3)~~] (c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

Section 2. Section Amended.

Section 35-4-6, Utah Code Annotated 1953, as last amended by Chapter 255, Laws of Utah 1990, is amended to read:

35-4-6. Claims for benefits.

[(a)] (1) Claims for benefits shall be made and shall be determined by the commission or its authorized representative or referred to an administrative law judge in accordance with [~~such regulations~~ as] rules adopted by the commission [~~shall prescribe~~]. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning benefit rights, claims for benefits, and such other matters relating to the administration of this chapter as the commission may by [~~regulation~~] rule prescribe. Each employer shall supply to [~~such~~] these individuals copies of the printed statements or other materials relating to claims for benefits when and as the commission may by [~~regulation~~] rule prescribe. The printed statements and other materials shall be supplied by the commission to each employer without cost to the employer.

Continuing Jurisdiction.

[~~(b)~~] (2) Jurisdiction over benefits shall be continuous. Upon its own initiative or upon application of any party affected, the commission or its authorized representatives may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits. The review shall be conducted in accordance with [~~such~~] rules [~~as~~] adopted by the commission [~~may prescribe~~] and may result in a new decision which may award, terminate, continue, increase, or decrease benefits, or may result in a referral of the claim to an appeal tribunal. Notice of any redetermination shall be promptly given to the party applying for redetermination and to other parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. The new order shall be subject to review and appeal as provided in this section. [~~No~~] A review [~~shall~~] may not be made after one year from the date of the original determination, except in cases of fraud[~~,~~] or claimant fault[~~,~~] as provided in Subsection [~~(d)~~] (4).

Notice of Determination of Claims.

[~~(c)~~] (3) The claimant or any other party entitled to notice of a determination as provided may file an appeal from [~~such~~] the determination with an administrative law judge within ten days after the date of mailing of the notice to his last known address or, if the notice is not mailed, within ten days after the date of delivery of the notice.

Appeal — Notice.

Unless the appeal or referral is withdrawn with his permission, the administrative law judge, after affording the parties reasonable opportunity for a fair hearing, shall make findings and conclusions and on that basis affirm, modify, or reverse the determination[~~; provided, the~~]. The administrative law judge shall first give notice of the pendency of an appeal to the commission, which may then be a party to the proceedings.

Copy of Decision.

The parties shall be promptly notified of the administrative law judge's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision [~~and the~~]. The decision [shall be deemed] is considered to be final unless, within [ten] 30 days after the date of mailing of notice to the party's last known address, or in the absence of mailed notice, within ten days after the delivery of the notice, further appeal is initiated [~~pursuant to the provisions of~~] under Section 35-4-10.

Repayment of Benefits Fraudulently Received.

[~~(d)~~] (4) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall [~~be liable to~~] repay the sum to the commission for the fund. If any person, by reason of his own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section[~~,~~] he has been found not entitled, he shall [~~be liable to~~] repay the sum, or shall, in the discretion of the commission, [~~be liable to~~] have the sum deducted from any future benefits payable to him, or both. In any case in which under this subsection a claimant is liable to repay to the commission any sum for the fund, the sum shall be collectible in the same manner as provided for contributions due under this chapter.

Overpayment of Benefits without Fault of Recipient.

[~~(e)~~] (5) If any person has received any sum as benefits under this chapter to which under a redetermination or decision he was not entitled, and it has been found that he was without fault in the matter, he is not liable to repay the sum but shall be liable to have the sum deducted from any future benefits payable to him. The commission may waive recovery of the overpayment if it is shown to the satisfaction of the commission that the claimant has the inability to meet more than the basic needs of survival for an indefinite period lasting at least several months.

Section 3. Section Amended.

Section 35-4-7.5, Utah Code Annotated 1953, as last amended by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-7.5. Nonprofit organizations — Contributions — Payments in lieu of contributions.

[~~(a)~~] (1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code which is exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

[~~(1)~~] (a) Any nonprofit organization which is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of Section 35-4-7.2, unless it elects in accordance with this paragraph to pay to the commission for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individu-

als for weeks of unemployment which begin during the effective period of [~~such~~] this election;

[~~(2)~~] (b) Any nonprofit organization which is or becomes subject to this chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter. The nonprofit organization shall file a written notice of its election with the commission not later than 30 days immediately following the date that the commission gives notice to the organization that it is subject to this chapter;

[~~(3)~~] (c) Any nonprofit organization which makes an election in accordance with Subsection [~~(2)~~] (b) shall continue to be liable for payments in lieu of contributions until it files with the commission a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which [~~such~~] this termination shall first be effective;

[~~(4)~~] (d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commission, not later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions. [~~Such~~] This election [~~shall~~] is not [~~be~~] terminable by the organization for that year or the next year;

[~~(5)~~] (e) The commission may, for good cause, extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive but not with respect to benefits paid prior to January 1, 1970; and

[~~(6)~~] (f) The commission, in accordance with its rules, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes, and of any termination of [~~such~~] this election. [~~Such~~] These determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35-4-10.

[~~(b)~~] (2) Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph including either Subparagraph [~~(1)~~] (a) or Subparagraph [~~(2)~~] (b).

[~~(1)~~] (a) At the end of each calendar month, or at the end of any other period as determined by the commission, the commission shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during [~~such~~] this month or other prescribed period that is attributable to service in the employ of such organization.

[~~(2)(A)~~] (b)(i) Every nonprofit organization which has elected payments in lieu of contributions may request permission to make payments under one of the methods provided in this subparagraph. The method selected becomes effective upon approval by the commission. At the end of each calendar month, or at the end of such other period as determined by the commission, the commission shall bill each organization for an amount representing the organization's choice of the following:

[~~(i)~~] (A) for 1972, 0.1% of its total payroll for 1971;

[~~(ii)~~] (B) for years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the commission shall determine, based upon the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year; or

[~~(iii)~~] (C) for any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during [~~such~~] the year as the commission shall determine.

[~~(B)~~] (ii) At the end of each contribution year, the commission may modify the monthly or other period's percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

[~~(C)~~] (iii) At the end of each contribution year, the commission shall determine whether the total of payments for [~~such~~] the year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during [~~such~~] the contribution year based on wages attributable to service in the employ of [~~such~~] the organization. Each nonprofit organization whose total payments for [~~such~~] the year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with Subparagraph [~~(3)~~] (c). If the total payments exceed the amount so determined for the contribution year, all or a part of the excess may, at the discretion of the commission, be refunded from the fund or retained in the fund as part of the payments which may be required for the next contribution year.

[~~(3)~~] (c) Payment of any bill rendered under Subparagraph [~~(1)~~] (a) or Subparagraph [~~(2)~~] (b) shall be made not later than 30 days after [~~such~~] the bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subparagraph [~~(5)~~] (e).

[~~(4)~~] (d) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

[~~(5)~~] (e) The amount due specified in any bill from the commission shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commission or an appeal to the board of review, setting forth the grounds for [~~such~~] the application or appeal. The commission shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a

redetermination in any case in which [such] the application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the board of review, setting forth the grounds for the appeal. Proceedings on appeal to the board of review from the amount of a bill rendered under this subsection or a redetermination of [such] the amount shall be in accordance with the provisions of Subsection 35-4-10 [(d)] (4), and the decision of the board of review shall be subject to the provisions of Subsection 35-4-10 [(i)] (9).

[(6)] (f) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35-4-17 (a), attach to past due contributions.

[(e)] (3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection [(b)] (2), the commission may terminate [such] the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and [such] this termination shall be effective for that and the next contribution year.

[(d)] (4) In the discretion of the commission, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the commission. The amount of [such] the deposit shall be determined in accordance with the provisions of this paragraph.

[(1)] (a) The amount of the deposit required by this paragraph shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35-4-22.3 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of [such] these four calendar quarters, the amount of the deposit shall be as determined by the commission.

[(2)] (b) Any deposit of money in accordance with this paragraph shall be retained by the commission in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as [hereinafter] provided in this section. The commission may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection [(b)(6)] (2)(f). The commission shall require the organization within 30 days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The commission may, at any time, review the adequacy of the deposit made by any organization. If, as a result of [such] this review, the commission determines that an adjustment is necessary, it shall require the organization to make additional deposit within 30 days of written notice of the commission's determination or shall return to it [such] any portion of the deposit [as] the commission no longer considers necessary, as deemed appropriate.

[(3)] (c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the commission may terminate [such] the organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective. However, the commission may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

[(e)] (5) Each employer liable for payments in lieu of contributions shall pay to the commission for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of [such] the employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of [such] these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for such payments shall be determined in accordance with the provisions of Subsection [(e)(1) or (e)(2)] (5)(a) or (b).

[(1)] (a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

[(2)] (b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by [such] the employer bear to the total base-period wages paid to the individual by all of his base-period employers.

[(f)] (6) Two or more employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and [Section] Subsection 35-4-22.3(2)(d), may file a joint application to the commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of [such] these employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this paragraph. Upon approval of the application, the commission shall establish a group account for [such] these employers effective as of the beginning of the calendar quarter in which it re-

ceives the application and shall notify the group's representative of the effective date of the account. [~~Such~~] This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the commission or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The commission shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this paragraph, for addition of new members to, and withdrawal of active members from, [~~such~~] these accounts, for the determination of the amounts that are payable under this paragraph by members of the group, and the time and manner of [~~such~~] these payments.

Section 4. Section Amended.

Section 35-4-9, Utah Code Annotated 1953, as last amended by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-9. Unemployment compensation fund — Administration — Contents — Treasurer and custodian — Separate accounts — Use of money requisitioned — Advances under Social Security Act.

[~~(a)~~] (1) There is [~~hereby~~] established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this [~~act~~] chapter. This fund shall consist of [~~(1)~~] the following moneys, all of which shall be mingled and undivided:

(a) all contributions collected under this [~~act~~] chapter, less refunds of contributions made from the clearing account under [~~Section~~] Subsection 35-4-7.3(5); [~~(2)~~]

(b) interest earned upon any moneys in the fund; [~~(3)~~]

(c) any property or securities acquired through the use of moneys belonging to the fund; [~~(4)~~]

(d) all earnings of the property or securities; [~~(5)~~]

(e) all money credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act as amended; and [~~(6)~~]

(f) all other moneys received for the fund from any other source. [~~All moneys in the fund shall be mingled and undivided.~~]

[~~(b)~~] (2) The state treasurer shall be the treasurer and custodian of the fund, and shall administer this fund in accordance with the directions of the commission and shall pay all warrants drawn upon it by the commission or its duly authorized agent in accordance with such [~~regulations~~] rules as the commission shall prescribe. The commission shall maintain within the fund three separate accounts: [~~(1)~~] (a) a clearing account, [~~(2)~~] (b) an unemployment trust fund account, and [~~(3)~~] (c) a benefit account. All moneys payable to the fund, upon receipt by the commission, shall be immediately deposited in the clearing account. All moneys in the clearing account after clearance shall, except as [~~herein~~] otherwise provided in this section, be deposited immediately with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained under Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds of contributions payable under [~~Sections~~] Subsections 35-4-7.3(5) and 35-4-22.4(2) may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States treasury. Moneys in the clearing and benefit accounts may be deposited in any depository bank in which general funds of this state may be deposited, but no public deposit insurance charge or premium [~~shall~~] may be paid out of the fund. Moneys in the clearing and benefit accounts [~~shall~~] may not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state. Collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation fund provided for under this [~~act~~] chapter. The liability on the official bond shall be effective immediately upon the enactment of this provision, and that liability shall exist in addition to the liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

[~~(c) (1)~~] (3) (a) Moneys requisitioned from this state's account in the unemployment trust fund shall, except as [~~hereinbelow~~] set forth in this section, be used exclusively for the payment of benefits and for refunds of contributions under [~~Sections~~] Subsections 35-4-7.3(5) and 35-4-22.4(2). The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account [~~therein~~] in the fund, as it [~~deems~~] considers necessary for the payment of those benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer shall deposit the moneys in the benefit account and shall pay benefits and refunds from the account by means of warrants issued by the commission or its duly authorized agent in accordance with regulations prescribed by the commission. Expenditures of these moneys in the benefit account and

refunds from the clearing account [shall] are not [be] subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

[(2)] (b) Moneys in this state's account in the unemployment trust fund which were collected under the "Federal Unemployment Tax Act" and credited to this state under Section 903 of the Social Security Act, as amended may be requisitioned from this state's account and used in the payment of expenses incurred by the commission for the administration of this state's unemployment law and public employment offices, if the expenses are incurred and the withdrawals are made only after and under a specific appropriation of the Legislature which specifies: [(A)] (i) The purposes and amounts, and [(B)] (ii) that the moneys may not be obligated after the two-year period which began on the date of the enactment of the appropriation law, and [(C)] (iii) that the total amount which may be used during a fiscal year shall not exceed the amount by which the aggregate of the amounts credited to this state's account under section 903 of the Social Security Act, as amended, during the fiscal year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state for administration during the same 35 fiscal years. For the purpose of [(2)(C)] Subsection (b)(iii), amounts used during any fiscal year shall be charged against equivalent amounts which were first credited and which have not previously been so charged. No amount used during any fiscal year may be charged against any amount credited during a fiscal year earlier than the 34th preceding fiscal year. Except as appropriated and used for administrative expenses, as [hereinabove] provided in this section, moneys transferred to this state under Section 903 of the Social Security Act as amended, may be used only for the payment of benefits. Any moneys used for the payment of benefits may be restored for appropriation and use for administrative expenses, upon request of the governor, under Section 903(c) of the Social Security Act. Money appropriated as provided [herein] in this section for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under the appropriation and, upon requisition, shall be deposited in the employment security administration fund from which the payments shall be made. The commission shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. Money deposited shall, until expended, remain a part of the unemployment fund and, if not expended, shall be returned promptly to the account of this state in the unemployment trust fund. The moneys available by reason of [such] this legislative appropriation shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the Employment Security Act.

[(3)] (c) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund, as provided in Subsection [(b)] (2).

[(d)] (4) The provisions of Subsections [(a), (b) and (c)] (1), (2), and (3), to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by the state for benefit purposes, together with this state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals. If and when the unemployment trust fund ceases to exist, or the separate book account is no longer maintained, all moneys belonging to the unemployment compensation fund of this state shall be administered by the commission as a trust fund for the purpose of paying benefits under this [act] chapter, and the commission shall have authority to hold, invest, transfer, sell, deposit, and release the moneys, and any properties, securities, or earnings acquired as an incident to the administration. The moneys shall be invested in the following readily marketable classes of securities; bonds or other interest-bearing obligations of the United States of America, of this state, or of any county, city, town, or school district of this state, at current market prices for the bonds. The investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

Section 5. Section Amended.

Section 35-4-10, Utah Code Annotated 1953, as last amended by Chapter 255, Laws of Utah 1990, is amended to read:

35-4-10. Review of decision or determination — Administrative law judge — Board of review — Effect of actions before unemployment insurance appeals tribunal — Witness fees — Judicial review by Court of Appeals — Exclusive procedure.

[(a)] (1) A review of a decision or determination involving contribution liability or applications for refund shall be made by the commission or its authorized representative in accordance with the provisions of this chapter. The decision of the representative conducting the review is considered the decision of the commission. The commission or its authorized representative conducting the review may refer the matter to an administrative law judge, may decide the application for review on the basis of any facts and information as may be obtained, or may, in its discretion, hear argument or hold a hearing to secure further facts. After the review, notice of the decision shall be given to the employing unit. The decision made pursuant to the review is the final decision of the commission unless, within ten

days after the date of notification or mailing of the decision, a further appeal is initiated under the provisions of this section.

[~~(b)~~] (2) Within ten days after the mailing or personal delivery of a notice of a determination or decision rendered following a review under Subsection [~~(a)~~] (1), an employing unit may appeal to an administrative law judge by filing a notice of appeal. The administrative law judge shall give notice of the pendency of the appeal to the commission, which is then a party to the proceedings. After affording the parties reasonable opportunity for a fair hearing, he shall make findings and conclusions and on that basis affirm, modify, or reverse the determination. The parties shall be promptly notified of the administrative law judge's decision and furnished a copy of the decision and findings. The decision is the final decision of the commission unless within [~~ten~~] 30 days after the date of mailing of notice to the parties' last known addresses or in the absence of a mailing within ten days after the delivery of notice, further appeal is initiated under [~~the provisions of~~] this section.

[~~(c)(1)~~] (3)(a) Each appeal referee employed by the Department of Employment Security shall be known as an administrative law judge.

[~~(2)~~] (b) The commission shall appoint one or more impartial administrative law judges consisting in each case of a salaried administrative law judge selected in accordance with Subsection 35-4-11 (4)(d) to hear and decide referrals or appeals relating to claims for benefits or to decisions affecting employing units referred to. No administrative law judge may participate in any case in which he is an interested party. Each decision of an administrative law judge shall represent his independent judgment.

[~~(d)(1)~~] (4)(a) The governor shall appoint a review board consisting of one or more panels, composed of three impartial members to hear and decide referrals and appeals from the decision of an administrative law judge. The members shall be: one industrial commissioner, one member who is representative of employers, and one member who is representative of employees. In addition, the governor shall appoint two alternates who are representative of the employers and two alternates who are representative of employees. The alternates shall serve in the absence of the regular member or members. The commissioner shall be the chairman, and all records on appeals shall be maintained in the offices of the commission, those records to include an appeal docket showing the receipt and disposition of the appeals on review. In the absence of a regular member the chairman shall designate an alternate. Every case shall be decided by a full three-member board. The members and the alternates shall be appointed for two-year terms commencing July 1 and ending June 30. The members of the board other than the commissioner shall be paid a per diem for each day of attendance necessary, and expenses incurred, in the performance of their duties, as provided by law. At the board's request the legal counsel of the commission shall act as an impartial aid to the board in outlining the facts and the issues.

[~~(2)~~] (b) The board of review within the time specified for the filing of appeals may allow an appeal from a decision of an administrative law judge on application filed within the designated time by any party entitled to notice of the decision. An appeal filed by the party shall be allowed as of right if the decision did not affirm a prior decision. Upon appeal the board of review may on the basis of the evidence previously submitted in the case, or upon the basis of any additional evidence it requires, affirm, modify, or reverse the findings, conclusions, and decision of the administrative law judge. The board of review shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions, and the decision is final unless within [~~ten~~] 30 days after mailing of notice to the parties' last known addresses or in the absence of mailing within [~~ten~~] 30 days after the delivery of the notification further appeal is initiated under the provisions of this section. However, upon denial by the board of review of an application for appeal from the decision of an administrative law judge the decision of the administrative law judge is considered to be a decision of the board of review within the meaning of this subsection for purposes of judicial review and is subject to judicial review within the time and in the manner provided.

[~~(e)~~] (5) The manner in which disputed matters are presented, the reports required from the claimant and employing units, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not the rules conform to common-law or statutory rules of evidence and other technical rules of procedure. When the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the same time and place for considering each matter may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the administrative law judge having jurisdiction of the proceedings, the consolidation would not be prejudicial to any party. A full and complete record shall be kept of all proceedings in connection with a disputed matter. All testimony at any hearing upon a disputed matter shall be reported but need not be transcribed unless the disputed matter is appealed.

[~~(f)(1)~~] (6)(a) Except for reconsideration of any determination under the provisions of Subsection 35-4-6 [~~(b)~~] (2), any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under this section which has become final, is conclusive for all the purposes of this chapter as between the commission, the claimant, and all employing units that had notice of the determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of this [act] chapter and is not subject to collateral attack by any employing unit, irrespective of notice.

[~~(2)~~] (b) Any findings of fact or law, judgment, conclusion, or final order made by an unemployment insurance hearing officer, administrative law judge, or any person with the authority to make findings of fact or law in any action or proceeding before the unemployment insurance appeals tribunal, is not conclusive or binding in any separate or subsequent action or proceeding, between an individual and his present or prior employer, brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

[~~(g)~~] (7) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The fees are part of the expense of administering this [~~act~~] chapter.

[~~(h)~~] (8) Any decision in the absence of an appeal as provided becomes final [~~ten days after the date of notification or mailing~~] upon issuance and judicial review may be permitted only after any party claiming to be aggrieved has exhausted his remedies before the commission and board of review as provided by this chapter. The commission is a party to any judicial action involving any decisions and shall be represented in the judicial action by any qualified attorney employed by the commission and designated by it for that purpose or at the commission's request by the attorney general.

[~~(i)~~] (9) Within [~~ten~~] 30 days after the decision of the board of review has become final, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the board of review for the review of its decision, in which action any other party to the proceeding before the board of review shall be made a defendant. In that action a petition, which shall state the grounds upon which a review is sought, shall be served upon a member of the board of review or upon that person the board of review designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the board of review shall mail one copy to each defendant. With its answer, the board of review shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision. The board of review may also, in its discretion, certify to the court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the commission and the board of review as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law. It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the commission or the board of review and no bond is required for entering the appeal. Upon final determination of the judicial proceeding, the commission shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.

[~~(j)~~] (10) The procedure provided for hearings and decisions with respect to any decision or determination of the commission affecting claimants or employing units under this [~~act~~] chapter is the sole and exclusive procedure notwithstanding any other provision of this [~~act~~] chapter.

Section 6. Section Amended.

Section 35-4-15, Utah Code Annotated 1953, as last amended by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-15. Special administrative expense fund.

There is [~~hereby~~] created in the state treasury a special fund to be known as the special administrative expense fund. All interest and penalties collected under this [~~act~~] chapter, less refunds made under [~~Section~~] Subsection 35-4-7.3(5), shall be paid into this fund from the clearing account of the fund at the end of each calendar month. Any voluntary contributions tendered as a contribution to this fund and any other moneys received for that purpose shall be paid into this fund. The moneys shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of those moneys be available to finance expenditures for the administration of the Employment Security Act. Nothing in this section shall prevent those moneys from being used as a revolving fund to cover expenditures, necessary and proper under the act, for which federal funds have been duly requested but not yet received subject to the charging of those expenditures against the funds when received. The moneys in this fund shall be deposited, administered, and dispersed in accordance with the directions of the Legislature. The moneys shall be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the employment security administration fund, and may be used for the payment of refunds of interest and penalties under [~~Section~~] Subsection 35-4-7.3(5). The moneys shall be available either to satisfy the obligations incurred by the commission directly or by requesting the state treasurer to transfer the required amounts from the special administrative expense fund to the employment security administration fund. The moneys in this fund are hereby specifically made available to replace within a reasonable time any moneys received by this state under Section 302 of the Federal Social Security Act as amended, which because of any action of contingency have been lost or have been expended for purposes other than or in amounts in excess of those necessary for the proper administration of the Employment Security Act. The moneys in this fund shall be continuously available to the commission for expenditure in accordance with this section and shall not lapse at any time or be transferred to any other fund except as directed by the Legislature. The state treasurer shall pay all warrants drawn upon it by the commission or its duly authorized agent in accordance with such [~~regulations~~] rules as the commission shall prescribe. Moneys in this fund shall not be commingled with other state funds, unless authorized by the Legislature to be deposited in the state general fund, but shall be maintained in a separate account on the books of a depository bank.

The moneys, if deposited in a separate account shall be secured by the depository in which they are held to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the special administrative expense fund provided for under this [act] chapter. Liability on the official bond shall exist in addition to any liability upon any separate bond existent on the effective date of this provision or which may be given in the future. All sums recovered on any surety bond losses sustained by the special administrative expense fund shall be deposited in that fund or in the General Fund if so directed by the Legislature.

Section 7. Section Amended.

Section 35-4-17, Utah Code Annotated 1953, as last amended by Chapters 81 and 92, Laws of Utah 1987, is amended to read:

35-4-17. Collection of contributions — Unpaid contributions to bear interest.

(a) (1) Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the commission.

(2) Contribution reports not made and filed by the date on which they are due as prescribed by the commission shall be subject to a penalty to be assessed and collected in the same manner as contributions due hereunder equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period. If a report is filed after such time and it is shown to the satisfaction of the commission or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no such addition shall be made to the contribution.

(3) If contributions are unpaid after ten days from the date of the mailing or personal delivery by the commission or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due hereunder, a penalty equal to 5% of the contribution due. No such penalty shall attach if within ten days after the mailing or personal delivery, arrangements for payment have been made with the commission, or its authorized representative, and payment is made in accordance with those arrangements.

(4) Benefit overpayments, contributions, interest, and penalties, uncollected three years after they become due, may be charged as uncollectable and removed from the records of the commission if no assets belonging to the liable person and subject to attachment can be found, and in the opinion of the commission there is no likelihood of collection at a future date. This does not apply to benefit overpayments under Subsection 35-4-5 [(e)] (5).

(5) Interest and penalties collected in accordance with the provisions of this section shall be paid into the Special Administrative Expense Fund.

(6) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78, Chapter 12.

(b) If an employer fails to file a report when prescribed by the commission for the purpose of determining the amount of his contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the commission, the commission or its authorized representative may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of such information as it may be able to obtain. The commission shall give written notice of the determination to the employer. The determination is considered correct unless the employer shall, within ten days after mailing or personal delivery of notice of the determination, apply to the commission for a review of the determination as provided in Section 35-4-10, or unless the commission or its authorized representative of its own motion shall review the determination. The amount of contribution so determined shall be subject to penalties and interest as provided in Subsection (a).

(c) If, after due notice, any employer defaults in any payment of contributions, interest, or penalties thereon, the amount due shall be collectible by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of the action. Civil actions brought under this section to collect contributions, interest or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(d) In the event of any distribution of an employer's assets under an order of any court under the laws of this state, including any receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding. In the event of an employer's commencement of a proceeding in the Federal Bankruptcy Court under any chapter of the Bankruptcy Reform Act of 1978, as amended, contributions, interest, and penalties then or thereafter due shall be entitled to such priority as is provided for taxes, interest, and penalties in the Bankruptcy Reform Act.

(e) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the commission or its authorized rep-

resentative may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of a delinquent employer found within his county for the payment of the contributions due thereon, with the added penalties, interest, and costs, and to return the warrant to the commission and pay into the fund the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant. Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in his county. The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, and costs, for which the warrant is issued and the date when the duplicate is filed. The amount of the warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent employer and shall also become a lien upon the real property of the delinquent employer in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk. The sheriff shall then proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

(f) Contributions imposed by this chapter are a lien upon the property of any employer liable for the contribution herein required to be collected who shall sell out his business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by the commission. His successor, successors, or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until such time as the former owner shall produce a receipt from the commission showing that they have been paid or a certificate stating that no amount is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money as above provided, he shall be personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(g) In the event that any employer is delinquent in the payment of any contribution, the commission may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice and thereafter any persons notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts until the commission has consented to a transfer or disposition, or until 20 days after the receipt of the notice. All persons so notified must, within five days after receipt of the notice, advise the commission of any and all such credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(h) (1) Each employer shall furnish the commission such information as is necessary for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter beginning October 1, 1984. The information shall be furnished at a time, in the form, and to those individuals as the commission may by rule require.

(2) Each employer shall furnish each individual worker who is separated that information as the commission may by rule require, and shall furnish within 48 hours of the receipt of a request from the commission a report of the earnings of any individual during such individual's base-period, such report to be on a form prescribed by the commission and containing such other information as is prescribed by the commission.

(3) For each failure by an employer to conform to the provisions of Subsection (h) (1) or (2) the commission shall, unless good cause is shown to the satisfaction of the commission for the failure, assess a $50 penalty to be collected in the same manner as contributions due under this chapter.

(i) If any person liable to pay any contribution or benefit overpayment imposed by the Employment Security Act neglects or refuses to pay the same after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the Department of Employment Security of the Industrial Commission upon all property and rights to property, whether real or personal belonging to the person.

(j) (1) The lien imposed by Subsection (i) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount so assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(2) The lien imposed by Subsection (i) is not valid as against any purchaser, holder of a security interest, mechanics lienor, or judgment lien creditor until a warrant which meets the requirements of Subsection (e) has been filed with the clerk of the district court. For the purposes of this subsection, the following definitions shall apply:

(A) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (i) if, at such time, the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation, and (ii) to the extent that, at that time, the holder has parted with money or money's worth.

(B) "Mechanics lienor" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or

materials furnished in connection with the construction or improvement of the property. For purposes of the preceding sentence, a person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(C) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(D) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(E) "Person" means an individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Section 8. Section Amended.

Section 35-4-22, Utah Code Annotated 1953, as last amended by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-22. General definitions.

(1) "Base-period" means the four completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences prior to January 5, 1986; and means the first four of the last five completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences on or after January 5, 1986.

(2) "Benefit year" means the 52 consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.

(3) "Benefits" means the money payments payable to an individual as provided in this chapter with respect to his unemployment.

(4) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent, as the commission may by rule prescribe.

(5) "Commission" means the Industrial Commission of Utah.

(6) "Contribution" means the money payments required by this chapter to be made into the State Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.

(7) "Employment office" means a free public employment office or branch operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(8) "Employment Security Administration Fund" means the Employment Security Administration Fund established by Section 35-4-14, and from which administrative expenses under this chapter shall be paid.

(9) "Extended benefits" has the meaning specified in Subsection 35-4-3.5 (g)(6).

(10) "Fund" means the Unemployment Compensation Fund established by this chapter.

(11) "Insured average annual wage" means on or before the 15th day of May of each year, the total wages of insured workers for the preceding calendar year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding calendar year as determined under the rules of the commission calculated to two decimal places, disregarding any fraction of one cent.

(12) "Insured average fiscal year wage" means on or before the 15th day of November of each year, the total wages of insured workers for the preceding fiscal year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding fiscal year as determined under the rules of the commission calculated to two decimal places, disregarding any fraction of one cent.

(13) "Insured average fiscal year weekly wage" means the insured average fiscal year wage determined in Subsection [~~(d)(5)~~] (12), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(14) "Insured average weekly wage" means the insured average annual wage determined in Subsection [~~(d)(3)~~] (11), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(15) "Insured status" means that an individual has, during his base-period, performed services and earned wages in employment sufficient to qualify for benefits under Section 35-4-4.

(16) "Insured work" means employment for employers.

(17) "Monetary base period wage requirement" means 8% of the insured average fiscal year wage for the preceding fiscal year, [~~e.g.~~] for example, fiscal year 1990 for individuals establishing benefit years in 1991, rounded up to the next higher multiple of $100.

(18) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

(19) "Week" means the period or periods of seven consecutive calendar days as the commission may prescribe by rule.

Section 9. Section Amended.

Section 35-4-22.3, Utah Code Annotated 1953, as enacted by Chapter 174, Laws of Utah 1991, is amended to read:

35-4-22.3. Definition of employment.

(1) Subject to the other provisions of this subsection, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if any of the following provisions is satisfied:

(a) The service is localized in this state. Service is localized within state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(b) (i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or

(ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) (i) The service is performed entirely outside this state and is not localized in any state, the worker is one of a class of employees who are required to travel outside this state in performance of their duties, and the base of operations is in this state or, if there is no base of operations, the place from which the service is directed or controlled is in this state.

(ii) Services covered by an election under Subsection 35-4-8 (c), and services covered by an arrangement under Section 35-4-21 between the commission and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the commission has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.

(d) The service is performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any county, city, town, school district, or any political subdivision thereof or any of its instrumentalities or any instrumentality or more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that the service is excluded from employment as defined in the Federal Unemployment Tax Act by Section 3306 (c)(7) of that act and is not excluded from employment by Section 35-4-22.4; and provided that as to any county, city, town, school district, or political subdivision of this state, or any instrumentality of the same, that service is either:

(i) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;

(ii) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or

(iii) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality in accordance with Section 35-4-8.

Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the commission instead of contributions in the manner and amounts prescribed by Subsections 35-4-8.5 (b)(1) and (d). Benefits paid on the basis of service performed in the employ of any other governmental entity described in this subsection shall be financed by payments to the commission in the manner and amount prescribed by the applicable provisions of Section 35-4-8.5.

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of Section 3306 (c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(f) (i) The service is performed outside the United States after December 31, 1971, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of Subsection (2) or the parallel provisions of another state's law if:

(A) the employer's principal place of business in the United States is located in this state;

(B) the employer has no place of business in the United States but is an individual who is a resident of this state, a corporation which is organized under the laws of this state, or a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria of Subsections (A) and (B) is met but the employer has elected coverage in this

state or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on that service, under the law of this state.

(ii) "American employer" for purposes of this subsection means a person who is an individual who is a resident of the United States, a partnership if two-thirds or more of the partners are residents of the United States, a trust if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(g) The service is performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with the vessel, and the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.

(h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.

(i) (i) Notwithstanding the provisions of Subsection 35-4-22.4 (1)[~~(m)~~] (s), the service is performed:

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for his principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to his principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(ii) The term employment as used in this paragraph includes services described in Subsections (i) (A) and (B) above, performed after December 31, 1971, only if:

(A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;

(B) the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and

(C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(j) The service is performed after December 31, 1977, by an individual in agricultural labor as defined in Section 35-4-22.5.

(k) The service is domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.

(3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the commission that the individual is an independent contractor. The commission shall analyze all of the facts in Subsections (a) through (t) under the common-law rules applicable to the employer-employee relationship to determine if an individual is an independent contractor. An individual is an independent contractor if the weight of the evidence supports that finding. The following factors are to be considered if applicable:

(a) whether the individual works his own schedule or is required to comply with another person's instructions about when, where, and how work is to be performed;

(b) whether the individual uses his own methods and requires no specific training from the purchaser, or is trained by an experienced employee working with him, is required to take correspondence or other courses, attend meetings, and by other methods indicates that the employer wants the services performed;

(c) whether the individual's services are independent of the success or continuation of a business or are merged into the business where success and continuation of the business depends upon those services and the employer coordinates work with the work of others;

(d) whether the individual's services may be assigned to others or must be rendered personally;

(e) whether the individual has the right to hire, supervise, and pay other assistants pursuant to a contract under which the individual is responsible only for the attainment of a result or the individual hires, supervises, and pays workers at the direction of the employer;

(f) whether the individual was hired to do one job and has no continuous business relationship with the person for whom the services are performed or continues to work for the same person year after year;

(g) whether the individual establishes his own time schedule or the employer sets the time schedule;

(h) whether the individual is free to work when and for whom he chooses, or is required to devote full-time to the business of the employer, and is restricted from doing other gainful work;

(i) whether the individual uses his own office, desk, telephone, or other equipment or is physically within the employer's direction and supervision;

(j) whether the individual is free to perform services at his own pace or performs services in the order or sequence set by the employer;

(k) whether the individual submits no reports or is required to submit regular oral or written reports to the employer;

(l) whether the individual is paid by the job or on a straight commission or is paid by the employer in regular amounts at stated intervals;

(m) whether the individual accounts for his own expenses or is paid by the employer for expenses;

(n) whether the individual furnishes his own tools or is furnished tools and materials by the employer;

(o) whether the individual has a real, essential, and adequate investment in the business or has a lack of investment and depends on the employer for such facilities;

(p) whether the individual may realize a profit or suffer a loss as a result of services performed or cannot realize a profit or loss by making good or poor decisions;

(q) whether the individual works for a number of persons or firms at the same time or usually works for only one employer;

(r) whether the individual has his own office and assistants, holds a business license, is listed in business directories, maintains a business telephone, or advertises in newspapers or does not make services available except through a business in which he or she has no interest;

(s) whether the individual may not be fired or discharged as long as he produces a result which meets contract specifications or may be discharged at any time; and

(t) whether the individual agrees to complete a specific service, and is responsible for its satisfaction or is legally obligated to perform the service, or may terminate his or her relationship with the employer at any time.

Section 10. Section Amended.

Section 35-4-22.4, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

35-4-22.4. Exempt employment.

(1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment shall not include:

(a) service performed:

(i) prior to January 1, 1973, in the employ of a state, except as provided in Subsection 35-4-22.3 (2)(d); or

(ii) in the employ of a political subdivision of a state, except as provided in Subsection 35-4-22.3 (2)(d);

(b) service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, the payments required of the instrumentalities with respect to that year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in Subsection 35-4-7.3 (5) with respect to contributions erroneously collected;

(c) service performed after June 30, 1939, as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), and service performed after June 30, 1939, for an employer as defined in that act except that if the commission determines that any employing unit which is principally engaged in activities not included in those definitions constitutes such an employer only to the extent of an identifiable and separable portion of its activities, this exemption applies only to services performed for the identifiable and separable portion of its activities;

(d) agricultural labor as defined in Section 35-4-22.5[~~, except as provided in Subsection 35-4-22.3 (2)(j)~~];

(e) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35-4-22.3 (2)(k);

(f) (i) service performed in the employ of a school, college, or university, if the service is performed:

(A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or

(B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;

(ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so

certified to the employer, but this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;

(g) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(h) for the purposes of Subsections 35-4-22.3 (2)(d) and (e), service performed:

(i) in the employ of:

(A) a church or convention or association of churches; or

(B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) after December 31, 1977, in the employ of a governmental entity referred to in Subsection 35-4-22.3 (2) if the service is performed by an individual in the exercise of his duties:

(A) as an elected official;

(B) as a member of a legislative body or the judiciary of the state or its political subdivisions;

(C) as a member of the National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;

(v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work-relief or work-training;

(vi) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

(i) casual labor not in the course of the employing unit's trade or business;

(j) service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501 (a) of the Federal Internal Revenue Code, other than an organization described in Section 401 (a), or under Section 521 of that code, if the remuneration for the service is less than $50;

(k) service is performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;

(l) service performed in the employ of an instrumentality wholly owned by a foreign government:

(i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or [~~of an instrumentality thereof~~] its instrumentalities; and

(ii) if the commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities [~~thereof~~];

(m) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(n) service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(o) service covered by an arrangement between the commission and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;

(p) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law;

(q) service performed by an individual for a person as a licensed real estate agent or salesman if all the service performed by the individual for that person is performed for remuneration solely by way of commission;

(r) service performed by an individual for a person as a licensed securities agent or salesman, regis-

tered representative, if the service performed by the individual for that person is performed for remuneration solely by way of commission;

(s) unless services would constitute employment at common law, employment does not include services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed;

(t) service performed by an individual as a telephone survey conductor or pollster if the individual does not perform the service on the principal's premises and if the individual is paid for the service solely on a piece-rate or commission basis;

(u) service performed by a [~~registered~~] nurse [~~or practical nurse as defined in Sections 58-31-9 and 58-31-10~~] licensed or registered under Title 58, Chapter 31, Nurse Practice Act, if:

(i) the service of the nurse is performed in the home of the patient;

(ii) substantially all of the nurse's compensation for the service is from health insurance proceeds; and

(iii) no compensation or fee for the service is paid to any agency or company as a business furnishing nursing services.

(2) "Included and excluded service" means if the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of the individual for the period are considered to be employment; but if the services performed during more than [~~1/2~~] half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of the individual for the period are considered to be employment. As used in this subsection, "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the individual by the person employing him.

CHAPTER 242
S. B. No. 173
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

NOTICE OF EXCESS LEVIES

By Craig A. Peterson

AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE PROCESS OF RECALCULATING EXCESSIVE LEVIES FOR PROPERTY; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-2-914, AS LAST AMENDED BY CHAPTER 288, LAWS OF UTAH 1990

REPEALS:
59-2-915, AS LAST AMENDED BY CHAPTER 288, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 59-2-914, Utah Code Annotated 1953, as last amended by Chapter 288, Laws of Utah 1990, is amended to read:

59-2-914. Excess levies — Commission to recalculate levy — Notice to implement adjusted levies to county auditor.

[~~The~~] (1) If the commission [~~shall carefully examine the statements and forms prescribed by the commission for compliance with this part, and, if it appears~~] determines that [~~any~~] a levy [~~has been fixed~~] established for a taxing entity set under Section 59-2-913 is in excess of the maximum [~~amount~~] levy permitted by law, [~~it shall immediately notify the county attorney of the county in which it appears that the excess levy has been fixed. Upon completion of this review and when the levies have been found to be properly set~~] the commission shall:

(a) lower the levy so that it is set at the maximum level permitted by law;

(b) notify the taxing entity which set the excessive rate that the rate has been lowered; and

(c) notify the county auditor of [each] the county [~~to implement the levies as set~~] or counties in which the taxing entity is located to implement the rate established by the commission.

(2) A levy set for a taxing entity by the commission under this section shall be the official levy for that taxing entity unless:

(a) the taxing entity lowers the levy established by the commission; or

(b) the levy is subsequently modified by a court order.

Section 2. Repealer.

Section 59-2-915, Suit to set aside excessive levy by county attorney — Costs of action, Utah Code Annotated 1953, as last amended by Chapter 288, Laws of Utah 1990, is repealed.

CHAPTER 243
S. B. No. 194
Passed March 3, 1993
Approved March 18, 1993
Effective January 1, 1994

PROPERTY TAX - ASSESSING AND COLLECTING LEVY AMENDMENTS

By Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; REPEALING THE LEVY FOR ASSESSING, COLLECTING, AND DISTRIBUTING PROPERTY TAX; ESTABLISHING A STATEWIDE PROPERTY TAX LEVY TO PROMOTE ACCURATE AND UNIFORM PROPERTY VALUATIONS; CREATING AN APPROPRIATE ACCOUNT; EXCLUDING TAXES COLLECTED FROM THE LEVY FROM REDEVELOPMENT INCREMENTAL FINANCING PROVISIONS; PROVIDING A METHOD OF DISBURSEMENT; AUTHORIZING A PROPERTY TAX TO FUND REAPPRAISAL; AUTHORIZING A PROPERTY TAX TO FUND LEGISLATIVE MANDATES AND EXECUTIVE AND JUDICIAL ORDERS; IMPOSING PENALTIES FOR FAILURE TO TAKE CORRECTIVE ACTION; AUTHORIZING THE STATE TAX COMMISSION TO SET VALUATION STANDARDS BY RULE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A COORDINATING CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17A-2-1199.48, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1247, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
59-2-704, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988
59-2-911, AS LAST AMENDED BY CHAPTER 264, LAWS OF UTAH 1991
59-2-924, AS LAST AMENDED BY CHAPTER 35, LAWS OF UTAH 1992

ENACTS:
59-2-704.5, UTAH CODE ANNOTATED 1953
59-2-906.1, UTAH CODE ANNOTATED 1953
59-2-906.2, UTAH CODE ANNOTATED 1953
59-2-906.3, UTAH CODE ANNOTATED 1953
59-2-906.4, UTAH CODE ANNOTATED 1953

REPEALS:
17-19-15, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 17A-2-1199.48, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1199.48. Division of taxes levied on property in project.

[Any] (1) Except as provided in Subsection (2), any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the state, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

[(1)] (a) that portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the taxable value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which the territory has been annexed or otherwise included after the effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the taxable value of the taxable property in the project on the effective date); and

[(2)] (b) that portion of the levied taxes each year in excess of the amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection [(1)] (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest, have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(2) (a) For redevelopment plans first adopted before May 4, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 which are not pledged to support bond indebtedness and other contractual obligations are exempt from the provisions of Subsection (1).

(b) For redevelopment plans first adopted after May 3, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section

59-2-906.1 are exempt from the provisions of Subsection (1).

Section 2. Section Amended.

Section 17A-2-1247, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-1247. Tax increment financing authorized — Division of tax revenues — Greater allocation allowed if authorized by taxing agency.

(1)[Any] Except as provided in Subsection (3), any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the state, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the taxable value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of the property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which the territory has been annexed or otherwise included after the effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the taxable value of the taxable property in the project on the effective date).

(b) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency before April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection (1)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) Notwithstanding the provisions of Subsections (1)(b) and (e), Subsection 17A-2-1210 (3), or any other provision of this part, any loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) issued prior to April 1, 1983, may be refinanced and repaid from 100% of that portion of the levied taxes paid into the special fund of the redevelopment agency each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a) if the principal amount of loans, moneys advanced to, or indebtedness is not increased in the refinancing.

(d) In a redevelopment project with a redevelopment plan adopted before April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits established in Subsection (1)(f) to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection (1)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(e) In a redevelopment project with a redevelopment plan adopted after April 1, 1983, that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a) shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency according to the limits established in Subsection (1)(f) to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, to finance or refinance, in whole or in part, the redevelopment project. Payment of tax revenues to the redevelopment agency shall be subject to and shall except uncollected or delinquent taxes in the

same manner as payments of taxes to other taxing agencies are subject to collection. Unless and until the total taxable value of the taxable property in a redevelopment project exceeds the total taxable value of the taxable property in the project as shown by the last equalized assessment roll referred to in Subsection (1)(a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and any interest have been paid, all moneys received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(f) For purposes of Subsections (1)(d) and (e), the maximum amounts which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency may not exceed the following percentages:

(i) for a period of the first five tax years commencing from the first tax year a redevelopment agency accepts an amount allocated to and when collected paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) which loans, advances, or indebtedness are incurred by the redevelopment agency after April 1, 1983, 100% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a);

(ii) for a period of the next five tax years 80% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a);

(iii) for a period of the next five tax years 75% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a);

(iv) for a period of the next five tax years 70% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a); and

(v) for a period of the next five tax years 60% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a).

(g)(i) In addition to the maximum amounts which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency as described in Subsection (1)(f), a redevelopment agency established by the governing body of a first class city may receive the following additional percentages (which shall be allocated to and when collected shall be paid into the special fund of a redevelopment agency) which are greater than those described in Subsection (1)(f) if the amount of the tax increment funding received from the greater percentage is used solely to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to such convention center or sports complex: for a period of the first 32 years commencing from the first tax year a redevelopment agency accepts an amount allocated to and when collected paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) which loans, advances, or indebtedness are incurred by the redevelopment agency after April 1, 1983, 100% of that portion of the levied taxes each year in excess of the amount allocated to and when collected paid into the funds of the respective taxing agencies under Subsection (1)(a).

(ii) This Subsection (g) applies only to a redevelopment agency in whose project area construction has begun on a building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to such convention center or sports complex, on or before June 30, 1995.

(iii) If any additional amount described in Subsection (i) is not pledged to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement described in Subsection (i) on or before June 30, 1995, such additional amount may no longer be allocated to or used by the redevelopment agency, notwithstanding any other law to the contrary.

(2) Nothing contained in Subsections (1)(d), (e), (f), and (g) prevents an agency from receiving a greater percentage than those established in Subsections (1)(f) and (g) of the levied taxes of any local taxing agency each year in excess of the amount allocated to and when collected paid into the funds of the respective local taxing agency if the governing body of the local taxing agency consents in writing.

(3) (a) For redevelopment plans first adopted before May 4, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 which are not pledged to support bond indebtedness and other contractual obligations are exempt from the provisions of Subsections (1) and (2).

(b) For redevelopment plans first adopted after May 3, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 are exempt from the provisions of Subsections (1) and (2).

Section 3. Section Amended.

Section 59-2-704, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-704. Assessment studies — Sharing of data — Factoring assessment rates — Corrective action.

(1) Each year, to assist in the evaluation of appraisal performance of taxable real property, the commission shall conduct and publish studies [and publish and distribute to each county assessor and others the results of studies, and all data related to those studies, of] to determine the relationship between the market value shown on the assessment roll and the market value of real property [to determine assessment-sales ratios for taxable real property. Every sales-ratio study] in each county. The studies shall include measurements of uniformity within counties and use [a] statistical [method to be] methods established by the commission. [Assessors] County assessors may provide sales information to the commission for purposes of the studies. The commission shall make the sales information related to the studies available to the assessors upon request.

(2) The commission shall, on or before the 4th Tuesday of November of each even-numbered year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in Section 59-2-103. The adjustment or factoring may include an entire county, geographical areas within a county, and separate classes of properties. Where significant value deviations occur, the commission shall also order corrective action.

(3) If a county fails to implement factoring or corrective action ordered under Subsection (2), the commission may:

(a) implement the factoring or corrective action; and

(b) charge 100% of the reasonable implementation costs to that county.

(4) If a county disputes the factoring or corrective action ordered under Subsection (2), the matter may be mediated by the Multicounty Appraisal Trust.

[(3)] (5) The commission may change the factor for any county which, after a hearing before the commission, establishes that the factor should properly be set at a different level for that county. The commission shall establish the method, procedure, and timetable for the hearings authorized under this section, including access to information to ensure a fair hearing. The commission may establish rules to implement this section.

Section 4. Section Enacted.

Section 59-2-704.5, Utah Code Annotated 1953, is enacted to read:

59-2-704.5. Commission to adopt rules — Legislative review.

(1) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and after receiving the advice of the Utah Assessors Association, the commission shall by rule adopt standards for determining acceptable assessment levels and valuation deviations within each county. The standards shall be used for determining whether factoring or corrective action is required under Subsection 59-2-704(2).

(2) As part of its review of the standards for determining acceptable assessment levels and valuation deviations within each county, the commission shall consider any relevant standards promulgated by the International Association of Assessing Officers.

(3) By October 1, 1998, and every five years thereafter, the Revenue and Taxation Interim Committee shall review the commission's standards and determine whether the standards should be modified.

Section 5. Section Enacted.

Section 59-2-906.1, Utah Code Annotated 1953, is enacted to read:

59-2-906.1. The Property Tax Valuation Agency Fund — Creation — Statewide levy — Additional county levy permitted.

(1) (a) There is created the Property Tax Valuation Agency Fund, to be funded by a statewide levy of .0003 imposed in accordance with Subsection (2)(a).

(b) The purpose of the statewide levy and the disbursement formulas established in Section 59-2-906.2 is to promote the accurate valuation of property, the establishment and maintenance of uniform assessment levels within and among counties, and the efficient administration of the property tax system, including the costs of assessment, collection, and distribution of property taxes.

(c) Income derived from the investment of money in the fund created in this subsection shall be deposited in and become part of the fund.

(2) (a) Beginning January 1, 1994, each county shall annually levy a property tax at the rate of .0003 per dollar of taxable value of taxable property as reported by each county. The levy shall be separately stated on the tax notice as a state assessing and collecting levy.

(b) Any levy established in Subsection (2)(a) is:

(i) exempt from the redevelopment provisions of Subsections 17A-2-1199.48(1), 17A-2-1199.48(2), 17A-2-1247(1) and 17A-2-1247(2);

(ii) in addition to and exempt from the maximum levies allowable under Section 59-2-908; and

(iii) exempt from the notice requirements of Sections 59-2-918 and 59-2-919.

(c) Each county shall transmit quarterly to the state treasurer the portion of the .0003 state assessing and collecting levy which is above the amount to which that county is entitled to under Section 59-2-906.2.

(i) The revenue shall be transmitted no later than the 10th day of the month following the end of the quarter in which the revenue is collected.

(ii) If revenue is transmitted after the 10th day of the month following the end of the quarter in which the revenue is collected, the county shall pay an interest penalty at the rate of 10% each year until the revenue is transmitted.

(d) The state treasurer shall deposit the revenue from the state assessing and collecting levy, any interest accrued from that levy, and any penalties received under Subsection (2)(c) in the Property Tax Valuation Agency Fund.

(3) Each county may levy an additional property tax up to .0002 per dollar of taxable value of taxable property as reported by each county. This levy shall be stated on the tax notice as a county assessing and collecting levy.

(a) The purpose of the levy established in this subsection is to promote the accurate valuation of property, the establishment and maintenance of uniform assessment levels within and among counties, and the efficient administration of the property tax system, including the costs of assessment, collection, and distribution of property taxes.

(b) Any levy established in Subsection (3)(a) is:

(i) exempt from the redevelopment provisions of Subsections 17A-2-1199.48(1), 17A-2-1199.48(2), 17A-2-1247(1) and 17A-2-1247(2);

(ii) in addition to and exempt from the maximum levies allowable under Section 59-2-908; and

(iii) is subject to the notice requirements of Sections 59-2-918 and 59-2-919.

Section 6. Section Enacted.

Section 59-2-906.2, Utah Code Annotated 1953, is enacted to read:

59-2-906.2. Disbursement of monies in the Property Tax Valuation Agency Fund — Use of funds.

(1) Beginning January 1, 1994, the state auditor shall authorize disbursement of money from the Property Tax Valuation Agency Fund to each county as follows:

(a) each county of the first class shall receive a disbursement of 94.5% of the funds transmitted to the Property Tax Valuation Agency Fund by such counties; and

(b) money derived from funds transmitted by counties of the second through sixth class and any remaining monies not distributed under Subsection (1)(a) shall be disbursed pro rata to counties of the second through sixth class based upon the number of adjusted parcel units in each county as determined in Subsection (2).

(2) (a) The number of adjusted parcel units in a county shall be determined by multiplying the sum of the following by the county parcel factor:

(i) the number of residential parcels multiplied by 2;

(ii) the number of commercial parcels multiplied by 4; and

(iii) the number of all other parcels multiplied by 1.

(b) For purposes of this subsection, the county parcel factor is:

(i) 0.9 for counties of the second class;

(ii) 1.0 for counties of the third class;

(iii) 1.05 for counties of the fourth class;

(iv) 1.15 for counties of the fifth class; and

(v) 1.3 for counties of the sixth class.

(3) Money in the Property Tax Valuation Agency Fund on the 10th day of the month following the end of the quarter in which the revenue is collected shall, upon authorization by the state auditor, be transmitted by the state treasurer according to the disbursement formula determined under Subsection (2) no later than five working days after the 10th day of the month following the end of the quarter in which the revenue is collected.

(4) If money in the Property Tax Valuation Agency Fund on the 10th day of the month following the end of the quarter in which the revenue is collected is not transmitted to a county within five working days of the 10th day of that month, except as provided for in Subsection (3), income from the investment of that money shall be:

(a) deposited in and become part of the Property Tax Valuation Agency Fund; and

(b) disbursed to the county in the next quarter.

(5) A county shall use money disbursed from the Property Tax Valuation Agency Fund for:

(a) establishing and maintaining accurate property valuations and uniform assessment levels as required by Section 59-2-103; and

(b) improving the efficiency of the property tax system.

Section 7. Section Enacted.

Section 59-2-906.3, Utah Code Annotated 1953, is enacted to read:

59-2-906.3. Additional levies by counties.

(1) Beginning January 1, 1994, a county may levy an additional tax to fund state mandated actions to meet legislative mandates or judicial or administrative orders which relate to promoting the accurate valuation of property, the establishment and maintenance of uniform assessment levels within and among counties, and the administration of the property tax system. An additional rate levied under this subsection:

(a) shall be stated on the tax notice, and may be included on the tax notice with the county assessing and collecting levy;

(b) may not be included in determining the maximum allowable levy for the county or other taxing entities; and

(c) is subject to the notice requirements of Sections 59-2-918 and 59-2-919.

(2) Beginning January 1, 1994, a county may levy an additional tax for reappraisal programs that are formally adopted by the county commission and which conform to tax commission rules. An additional rate levied under this subsection:

(a) shall be stated on the tax notice, and may be included on the tax notice with the county assessing and collecting levy;

(b) may not be included in determining the maximum allowable levy for the county or other taxing entities; and

(c) is subject to the notice requirements of Sections 59-2-918 and 59-2-919.

Section 8. Section Enacted.

Section 59-2-906.4, Utah Code Annotated 1953, is enacted to read:

59-2-906.4. Accounting records for levies.

Each county shall separately account for the use of any monies received or expended under a levy imposed under Section 59-2-906.1, 59-2-906.2, or 59-2-906.3.

Section 9. Section Amended.

Section 59-2-911, Utah Code Annotated 1953, as last amended by Chapter 264, Laws of Utah 1991, is amended to read:

59-2-911. Exceptions to maximum levy limitation.

(1) The maximum levies set forth in Section 59-2-908 do not apply to and do not include:

(a) levies made to pay outstanding judgment debts;

(b) levies made in any special improvement districts;

(c) levies made for extended services in any county service area;

(d) levies made for county library services;

(e) levies made to be used for storm water, flood, and water quality control;

(f) levies made to share disaster recovery expenses for public facilities and structures as a condition of state assistance when a Presidential Declaration has been issued under the Disaster Relief Act of 1974 (Public Law 93-288, 42 U.S.C. Section 5121);

(g) levies made to pay interest and provide for a sinking fund in connection with any bonded or voter authorized indebtedness, including the bonded or voter authorized indebtedness of county service areas, special service districts, and special improvement districts;

(h) levies made to fund local health departments;

(i) levies made to fund public transit districts;

(j) levies made to establish, maintain, and replenish special improvement guaranty funds;

(k) levies made in any special service district;

(l) levies made to fund municipal-type services to unincorporated areas of counties under Title 17, Chapter 34;

(m) levies made to fund the purchase of paramedic or ambulance facilities and equipment and to defray administration, personnel, and other costs of providing emergency medical and paramedic services, but this exception only applies to those counties in which a resolution setting forth the intention to make those levies has been duly adopted by the county governing body and approved by a majority of the voters of the county voting at a special or general election; [and]

(n) levies made to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3;

(o) the state and county assessing and collecting levies made to promote accurate property valuations, uniform assessment levels, and the efficient administration of the property tax system under Section 59-2-906.1; and

[~~(n)~~] (p) all other exceptions to the maximum levy limitation pursuant to statute.

(2) Upon the retirement of bonds issued for the development of a convention complex described in Section 17-12-4, and notwithstanding Section 59-2-908, any county of the first class may continue to impose a property tax levy equivalent to the average property tax levy previously imposed to pay debt service on those retired bonds. The revenues from this continued levy shall be used only for the funding of convention facilities as defined in Section 59-12-602.

Section 10. Section Amended.

Section 59-2-924, Utah Code Annotated 1953, as last amended by Chapter 35, Laws of Utah 1992, is amended to read:

59-2-924. Report of valuation of property to county auditor and tax commission — Transmittal by auditor to governing bodies — Certified tax rate — Adoption of tentative budget.

(1) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission a statement showing the aggregate valuation of all taxable property in each taxing entity, together with a statement showing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current tax year. The county auditor shall, on or before June 8, transmit this statement, together with an estimate of the revenue from personal property, the certified tax rate, and all forms necessary to submit a tax levy request, to the governing body of each taxing entity.

(2) (a) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenue for each taxing entity as was collected for

the prior year by that taxing entity excluding collections from redemptions, interest, and penalties. The certified tax rate shall be calculated by dividing property tax revenues collected for the prior year by that taxing entity excluding collections from redemptions, interest, and penalties by the taxable value established in accordance with Section 59-2-913 except for the following:

(i) for new taxing entities, the certified tax rate shall be zero;

(ii) for the minimum school levy established under Section 53A-17a-135, debt service voted on by the public, and [~~the uniform levy for collecting and distributing property taxes~~] state and county assessing and collecting levies to promote accurate property valuations, uniform assessment levels, and efficient administration established under [~~Section 17-19-15~~]Section 59-2-906.1, the certified tax rate shall be the actual levy imposed by those sections; however,

(iii) the [~~exception~~] exceptions for the [~~minimum school levy~~] levies granted in Subsection (2)(a)(ii) [~~does~~] do not include:

(A) school leeways provided for under Sections 11-2-7, 53A-16-104, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-110[~~, all of which shall calculate~~]; and

(B) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3; and

(iv) the certified tax [~~rate~~] rates for the levies listed in Subsection (iii) shall each be calculated in accordance with Section 59-2-913.

(b) For the purpose of calculating the certified tax rate the county auditor shall use the taxable value of property on the assessment roll, exclusive of new growth. New growth is the increase in taxable value of the taxing entity from the previous calendar year to the current year less the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments.

(3) No later than June 22, each taxing entity shall adopt a tentative budget. If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of (a) its intent to exceed the rate, and (b) the amount by which it proposes to exceed the rate. The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919 (2).

Section 11. Repealer.

Section 17-19-15, Separate budget for costs of assessing, collecting, and distributing property taxes — Submission to state auditor for review — Allowable costs established by rule — Transmission to tax commission — Limitations on tax rate — Exceptions — Adjustments, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1988, is repealed.

Section 12. Effective Date.

This act takes effect on January 1, 1994, except that Sections 17A-2-1199.48, 17A-2-1247, and 59-2-704.5 shall take effect on May 3, 1993.

Section 13. Coordinating Clause.

If Fifth Substitute S.B. 194 and H.B. 278 both pass in the 1993 Annual General Session, on May 3, 1993, Subsection 17A-2-1247(3) of this act shall be enacted as Subsection 17A-2-1247.5(6) of H.B. 278, and shall take effect on May 3, 1993, and Section 17A-2-1247 shall be deleted from Fifth Substitute S.B. 194.

CHAPTER 244
S. B. No. 196
Passed March 2, 1993
Approved March 18, 1993
Effective May 3, 1993

SOIL CONSERVATION ACT AMENDMENTS

By Leonard M. Blackham

AN ACT RELATING TO THE SOIL CONSERVATION COMMISSION AND DISTRICTS; AMENDING PROVISIONS RELATING TO THE SOIL CONSERVATION COMMISSION, INCLUDING ITS POWERS, DUTIES, AND RULEMAKING AUTHORITY; DEFINING TERMS IN THE SOIL CONSERVATION DISTRICTS ACT; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
4-18-4, AS LAST AMENDED BY CHAPTER 122, LAWS OF UTAH 1992
4-18-5, AS LAST AMENDED BY CHAPTER 6, LAWS OF UTAH 1983
4-18-14, AS ENACTED BY CHAPTER 205, LAWS OF UTAH 1990

ENACTS:
17A-3-800, UTAH CODE ANNOTATED 1953

REPEALS:
4-18-5.5, AS ENACTED BY CHAPTER 284, LAWS OF UTAH 1981

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

Section 1. Section Amended.

Section 4-18-4, Utah Code Annotated 1953, as last amended by Chapter 122, Laws of Utah 1992, is amended to read:

4-18-4. Soil Conservation Commission created — Appointment — Composition — Terms — Compensation — Attorney general to provide legal assistance.

(1) There is established, to serve as an agency of the state and functioning within the Department of Agriculture the Soil Conservation Commission to perform the functions [~~conferred upon it by~~] specified in this chapter[~~, the~~].

(2) The Soil Conservation Commission [comprising] shall be comprised of 12 members as follows:

(a) the director of the Extension Service at Utah State University, or his designee;

(b) the president of the Association of Soil Conservation Districts, or his designee;

(c) the commissioner, or his designee;

(d) the executive director of the Department of Natural Resources, or his designee;

(e) the executive director of the Department of Environmental Quality, or his designee; and

(f) seven district supervisors [~~recommended by the commission to~~] who provide district representation on the commission on a multicounty basis[~~, appointed by the governor with the advice and consent of the Senate~~].

(3) If a district supervisor is unable to attend a meeting, an alternate may serve in his place.

[~~(2) Members~~] (4) The members of the commission specified in Subsection (2)(f) shall:

(a) be recommended by the commission to the governor;

(b) be appointed by the governor with the advice and consent of the Senate; and

(c) serve three-year terms of office.

[~~(3)~~] (5) The commissioner is chairman of the commission.

[~~(4)~~] (6) Attendance of a [simple] majority of the commission members at a [~~duly called~~] meeting constitutes a quorum [~~for the transaction of official business~~].

[~~(5)~~] (7) [~~Vacancies which occur on the commission among appointed members shall be filled by appointment of~~] If a vacancy occurs among appointed members, the governor [~~for~~] shall appoint a replacement to fill the unexpired term of the vacated member.

[~~(6) An appointed member or his alternate is~~] (8) The following are entitled to per diem and expenses incurred in the performance of the member's official duties at the same rate provided in Sections 63-1-14.5 and 63-1-15:

(a) an appointed member or his alternate; and

(b) the president of the Association of Soil Conservation Districts, or his designee.

[~~(7)~~] (9) The commission shall keep a record of its [~~official~~] actions.

[~~(8)~~] (10) The attorney general shall provide legal services to the commission upon request.

Section 2. Section Amended.

Section 4-18-5, Utah Code Annotated 1953, as last amended by Chapter 6, Laws of Utah 1983, is amended to read:

4-18-5. Soil conservation commission — Functions and duties.

(1) The commission [~~has and~~] shall [~~exercise the following functions, powers, and duties~~]:

[~~(1) To employ, subject to approval of the department, an administrator and such other technical experts and employees as it requires;~~]

[~~(2) To adopt rules and regulations, subject to the Utah Rule-making Act, deemed necessary for the administration and enforcement of this chapter;~~]

[~~(3) To coordinate and assist in~~] (a) facilitate the development and implementation of the strategies and programs necessary to protect, conserve, utilize, and develop the soil and water resources of the

[~~several districts and apprise such districts of the activities and experiences of other districts in the~~] state;

[~~(4) To~~] (b) disseminate information [~~throughout the state about activities and programs of the several districts and to encourage~~] regarding districts' activities and programs;

(c) supervise the formation [~~or~~], reorganization, or dissolution of districts [~~it deems necessary or desirable~~] pursuant to the requirements of Title 17A, Chapter 3, Part 8;

[~~(5) To~~] (d) prescribe uniform accounting and recordkeeping procedures for districts and require [~~that~~] each district [~~annually~~] to submit annually an audit of its funds to the commission [~~an audit of its funds~~];

[~~(6) To~~] (e) approve and make loans[~~, restricted to agriculture~~] for agricultural purposes, from the Agriculture Resource Development Fund for the following:

(i) nonfederal rangeland improvement and management projects[~~,~~];

(ii) watershed protection and flood prevention projects[~~,~~];

(iii) agricultural cropland soil and water conservation projects[~~,~~]; and [~~for~~]

(iv) programs designed to promote energy efficient farming practices[~~, which are approved by the commission~~];

[~~(7) To accept~~] (f) administer federal or state funds [~~from federal or state agencies~~] in accordance with applicable federal or state guidelines and[~~, subject to available funds,~~] make loans or grants from those funds to land occupiers for the conservation of soil or water resources;

[~~(8) To secure the assistance and cooperation of other~~] (g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies [~~for the benefit of the programs and activities of the several districts~~]; and

[~~(9) To~~] (h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities and [~~function as the state agency responsible for~~] coordinate flood control [~~coordination~~] projects in the state[~~; and~~].

[~~(10) To make and execute contracts or other instruments necessary to exercise its powers and to sue and be sued.~~]

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) sue and be sued; and

(d) adopt rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties specified in Subsections (1)(d), (e), (f), and (2)(b).

Section 3. Section Amended.

Section 4-18-14, Utah Code Annotated 1953, as enacted by Chapter 205, Laws of Utah 1990, is amended to read:

4-18-14. Adoption of resolution implementing conservation corps.

Any soil conservation district organized under [~~this~~] Title 17A, Chapter 3, Part 8, may adopt a resolution implementing a Utah Conservation Corps Program as set forth in Sections 4-18-15 through 4-18-27.

Section 4. Section Enacted.

Section 17A-3-800, Utah Code Annotated 1953, is enacted to read:

17A-3-800. Definitions.

As used in this chapter:

(1) "Commission" means the Soil Conservation Commission created by Section 4-18-4.

(2) "Department" means the Department of Agriculture created in Section 4-2-1.

(3) "District" means a soil conservation district created under this chapter.

Section 5. Repealer.

Section 4-18-5.5, Flood control projects, Utah Code Annotated 1953, as enacted by Chapter 284, Laws of Utah 1981, are repealed.

CHAPTER 245
S. B. No. 201
Passed March 2, 1993
Approved March 18, 1993
Effective May 3, 1993

MANDATORY CYCLICAL APPRAISALS FOR COUNTY ASSESSED PROPERTY

By Robert F. Montgomery

AN ACT RELATING TO REVENUE AND TAXATION; REQUIRING COUNTY ASSESSORS TO APPRAISE COUNTY ASSESSED PROPERTY ON A RECURRING BASIS; ALLOWING THE TAX COMMISSION TO TAKE CORRECTIVE ACTION; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-2-303, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1987

ENACTS:
59-2-303.1, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 59-2-303, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1987, is amended to read:

59-2-303. General duties of county assessor.

(1) Prior to May 22 each year, the county assessor shall ascertain the names of the owners of all property which is subject to taxation by the county, and shall assess the property to the owner, claimant of record, or occupant in possession or control at 12 o'clock [~~m.~~] midnight of January 1 in the tax year, unless a subsequent conveyance of ownership of the real property was recorded in the office of the county recorder more than 14 calendar days before the date of mailing of the tax notice. In that case, any tax notice may be mailed, and the tax assessed, to the new owner. No mistake in the name or address of the owner or supposed owner of property renders the assessment invalid.

(2) [~~Assessors~~] A county assessor shall become fully acquainted with all property in [~~their respective counties, and, either in person or by deputy, regularly update assessment records in order to annually establish the values of the property they are required to assess~~] his county, as provided in Section 59-2-301.

Section 2. Section Enacted.

Section 59-2-303.1, Utah Code Annotated 1953, is enacted to read:

59-2-303.1. Mandatory cyclical appraisals.

(1) Beginning January 1, 1994, each county assessor shall annually update property values of property as provided in Section 59-2-301 based on a systematic review of current market data. In addition, the county assessor shall complete a detailed review of property characteristics for each property at least once every five years.

(a) The commission may take corrective action if the commission determines that:

(i) a county assessor has not satisfactorily followed the current mass appraisal standards, as provided by law; or

(ii) the sales-assessment ratio, coefficients of dispersion, or other statistical measures of appraisal performance related to the studies required by Section 59-2-704 are not within the standards provided by law.

(b) For purposes of this section, "corrective action" includes a petition for a court order requiring a county to take action.

(2) (a) By July 1, 1993, each county assessor shall prepare a five-year plan to comply with the requirements of Subsection 59-2-303.1(1).

(b) The plan shall be available in the county assessor's office for review by the public upon request.

(c) The plan shall be annually reviewed and revised as necessary.

CHAPTER 246
S. B. No. 202
Passed March 3, 1993
Approved March 18, 1993
Effective March 18, 1993

LOCAL GOVERNMENT EXEMPT EMPLOYEE RETIREMENT

By Stephen J. Rees

AN ACT RELATING TO PENSIONS; INCREASING THE NUMBER OF EXEMPT EMPLOYEES ELIGIBLE FOR PARTICIPATION; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
49-2-205, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992
49-3-206, AS LAST AMENDED BY CHAPTER 157, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 49-2-205, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-2-205. Exclusions from membership in system.

The following employees are excluded from membership in the retirement system:

(1) Every employee whose employment status is temporary in nature due to the nature or the type of work to be performed. If the term of employment exceeds six months, then for that employee a regular full-time status shall be assumed, and the employee shall be enrolled in the system effective the beginning of the seventh month of employment. If the same employee, previously terminated prior to enrollment as a member, is again employed within three months of termination by the same employer, the employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter.

(2) Full-time students or the spouse of a full-time student and persons employed in a trainee relationship may be excluded from coverage by rules adopted by the board.

(3) Every current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, pursuant to Section 49-2-206, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which that employee has received contributions toward the premiums required on compensation from the employing unit. The employee, upon cessation of the employer contributions, shall immediately become a contributing member.

(4) Every employee serving as an exchange employee from outside the state.

(5) Elected officials who file a formal request for exemption.

(6) Executive department heads of the state, members of the State Tax Commission, the Public Service Commission, and other members of full-time or part-time boards or commissions who file a formal request to be excluded from coverage.

(7) Persons appointed as city managers or chief city administrators or other persons employed by a city, town, county, or other political subdivision who are not entitled to merit or civil service protection. Persons eligible for exclusion under this subsection shall file a formal request for exclusion from coverage and be employed in a position designated as exempt under an employee exemption plan developed by the city, town, county, or political subdivision. Employee exemption plans shall be subject to the following limitations:

(a) The total number of positions a city, town, county, or political subdivision may exempt may not exceed the lesser of [~~15~~] 30 positions or a number equal to 10% of the employees of the city, town, county, or political subdivision. However, every city, town, county, or political subdivision is entitled to a minimum exemption of one eligible employee.

(b) Employee exemption plans shall be filed annually with the retirement office, and the city, town, county, or political subdivision shall update the exemption plan in the event of any change.

(c) The retirement office may promulgate rules to implement this subsection.

Section 2. Section Amended.

Section 49-3-206, Utah Code Annotated 1953, as last amended by Chapter 157, Laws of Utah 1992, is amended to read:

49-3-206. Exclusions from membership in system.

The following employees are excluded from membership in the retirement system:

(1) Every employee whose employment status is temporary in nature due to the nature or the type of work to be performed. If the term of employment exceeds six months, then for that employee a regular full-time status shall be assumed, and the employee shall be enrolled in the system effective the beginning of the seventh month of employment. If the same employee, previously terminated prior to enrollment as a member, is again employed within three months of termination by the same employer, the employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter.

(2) Full-time students or the spouse of a full-time student and persons employed in a trainee relationship may be excluded from coverage by rules adopted by the board.

(3) Every current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, pursuant to Section 49-2-206, a

retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which that employee has received contributions toward the premiums required on compensation from the employing unit. The employee, upon cessation of the employer contributions, shall immediately become a contributing member.

(4) Every employee serving as an exchange employee from outside the state.

(5) Elected officials who file a formal request for exemption.

(6) Executive department heads of the state, members of the State Tax Commission, the Public Service Commission, and other members of full-time or part-time boards or commissions who file a formal request to be excluded from coverage.

(7) Persons appointed as city managers or chief city administrators or other persons employed by a city, town, county, or other political subdivision, who are not entitled to merit or civil service protection. Persons eligible for exclusion under this subsection shall file a formal request for exclusion from coverage and be employed in a position designated as exempt under an employee exemption plan developed by the city, town, county, or political subdivision. Employee exemption plans shall be subject to the following limitations:

(a) The total number of positions a city, town, county, or political subdivision may exempt may not exceed the lesser of [~~15~~] 30 positions or a number equal to 10% of the employees of the city, town, county, or political subdivision. However, every city, town, county, or political subdivision is entitled to a minimum exemption of one eligible employee.

(b) Employee exemption plans shall be filed annually with the retirement office, and the city, town, county, or political subdivision shall update the exemption plan in the event of any change.

(c) The retirement office may promulgate rules to implement this section.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 247
S. B. No. 235
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

STATE PARK ACCESS AND APPROPRIATION

By Craig A. Peterson

AN ACT RELATING TO HIGHWAYS; CLARIFYING JURISDICTION OVER HIGHWAYS LEADING TO AND WITHIN STATE PARKS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
27-12-23.5, UTAH CODE ANNOTATED 1953
27-12-23.6, UTAH CODE ANNOTATED 1953
27-12-23.7, UTAH CODE ANNOTATED 1953
27-12-23.8, UTAH CODE ANNOTATED 1953
27-12-23.9, UTAH CODE ANNOTATED 1953
27-12-23.10, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
63-11-20, AS LAST AMENDED BY CHAPTER 9, LAWS OF UTAH 1975, FIRST SPECIAL SESSION

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

Section 1. Section Enacted.

Section 27-12-23.5, Utah Code Annotated 1953, is enacted to read:

27-12-23.5. Jurisdiction over highways leading to and within state parks.

(1) The department, a county, or a city has jurisdiction over and responsibility for:

(a) primary access highways to state parks;

(b) highways to the main attraction within each state park; and

(c) highways through state parks providing access to land uses beyond state park boundaries.

(2) (a) The appropriate entities with jurisdiction over and responsibility for the highways referred to in Subsections (1)(a) and (b) are specified in Sections 27-12-23.6 through 27-12-23.10.

(b) Jurisdiction over and responsibility for roads under Subsection (1)(c) shall be determined by the commission as described in Sections 27-12-21, 27-12-22, and 27-12-23.

Section 2. Section Enacted.

Section 27-12-23.6, Utah Code Annotated 1953, is enacted to read:

27-12-23.6. Highways leading to and within state parks.

The roads which qualify under Section 27-12-23.5 are as follows:

(1) ANASAZI INDIAN VILLAGE STATE PARK. Access to the Anasazi Indian Village State Park is at the park entrance located in Garfield County at milepoint 87.8 on State Highway 12. No access road is defined.

(2) BEAR LAKE STATE PARK (Marina). Access to the Bear Lake Marina is at the pay gate located in Rich County at milepoint 413.2 on State Highway 89. No access road is defined.

(3) BEAR LAKE STATE PARK (East Shore). Access to the Bear Lake East Shore begins in Rich County at State Highway 30 and proceeds northerly along a county road (L326) a distance of 9.2 miles, to the camping area of the park and is under the jurisdiction of Rich County.

(4) BEAR LAKE STATE PARK (Rendezvous Beach). Access to the Bear Lake Rendezvous Beach is at the park entrance located in Rich County at milepoint 124.5 on State Highway 30. No access road is defined.

(5) CAMP FLOYD/STAGECOACH INN STATE PARK. Access to the Camp Floyd/Stagecoach Inn State Park is at the parking area located in Utah County at milepoint 20.6 on State Highway 73. No access road is defined.

(6) CORAL PINK SAND DUNES STATE PARK. Access to the Coral Pink Sand Dunes State Park begins in Kane County at State Highway 89 and proceeds southwesterly along a county road a distance of 12.0 miles to the visitor center of the park and is under the jurisdiction of Kane County.

(7) DEAD HORSE POINT STATE PARK. Access to Dead Horse Point State Park begins in Grand County at State Highway 191 and proceeds southwesterly along State Highway 313 a distance of 20.8 miles to the camping area at the park and is under the jurisdiction of UDOT.

(8) DEER CREEK STATE PARK. Access to Deer Creek State Park begins in Wasatch County at State Highway 189 and proceeds southwesterly along State Highway 314 a distance of 0.2 miles to the boat ramp at the park and is under the jurisdiction of UDOT.

(9) EAST CANYON STATE PARK. Access to East Canyon State Park begins in Morgan County at State Highway 66 and proceeds southeasterly along State Highway 306 a distance of 0.1 miles to the parking area at the park and is under the jurisdiction of UDOT.

(10) EDGE OF THE CEDARS STATE PARK. Access to Edge of the Cedars State Park is at the parking area and museum located in San Juan County at 660 West 400 North in Blanding, Utah. No access road is defined.

Section 3. Section Enacted.

Section 27-12-23.7, Utah Code Annotated 1953, is enacted to read:

27-12-23.7. Highways leading to and within state parks.

The roads which qualify under Section 27-12-23.5 are as follows:

(1) ESCALANTE STATE PARK. Access to Escalante State Park begins in Garfield County at State

Highway 12 and proceeds northwesterly along a county road a distance of 1 mile to the park's visitor center and is under the jurisdiction of Garfield County.

(2) FORT BUENAVENTURA STATE PARK. Access to Fort Buenaventura State Park is at the visitor center/contact station located in Weber County at 2450 A Avenue in Ogden, Utah. No access road is defined.

(3) FREMONT INDIAN STATE PARK. Access to the Fremont Indian State Park begins in Sevier County at State Highway 70 and proceeds easterly along a county road a distance of 2.0 miles to the parking area and visitor center of the park and is under the jurisdiction of Sevier County.

(4) GOBLIN VALLEY STATE PARK. Access to the Goblin Valley State Park begins in Emery County at State Highway 24 and proceeds southwesterly along a county road 11.7 miles to the overlook/parking area at the park and is under the jurisdiction of Emery County.

(5) GOOSENECKS STATE PARK. Access to Goosenecks State Park begins in San Juan County at State Highway 261 and proceeds southwesterly along State Highway 316 a distance of 3.6 miles to the parking area and overlook at the park and is under the jurisdiction of UDOT.

(6) ANTELOPE ISLAND STATE PARK. Access to Antelope Island State Park begins in Davis County at State Highway 127 and proceeds southwesterly along a county road a distance of 7.2 miles to the parking area and marina at the park and is under the jurisdiction of Davis County.

(7) GREAT SALT LAKE STATE PARK. Access to the Great Salt Lake State Park begins in Salt Lake County at Interstate Highway 80 and proceeds southwesterly along a county road a distance of 1.5 miles to the parking area and marina at the park and is under the jurisdiction of Salt Lake County.

(8) GREEN RIVER STATE PARK. Access to Green River State Park is at the park entrance located in Grand County at Green River Blvd. in Green River, Utah. No access road is defined.

(9) GUNLOCK STATE PARK. Access to the Gunlock State Park begins in Washington County at the junction of county road (L009) and a county road and proceeds northwesterly along a county road a distance of 0.1 miles to the parking area at the park and is under the jurisdiction of Washington County.

(10) HUNTINGTON STATE PARK. Access to the Huntington State Park begins in Emery County at State Highway 10 and proceeds northwesterly along a county road a distance of 0.3 miles to the park entrance and is under the jurisdiction of Emery County.

Section 4. Section Enacted.

Section 27-12-23.8, Utah Code Annotated 1953, is enacted to read:

27-12-23.8. Highways leading to and within state parks.

The roads which qualify under Section 27-12-23.5 are as follows:

(1) HYRUM STATE PARK. Access to Hyrum State Park is at the pay gate located in Cache County at 405 West 300 South in Hyrum, Utah. No access road is defined.

(2) IRON MISSION STATE PARK. Access to Iron Mission State Park is at the parking area and museum located in Iron County at milepoint 3.3 on State Highway 130 (585 North Main St. in Cedar City, Utah). No access road is defined.

(3) JORDAN RIVER STATE PARK. Access to Jordan River State Park is at the park entrance located in Salt Lake County at milepoint 61.3 on State Highway 68 (1084 North Redwood Rd. in Salt Lake City, Utah). No access road is defined.

(4) JORDANELLE STATE PARK (HAILSTONE MARINA). Access to the Jordanelle Hailstone Marina begins in Wasatch County at State Highway 40 and proceeds southeasterly along State Highway 319 a distance of 1.4 miles to the marina/parking area at the park and is under the jurisdiction of UDOT.

(5) JORDANELLE STATE PARK (ROCK CLIFF NATURE CENTER). Access to the Jordanelle Rock Cliff Nature Center begins in Wasatch County at State Highway 32 and proceeds northwesterly along a county road a distance of 0.6 miles to the parking area at the park and is under the jurisdiction of the county.

(6) JORDANELLE STATE PARK (ROCK CREEK). Access to Jordanelle Rock Creek begins in Wasatch County at State Highway 189 and proceeds southerly along a county road a distance of 0.1 miles to the parking area at the park and is under the jurisdiction of the county.

(7) KODACHROME BASIN STATE PARK. Access to the Kodachrome Basin State Park begins in Kane County at State Highway 12 and proceeds southeasterly along county road 10.1 miles to the parking area at Kodachrome Lodge and is under the jurisdiction of Kane County.

(8) LOST CREEK STATE PARK. Access to the Lost Creek State Park begins in Morgan County at Interstate Highway 84 and proceeds northeasterly along a county road a distance of 12.8 miles to the parking/boat launch area at the park and is under the jurisdiction of Morgan County.

(9) MILLSITE STATE PARK. Access to the Millsite State Park begins in Emery County at State Highway 10 and proceeds northwesterly along a county road (L122) a distance of 4.6 miles to the parking area at the park and is under the jurisdiction of Emery County.

(10) MINERSVILLE STATE PARK. Access to the Minersville State Park begins in Beaver County at State Highway 21 and proceeds northwesterly along State Highway 310 a distance of 0.3 miles to the visitor center/contact station at the park and is under the jurisdiction of Beaver County.

(11) NEWSPAPER ROCK STATE PARK. Access to the Newspaper Rock State Park begins in San

Juan County at State Highway 191 and proceeds southwesterly along State Highway 211 a distance of 12.4 miles to the parking area at the park and is under the jurisdiction of UDOT.

(12) OTTER CREEK STATE PARK. Access to the Otter Creek State Park is at the pay gate/contact station located in Piute County at milepoint 6.4 on State Highway 22. No access road is defined.

(13) PAINTED ROCKS (Yuba East Shore). Access to the Painted Rocks (Yuba East Shore) begins in Sanpete County at State Highway 28 and proceeds westerly along a county road a distance of 2.0 miles to the parking/boat launch area at the park and is under the jurisdiction of Sanpete County.

Section 5. Section Enacted.

Section 27-12-23.9, Utah Code Annotated 1953, is enacted to read:

27-12-23.9. Highways leading to and within state parks.

The roads which qualify under Section 27-12-23.5 are as follows:

(1) PALISADE STATE PARK. Access to the Palisade State Park begins in Sanpete County at State Highway 89 and proceeds northeasterly along a county road a distance of 2.2 miles to the golf club/contact station at the park and is under the jurisdiction of Sanpete County.

(2) PIONEER TRAILS STATE PARK. Access to Pioneer Trails State Park is at the park entrance located in Salt Lake County at 2601 East Sunnyside Avenue in Salt Lake City, Utah. No access road is defined.

(3) PIUTE STATE PARK. Access to the Piute State Park begins in Piute County at State Highway 89 and proceeds southeasterly along a county road a distance of 1.0 miles to the parking area at the park and is under the jurisdiction of Piute County.

(4) QUAIL CREEK STATE PARK. Access to the Quail Creek State Park begins in Washington County at State Highway 9 and proceeds northerly along State Highway 318 a distance of 2.2 miles to the pay gate/contact station at the park and is under the jurisdiction of UDOT.

(5) RED FLEET STATE PARK. Access to the Red Fleet State Park begins in Uintah County at State Highway 191 and proceeds easterly along a county road a distance of 2.0 miles to the pay gate at the park and is under the jurisdiction of Uintah County.

(6) ROCKPORT STATE PARK. Access to the Rockport State Park begins in Summit County at State Highway 32 and proceeds northwesterly along State Highway 302 a distance of 0.2 miles to the pay gate at the park and is under the jurisdiction of UDOT.

(7) SCOFIELD (Mountain View). Access to Scofield (Mountain View) is at the boat launch located in Carbon County at milepoint 9.2 on State Highway 96. No access road is defined.

(8) SCOFIELD STATE PARK (Madsen Bay). Access to the Scofield State Park (Mountain View) is at the park entrance located in Carbon County at milepoint 12.3 on State Highway 96. No access road is defined.

(9) SNOW CANYON STATE PARK. Access to the Snow Canyon State Park begins in Washington County at State Route 300 at milepoint 4.3 at the entrance to the park. No access road is defined.

(10) STARVATION STATE PARK. Access to the Starvation State Park begins in Duchesne County at State Highway 40 and proceeds northwesterly along State Highway 311 a distance of 2.2 miles to the boat ramp at the park and is under the jurisdiction of UDOT.

Section 6. Section Enacted.

Section 27-12-23.10, Utah Code Annotated 1953, is enacted to read:

27-12-23.10. Highways leading to and within state parks.

The roads which qualify under Section 27-12-23.5 are as follows:

(1) STEINAKER STATE PARK. Access to the Steinaker State Park begins in Uintah County at State Highway 191 and proceeds northwesterly along State Highway 301 a distance of 1.7 miles to the boat ramp at the park and is under the jurisdiction of UDOT.

(2) TERRITORIAL STATEHOUSE STATE PARK. Access to the Territorial Statehouse State Park is at the parking area located in Millard County at milepoint 1.0 on State Highway 100. No access road is defined.

(3) UTAH FIELD HOUSE OF NATURAL HISTORY STATE PARK. Access to Utah Field House of Natural History State Park is at the parking area located in Uintah County at milepoint 145.8 on State Highway 40 (235 East Main in Vernal, Utah). No access road is defined.

(4) UTAH LAKE STATE PARK. Access to the Utah Lake State Park begins in Utah County at State Highway 114 and proceeds westerly along a county road a distance of 2.5 miles to the pay gate at the park and is under the jurisdiction of Utah County.

(5) VETERAN'S MEMORIAL CEMETERY. Access to the Veteran's Memorial Cemetery is at the cemetery entrance located in Utah County at 17111 South Camp Williams Rd. in Riverton, Utah. No access road is defined.

(6) WASATCH MOUNTAIN STATE PARK. Access to the Wasatch Mountain State Park begins in Wasatch County at milepoint 2.3 on State Highway 224 at the junction of a county road (L303) and proceeds northerly along State Highway 224 a distance of 1 mile to the campground entrance and is under the jurisdiction of UDOT.

(7) WILLARD BAY STATE PARK (South). Access to the Willard Bay State Park (South) begins in Box Elder County at a county road and proceeds northwesterly along State Highway 312 a distance of 0.2

miles to the marina parking at the park and is under the jurisdiction of UDOT.

(8) WILLARD BAY STATE PARK (North). Access to the Willard Bay State Park (North) begins in Box Elder County at Interstate Highway 15 and proceeds southwesterly along State Highway 315 a distance of 0.6 miles to the marina parking at the park and is under the jurisdiction of UDOT.

(9) YUBA STATE PARK. Access to the Yuba State Park begins in Juab County at Interstate Highway 15 and proceeds southerly along county road (L203) a distance of 4.1 miles to the pay gate at the park and is under the jurisdiction of Juab County.

Section 7. Section Repealed and Reenacted.

Section 63-11-20, Utah Code Annotated 1953, as last amended by Chapter 9, Laws of Utah 1975, First Special Session, is repealed and reenacted to read:

63-11-20. Highways within state parks.

The Division of Parks and Recreation has jurisdiction over and responsibility for service roads, parking areas, campground loops, and related facilities within state parks.

CHAPTER 248
S. B. No. 243
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

TAXPAYER APPEAL FROM ADMINISTRATIVE RULINGS

By Howard A. Stephenson
Arnold Christensen

AN ACT RELATING TO REVENUE AND TAXATION; GIVING THE DISTRICT COURT JURISDICTION OVER APPEALS FROM INFORMAL AND FORMAL ADJUDICATIVE PROCEEDINGS; PROHIBITING THE DISTRICT COURT FROM HEARING NEW WITNESSES OR CONSIDERING NEW DOCUMENTS ON APPEAL; ALLOWING THE APPELLATE COURT TO REMAND TO THE COMMISSION ANY CLAIMS NOT PRESENTED IN THE ORIGINAL ADJUDICATIVE PROCEEDINGS; PROVIDING FOR A STANDARD OF REVIEW; PROVIDING FOR SETTLEMENT CONFERENCES BEFORE A FORMAL HEARING; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-1-601, AS LAST AMENDED BY CHAPTER 127, LAWS OF UTAH 1992
59-1-602, AS LAST AMENDED BY CHAPTER 127, LAWS OF UTAH 1992

ENACTS:
59-1-502.5, UTAH CODE ANNOTATED 1953
59-1-610, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 59-1-502.5, Utah Code Annotated 1953, is enacted to read:

59-1-502.5. Settlement conference.

(1) At least 30 days before any formal hearing is held in response to a party's request for agency action, a settlement conference shall be held before one or more tax commissioners or an administrative law judge designated by the commission at which proffers of evidence, including testimony, documents, and other exhibits may be made and oral or written argument on legal issues may be received.

(2) Any party participating in a settlement conference shall have the right to informal discovery under any rules established by the commission.

(3) Parties may appear at the settlement conference in person or through agents, employees, or other representatives, but any person appearing on behalf of another party or entity shall have full settlement authority on behalf of the party he is representing.

(4) A record may not be kept of the settlement conference and all settlement conference proceedings are privileged and do not constitute admissions against interest of any party participating in the conference.

(5) At the settlement conference, or as soon thereafter as reasonably practicable, the commission may take any action it deems appropriate to settle, compromise, or reduce the deficiency, or adjust the assessed valuation of any property.

(6) Nothing in this section may limit a party's right to a formal hearing under Title 63, Chapter 46b, Administrative Procedures Act.

Section 2. Section Amended.

Section 59-1-601, Utah Code Annotated 1953, as last amended by Chapter 127, Laws of Utah 1992, is amended to read:

59-1-601. District court jurisdiction.

[~~The~~] (1) In addition to the jurisdiction granted in Section 63-46b-15, beginning July 1, 1994, the district court [~~has exclusive~~] shall have jurisdiction [~~of~~] to review by trial de novo all [~~appeals from and petitions for review of~~] decisions by the commission [~~rendered after informal~~] resulting from formal adjudicative proceedings.

(2) As used in this section, "trial de novo" means an original, independent proceeding, and does not mean a trial de novo on the record.

(3) In any appeal taken after July 1, 1994, from a formal hearing to the district court pursuant to this section, the commission shall certify a record of its proceedings to the district court which record shall be reviewed and considered by the district court. A district court may not, unless the parties otherwise agree in writing, hear witnesses that were not called to testify or consider exhibits that were not presented to the commission at the formal hearing. If the parties do not agree, and a district court determines that additional witnesses should be heard or additional exhibits considered in the interest of justice, the district court shall remand the case to the commission for that purpose. This subsection supercedes Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

Section 3. Section Amended.

Section 59-1-602, Utah Code Annotated 1953, as last amended by Chapter 127, Laws of Utah 1992, is amended to read:

59-1-602. Right to appeal — Venue — County as party in interest.

(1) (a) Any aggrieved party appearing before the commission or county whose tax revenues are affected by the decision may at that party's option petition for judicial review in the district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant to Section 63-46b-16.

(b) Judicial review of formal or informal adjudicative proceedings in the district is in the district court located in the county of residence or principal place of business of the affected taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the Third Judicial District Court in and for Salt Lake County.

(2) A county whose tax revenues are affected by the decision being reviewed shall be allowed to be a party in interest in the proceeding before the court.

Section 4. Section Enacted.

Section 59-1-610, Utah Code Annotated 1953, is enacted to read:

59-1-610. Standard of review of appellate court.

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

(a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and

(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

CHAPTER 249
S. B. No. 247
Passed March 3, 1993
Approved March 18, 1993
Effective January 1, 1993
Retrospective operation to
January 1, 1993

CLEAN-FUEL VEHICLES

By LeRay McAllister

AN ACT RELATING TO ENVIRONMENTAL QUALITY; AMENDING THE PUBLIC SECTOR AND THE PRIVATE SECTOR CLEAN-FUELS VEHICLE INCENTIVE PROGRAMS TO EXPAND LOAN ELIGIBILITY TO CLEAN-FUEL VEHICLE PURCHASES AND TO VEHICLE REFUELING EQUIPMENT PURCHASES; PROVIDING FOR ZERO INTEREST LOANS FROM THE PUBLIC SECTOR FUND; APPROPRIATING $500,000 TO THE CLEAN FUELS PUBLIC SECTOR VEHICLE LOAN FUND; PROVIDING RETROSPECTIVE OPERATION; AND PROVIDING DEFINITIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-53-9, AS LAST AMENDED BY CHAPTERS 68 AND 151, LAWS OF UTAH 1992
63-53-9.5, AS ENACTED BY CHAPTER 68, LAWS OF UTAH 1992
63-53-10, AS LAST AMENDED BY CHAPTER 151, LAWS OF UTAH 1992
63-53-11, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1991
63-53-12, AS LAST AMENDED BY CHAPTERS 68 AND 151, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-53-9, Utah Code Annotated 1953, as last amended by Chapters 68 and 151, Laws of Utah 1992, is amended to read:

63-53-9. Definitions.

As used in this chapter:

(1) "Clean fuel" means:

(a) propane, compressed natural gas, or electricity;

(b) other fuel the Air Quality Board determines to be at least as effective as fuels under Subsection (a) in reducing air pollution; or

(c) other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(2) "Clean-fuel vehicle" means a vehicle that uses a clean fuel and that meets clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(3) "Government vehicle" means a motor vehicle registered in Utah and owned and operated by the state, a public trust authority, a county, a municipality, a town, or a city, including metropolitan rapid transit motor vehicles, buses, trucks, law enforcement vehicles, and emergency vehicles.

(4) "Incremental costs" means the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean-fuel fueling system.

(5) "OEM vehicle" means a vehicle manufactured by the original vehicle manufacturer to use a clean fuel as the dedicated vehicle fuel.

[~~(4)~~] (6) "Private sector fund" means the Clean Fuels Private Sector Vehicle [~~Conversion~~] Loan Fund created in Section 63-53-9.5.

[~~(5)~~] (7) "Private sector program" means the Clean Fuels Private Sector Vehicle [~~Incentive~~] Loan Program created in Section 63-53-12.

[~~(6)~~] (8) "Private sector business vehicle [~~fleet~~]" means [~~at least ten motor vehicles that are not government vehicles and that are owned or operated by one person~~] one or more motor vehicles registered in Utah that are owned and operated solely in the conduct of a private business enterprise.

[~~(7)~~] (9) "Public sector fund" means the Clean Fuels Public Sector Vehicle [~~Conversion~~] Loan Fund created in Section 63-53-10.

[~~(8)~~] (10) "Public sector program" means the Clean Fuels Public Sector [~~Incentive~~] Loan Program created in Section 63-53-12.

(11) "Refueling equipment" means compressors when used separately, compressors used in combination with cascade tanks, and other equipment that constitute a central refueling system capable of dispensing vehicle fuel.

Section 2. Section Amended.

Section 63-53-9.5, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1992, is amended to read:

63-53-9.5. Clean Fuels Private Sector Vehicle Loan Fund — Creation — Funding.

(1) (a) There is created in the division a revolving fund known as the Clean Fuels Private Sector Vehicle [~~Conversion~~] Loan Fund.

(b) The private sector fund consists of:

(i) appropriations to the private sector fund;

(ii) other public and private contributions made under Subsection (d);

(iii) interest earnings on cash balances; and

(iv) all monies collected for loan repayments and interest on loans.

(c) All money appropriated to the private sector fund is nonlapsing.

(d) The division [~~of Energy~~] may accept contributions from other public and private sources for deposit into the private sector fund.

(2) (a) Monies available in the private sector fund may be loaned by the division for expenses for:

(i) the conversion of private sector [fleet] business vehicles to use a clean fuel; or

(ii) to purchase OEM vehicles.

(b) The [maximum] amount loaned per vehicle may not exceed the lessor of:

(i)(A) the actual cost of the vehicle conversion [or ~~$3,000, whichever is less~~] if loaned under Subsection (a)(i); or

(B) the incremental cost of purchasing the OEM vehicle if loaned under Subsection (a)(ii); and

(ii) (A) $4,000 for vehicles with a gross vehicle weight rating of 10,000 pounds or less;

(B) $6,000 for vehicles with a gross vehicle weight rating of 10,001 pounds through 16,000 pounds;

(C) $10,000 for vehicles with a gross vehicle weight rating of 16,001 pounds through 20,000 pounds; or

(D) $18,000 for vehicles with a gross vehicle weight rating of 20,001 pounds or greater.

(c)(i) Subject to the availability of funds in the private sector fund, monies may be loaned by the division for the purchase of vehicle refueling equipment for private sector business vehicles.

(ii) The maximum amount loaned per installation of refueling equipment may not exceed the actual cost of this refueling equipment or $250,000, whichever is less.

(3) Administrative costs of the private sector fund shall be paid by the division until interest revenues in the private sector fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the private sector fund.

(4)(a) The private sector fund balance may not exceed $5,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the private sector fund balance at $5,000,000 shall be deposited in the General Fund.

(5)(a) Expenditures from the private sector fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy with the division.

Section 3. Section Amended.

Section 63-53-10, Utah Code Annotated 1953, as last amended by Chapter 151, Laws of Utah 1992, is amended to read:

63-53-10. Clean Fuels Public Sector Vehicle Loan Fund — Creation — Funding.

(1)(a) There is created in the division a revolving fund known as the Clean Fuels Public Sector Vehicle [Conversion] Loan Fund.

(b) The public sector fund consists of:

(i) appropriations to the public sector fund;

(ii) other public and private contributions made under Subsection (d);

(iii) interest earnings on cash balances; and

(iv) all monies collected for loan repayments and interest on loans.

(c) All money appropriated to the public sector fund is nonlapsing.

(d) The division [~~of Energy~~] may accept contributions from other public and private sources for deposit into the public sector fund.

(2)(a) Monies available in the public sector fund may be loaned by the division for expenses for:

(i) the conversion of government [fleet] vehicles to use a clean fuel; or

(ii) to purchase OEM vehicles.

(b) The [maximum] amount loaned per vehicle may not exceed the lessor of:

(i)(A) the actual cost of the vehicle conversion [or ~~$3,000, whichever is less~~] if loaned under Subsection (a)(i); or

(B) the incremental cost of purchasing the OEM vehicle if loaned under Subsection (a)(ii); and

(ii) (A) $4,000 for vehicles with a gross vehicle weight rating of 10,000 pounds or less;

(B) $6,000 for vehicles with a gross vehicle weight rating of 10,001 pounds through 16,000 pounds;

(C) $10,000 for vehicles with a gross vehicle weight rating of 16,001 pounds through 20,000 pounds; or

(D) $18,000 for vehicles with a gross vehicle weight rating of 20,001 pounds or greater.

(c) (i) Subject to the availability of funds in the public sector fund, monies may be loaned by the division for the purchase of vehicle refueling equipment for government vehicles.

(ii) The maximum amount loaned per installation of refueling equipment may not exceed the actual cost of this refueling equipment or $250,000, whichever is less.

(3) Administrative costs of the public sector fund shall be paid by the division until interest revenues in the public sector fund are sufficient to cover administrative costs, at which time administrative costs may be paid from the public sector fund.

(4)(a) The public sector fund balance may not exceed $5,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the public sector fund balance at $5,000,000 shall be deposited in the General Fund.

(5)(a) Expenditures from the public sector fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy with the division.

Section 4. Section Amended.

Section 63-53-11, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1991, is amended to read:

63-53-11. Clean Fuels Program.

(1) The state, a county or municipal government, and a school district within the state may apply to the division [~~in the manner provided in~~] under Section 63-53-10 for a loan for the reasonable expenses of:

(a) the conversion of its vehicles to use clean fuel; or

(b) to purchase OEM vehicles.

(2) The state, county, municipality, or school district must demonstrate the ability to pay back the [~~conversion costs~~] loan within [~~seven~~] ten years of the date of [~~conversion~~] origination.

Section 5. Section Amended.

Section 63-53-12, Utah Code Annotated 1953, as last amended by Chapters 68 and 151, Laws of Utah 1992, is amended to read:

63-53-12. Rulemaking — Division duties — Loan repayment.

(1) The division shall:

(a) (i) establish and administer the public sector program to encourage government officials to [~~convert their fleets to~~] obtain and use [a] clean-fuel vehicles; and

(ii) establish and administer the private sector program to encourage private sector business vehicle [~~fleet~~] owners and operators to [~~convert their fleets to~~] obtain and use [a] clean-fuel vehicles;

(b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish criteria and conditions for:

(i) prioritizing and awarding loans, including establishing a minimum loan amount;

(ii) repayment by the loan recipient;

(iii) collection of the loans authorized by this section;

(iv) awarding program monies to loan recipients who meet the criteria and conditions under Subsection (a);

(v) requiring all loan applicants who wish to receive [~~funds for conversion of a vehicle to use a clean fuel~~] a loan under the private sector program or the public sector program to:

(A) apply on forms provided by the division;

(B) agree in writing to use the clean fuel for which each vehicle is converted or purchased using loan proceeds for a minimum of 50% of the vehicle miles traveled beginning from the time of conversion or purchase of the vehicle;

(C) agree in writing to notify the division if a vehicle converted or purchased using loan proceeds becomes inoperable through mechanical failure or accident and to pursue a remedy outlined in division rules;

(D) provide reasonable data to the division on vehicles converted or purchased with loan proceeds; and

(E) submit vehicles converted or purchased with loan proceeds to inspections by the division as required in division rules.

(2) (a) When developing repayment schedules for the loans, the division shall consider the projected savings from [~~conversion to a~~] use of the clean-fuel vehicle.

(b) A repayment schedule may not exceed [~~seven~~] ten years.

(c) [~~The loan repayment amount shall include~~] Loans made from the private sector fund shall be made at an interest [~~at a~~] rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

(d) Loans made from the public sector fund shall be made at a zero interest rate.

(3) The Division of Finance is responsible for collection of and accounting for the loans and has custody of all loan documents, including all notes and contracts, evidencing the indebtedness of the public sector fund and the private sector fund.

Section 6. Appropriation.

There is appropriated for fiscal year 1993-94 $500,000 from the General Fund to the Clean Fuels Public Sector Vehicle Loan Fund.

Section 7. Retrospective Operation.

This act has retrospective operation to January 1, 1993.

CHAPTER 250
S. B. No. 260
Passed March 2, 1993
Approved March 18, 1993
Effective March 18, 1993

UTAH HOUSING FINANCE AGENCY ACT AMENDMENTS

By Lane Beattie

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; AMENDING THE UTAH HOUSING FINANCE AGENCY ACT; PROVIDING ADDITIONAL LEGISLATIVE FINDINGS; AMENDING DEFINITIONS; AMENDING SURETY BOND REQUIREMENTS FOR THE AGENCY; AMENDING AGENCY POWERS; PROVIDING FOR LOW-INCOME HOUSING TAX CREDITS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-4-902, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-903, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-909, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-910, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-4-911, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

ENACTS:
9-4-925, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 9-4-902, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-902. Policy — Finding and declaration.

(1) It is declared that the policy of the state of Utah is to assure the health, safety, and welfare of its citizens, that an adequate supply of decent, safe, and sanitary housing is essential to the well-being of the citizens of the state, and that an adequate supply of mortgage funds for housing at reasonable interest rates is in the public interest.

(2) It is found and declared that there continues to exist throughout the state a seriously inadequate supply of safe and sanitary dwelling accommodations within the financial means of persons and families of low [and] or moderate income who wish to purchase or rent residential housing. From time to time the high rates of interest charged by mortgage lenders seriously restrict the transfer of existing housing and new housing starts.

(3) It is found and declared that the reduction in residential construction starts associated with the high rates causes a condition of substantial unemployment and underemployment in the construction industry which impedes the economy of the state and affects the welfare and prosperity of all the people of the state.

(4) It is found and declared that these conditions associated with the recurrent shortages of residential mortgage funds contribute to slums and blight in the cities and rural areas of the state and ultimately to the deterioration of the quality of living conditions within the state of Utah. In accordance with the purpose of this part to assist in providing housing for low and moderate income persons who otherwise could not achieve decent, safe, and sanitary housing, the agency shall make every effort to make housing available in rural, inner city, and other areas experiencing difficulty in securing construction and mortgage loans, and to make decent, safe, and sanitary housing available to low income persons and families.

(5) It is found and declared that in order to assure an adequate fund of private capital into this housing, the cooperation between private enterprise and state government is essential and is in the public interest.

(6) It is found and declared that low and moderate income persons in Utah have a wide range of housing needs, which necessitates the development of many different kinds of programs to address those needs, including programs providing mortgage loans, nontraditional loans, grants, and other forms of financial assistance, and combinations of these forms.

(7) It is found and declared that there are private organizations and governmental entities throughout Utah that are endeavoring to improve the availability of housing for low and moderate income, but many such organizations and entities lack expertise and financial resources to act efficiently and expeditiously in such efforts.

(8) It is found and declared that innovative programs that bring together resources from the public, nonprofit, and private sector are necessary in order to increase the supply of housing for low and moderate individuals, but these programs usually need advice and financial assistance to become established.

[~~(6)~~] (9) It is declared that all of the foregoing are public purposes and uses for which moneys may be borrowed, expended, advanced, loaned, or granted, and that these activities serve a public purpose in improving or otherwise benefiting the people of this state, and that the necessity of enacting the provisions set forth in this part is in the public interest and is hereby so declared as a matter of express legislative determination.

[~~(7)~~] (10) It is found and declared that the compelling need within the state for the creation of an adequate supply of mortgage funds at reasonable interest rates and for other kinds of financial assistance to help provide affordable housing for low and moderate income individuals can be best met by the establishment of an independent state agency and a body corporate and politic vested with the powers and duties specified in this part.

Section 2. Section Amended.

Section 9-4-903, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-903. Definitions.

As used in this part the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

(1) "Agency" means the Utah Housing Finance Agency created by Section 9-4-904.

(2) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness of the agency authorized to be issued under the provisions of this part.

(3) "Construction loan" means a short-term advance of monies for the purpose of constructing residential housing for low and moderate income persons.

(4) "Employee of the agency" means any individual who is employed by the agency but who is not a member of the agency.

(5) "Financial assistance" includes:

(a) a loan, whether interest or noninterest bearing, secured or unsecured;

(b) a loan that converts to a grant upon the occurrence of specified conditions;

(c) a development loan;

(d) a grant;

(e) an award;

(f) a subsidy;

(g) a guarantee;

(h) a warranty;

(i) a lease;

(j) a payment on behalf of a borrower of an amount usually paid by a borrower, including a down payment;

(k) any other form of financial assistance that helps provide affordable housing for low and moderate income persons; or

(l) any combination of the foregoing.

(6) "Housing development" means a residential housing project, which includes residential housing for low and moderate income persons.

(7) "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, residential housing to low and moderate income persons, including a local public body, a nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability company, a joint venture, a subsidiary of the agency, or any subsidiary of the subsidiary, a cooperative, a mutual housing organization, or any other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.

(8) "Local public body" means the state, any municipality, county, district, or other subdivision or instrumentality of the state, including redevelopment agencies and housing authorities created under Part 6.

[~~(5)~~] (9) "Low and moderate income persons" means persons, irrespective of race, religion, creed, national origin, or sex, as determined by the agency to require such assistance as is made available by this part on account of insufficient personal or family income taking into consideration without limiting the generality thereof, such factors as follows:

(a) the amount of income of such persons and families available for housing needs;

(b) the size of family;

(c) whether a person is a single head of household;

[~~(c)~~] (d) the cost and condition of residential housing available; and

[~~(d)~~] (e) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing.

[~~(6) "Mortgage insurer" means any agency, department, administration, or instrumentality, corporate or otherwise, of or in the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Veterans Administration, private mortgage insurance companies, or any other public or private agency which insures or guarantees mortgage loans.~~]

[~~(7)~~] (10) "Mortgage lender" means any bank, trust company, savings and loan association, credit union, mortgage banker, [~~and~~] or other financial institution authorized to transact business in the state, any local public body, or any other entity, profit or nonprofit, that makes mortgage loans.

[~~(8)~~] (11) "Mortgage loan" means [~~an interest-bearing obligation~~] a loan secured by a mortgage, which [~~obligation~~] loan may bear interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of which are used for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons, including low and moderate income persons who are first-time homebuyers, single heads of household, elderly, homeless, or disabled.

[~~(9)~~] (12) "Mortgage" means a mortgage [deed], deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property ([~~such~~] the property being held in fee simple or on a leasehold under a lease having a remaining term, at the time [~~such~~] the mortgage is acquired, of not less than the term for repayment of the mortgage loan secured by [~~such~~] the mortgage) improved or to be

improved by residential housing, creating a lien which may be first priority or subordinate.

(13) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and repair of residential housing.

[~~(10)~~] (14) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including [~~the acquisition, construction, reconstruction, or rehabilitation of~~] land, buildings, and improvements [~~thereto~~] to land and buildings, [~~for~~] whether in one to four family units or multifamily units, and such other nonhousing facilities as may be incidental or appurtenant thereto, or as otherwise specified by the agency.

[~~(11)~~] (15) "State" means the state of Utah.

[~~(12) "Local public body" means the state, or any municipality, county, district, or other subdivision or instrumentality of the state.~~]

(16) "State housing credit ceiling" means the amount specified in Subsection 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

Section 3. Section Amended.

Section 9-4-909, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-909. Members — Surety bond required.

[~~Before the issuance of any notes, bonds, or other obligations under this part, each member of the agency shall execute~~] The agency shall maintain for each member a surety bond in the penal sum of $25,000, and for the executive director of the agency [~~shall execute~~] a surety bond in the penal sum of $50,000. Each surety bond is to be conditioned upon the faithful performance of the duties of the office of the member or executive director, as the case may be, and is to be issued by a surety company authorized to transact business in the state of Utah as surety, and is to be [~~approved by the attorney general and~~] filed in the office of the state treasurer. [~~At all times after the issuance of any notes, bonds, or other obligations by the agency, each~~] Each member and the executive director shall maintain [~~such~~] these bonds in full force and effect. [~~All~~] The agency shall bear all costs of the surety bonds [~~shall be borne by the agency~~].

Section 4. Section Amended.

Section 9-4-910, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-910. Agency — Powers.

The agency has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this part, including without limiting the generality thereof, the following:

(1) to have perpetual succession as a body politic and corporate and to adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;

(2) to sue and be sued in its own name;

(3) to have an official seal and power to alter that seal at will;

(4) to maintain an office at any place or places within this state it may designate;

(5) to adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the agency and the conduct of its business;

(6) to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;

(7) to employ advisers, consultants, and agents, including, but not limited to, financial experts, independent legal counsel, and such advisers, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(8) to procure insurance against any loss in connection with its property and other assets, including mortgage loans, in amounts and from insurers it deems desirable;

(9) to borrow money and to issue bonds and notes or other evidences of indebtedness as provided in this part;

(10) to receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, loaned, granted, and applied to carry out the purposes of this part subject to the conditions, if any, upon which the grants and contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(11) to enter into agreements with any local public body, any housing sponsor, any department, agency, or instrumentality of the United States or this state [~~and~~], or with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, construction, [~~reconstruction,~~] rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of, any residential housing undertaken with the assistance of the agency under this part;

(12) to [~~proceed with~~] exercise all of its remedies following the default under any mortgage loan, including:

(a) proceeding with a foreclosure action[~~;~~] or private sale to obtain title to the real and personal property held as collateral and taking assignments of leases and rentals;

(b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage[~~;~~] and operate[~~;~~] this property in preparation for its disposition; and

(c) to assign, encumber, sell, or otherwise dispose of any [~~real or personal property obtained by the agency due to the default on any mortgage loan held by the agency in preparation for disposition of such~~

~~properties, take assignments of leases and rentals, proceed with foreclosure actions, and take other actions necessary or incidental to the performance of its corporate duties~~] such property;

(13) to invest any funds not required for immediate disbursement, including funds held in reserve, in accordance with applicable provisions of Title 51, Chapter 7, State Money Management Act of 1974;

(14) to provide technical and financial assistance to [~~local public bodies and to profit and nonprofit entities~~] housing sponsors and advisory committees in the development or operation of housing for low and moderate income persons [and];

(15) to gather and distribute data and information concerning the housing needs of low and moderate income families within the various communities of this state;

[~~(15)~~] (16) to the extent permitted under [~~its~~] any contract with the holders of bonds, notes, and other obligations of the agency, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the agency is a party;

[~~(16)~~] (17) to the extent permitted under [~~its~~] any contract with the holders of bonds, notes, and other obligations of the agency, to enter into contracts with any mortgagor or housing sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of residential housing being financed;

(18) to acquire property within this state for the purpose of holding it for subsequent disposition to a housing sponsor or other entity that can use it for residential housing for low and moderate income persons, except that if no person can be found to use it in such a manner, the agency may dispose of the property to any person;

(19) to purchase, own and operate residential housing for the benefit, in whole or in part, of low and moderate income persons, so long as the agency makes reasonable efforts to sell that residential housing to a housing sponsor;

(20) to incorporate or form one or more subsidiaries of the agency for the purpose of carrying out any of the powers of the agency and accomplishing any of the purposes of the agency, to invest in and provide financial assistance to these subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries, and to enter into agreements with these subsidiaries to carry out any of the agency's powers under this part;

(21) to enter into partnership and limited liability company agreements, to purchase and sell interests in housing sponsors, to serve as general partner of a partnership, and to serve as a manager of a limited liability company to carry out any of the agency's powers under this part;

(22) to require that persons receiving a mortgage loan or financial assistance from the agency subject the property involved to restrictive covenants that shall be considered to be running with the land, regardless of whether the agency enjoys privity of estate or whether the covenant touches and concerns the burdened property;

(23) to enter into management agreements with any person or entity for the performance by the person or entity for the agency of any of its functions or powers, upon such terms and conditions as may be mutually agreeable;

[~~(17)~~] (24) to sell, at public or private sale, with or without public bidding, any mortgage loan or other obligation held by the agency; [and]

(25) to sell or convey real property owned by the agency to low or moderate income persons and housing sponsors, without consideration if the sale or conveyance will inure primarily to the benefit of low or moderate income persons living in a housing development;

(26) upon making a determination that the financial status of a housing development is such as to jeopardize any economic interest of the agency in the housing development, to assume managerial and financial control of the property or the owner and to supervise and prescribe the activities of the property or the owner in such a manner and under such terms and conditions as the agency may stipulate in any contract;

(27) to supervise housing sponsors of housing developments;

(28) to service mortgage loans; and

[~~(18)~~] (29) to do any act necessary or convenient to the exercise of the powers granted by this part or reasonably implied therefrom.

Section 5. Section Amended.

Section 9-4-911, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-4-911. Agency — Additional powers.

(1) To accomplish the declared purposes of this part, the agency has the following powers in addition to others granted in this part:

[~~(1) to make, participate in making, and undertake commitments to make or participate in making mortgage loans originated by mortgage lenders for the financing of residential housing for low and moderate income persons, which mortgage loans shall bear maturities as determined by the agency;~~]

[~~(2) to make, participate in making, and undertake commitments to make or participate in making construction loans originated by mortgage lenders for construction, reconstruction, or rehabilitation of residential housing for low and moderate income~~

~~persons, but these loans shall be secured to the satisfaction of the agency;~~]

[~~(3) to make, participate in making, and undertake commitments to make or participate in making loans originated by mortgage lenders, the agency, or a local public body for the rehabilitation of residential housing for low and moderate income persons, but those loans shall be secured to the satisfaction of the agency;~~]

[~~(4) to make and undertake commitments to make loans to any housing authority created pursuant to Part 6, which housing authorities may enter into commitments for and accept loans for a housing project or projects as defined in Section 9-4-602, and these loans may be secured in the same manner as the bonds of these housing authorities; and~~]

[~~(5) to invest in, purchase, or make commitments to purchase, and take assignments from mortgage lenders of mortgage loans made for the construction, rehabilitation, purchase, or leasing of residential housing, but no loan may be eligible for purchase or commitment to purchase by the agency hereunder unless at or before the time of transfer thereof to the agency the mortgage lender certifies:~~]

[~~(a) that in its judgment the loan would in all respects be a prudent investment at the purchase price paid by the agency; and~~]

[~~(b) that, pursuant to rules of the agency, the proceeds of sale or its equivalent shall be reinvested in mortgages or notes to provide residential housing, or, pending the making of such residential mortgages, invested in short-term obligations.~~]

(a) to purchase mortgage loans originated by mortgage lenders or local public bodies made for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons;

(b) to make mortgage loans and to provide financial assistance to housing sponsors for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons;

(c) to make mortgage loans and provide financial assistance to housing sponsors for the purpose of financing the operations of a housing development that are necessary or desirable to enable the housing development to remain available as residential housing for low and moderate income persons, whether or not the housing development has been financed by the agency;

(d) to provide financial assistance to any housing authority created under Part 6, which housing authorities may enter into commitments for and accept loans for a housing project or projects as defined in Section 9-4-602; and

(e) to make mortgage loans and to provide financial assistance to low and moderate income persons for the construction, rehabilitation, or purchase of residential housing.

[~~(6)~~] (2) [~~Loans made pursuant to Subsections (1) and (2)~~] Bonds to purchase loans pursuant to Subsection (1)(a) shall be [~~made~~] issued only after a determination by the agency that the loans are not otherwise available upon reasonably equivalent terms and conditions from private lenders. [~~Loans to housing authorities may be secured as provided in Subsection (4).~~]

(3) Loans for owner-occupied housing made pursuant to [~~Subsections (1) and (2)~~] Subsection (1)(a) may not include a penalty for prepayment.

[~~(7) The agency shall purchase mortgage loans at a purchase price equal to the outstanding principal balance, but a discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return, as determined by the rate of return on comparable investment under market conditions existing at the time of purchase. In addition to the payment of outstanding principal balance, the agency shall pay the accrued interest due on the balance, on the date the loan or obligation is delivered against payment for it or on such later date or dates as may be established by agreement between the agency and the seller.~~]

[~~(8)~~] (4) No mortgage loan is eligible for purchase by the agency if the loan was made more than two years prior to the date of purchase.

[~~(9)~~] (5) The agency shall make rules governing the activities authorized under this section including rules as to any or all of the following:

(a) procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans[~~,~~] and the making of mortgage loans[~~, loans for the rehabilitation of residential housing, and loans to housing authorities~~];

[~~(b) the reinvestment by mortgage lenders of the proceeds, or an equivalent amount, from the sale of mortgage loans to the agency in mortgages or notes to provide residential housing, which rules may also require that the housing be for low and moderate income persons and may include restrictions on the number of units, location, and other characteristics of the housing;~~]

[~~(c) the number of dwelling units, location of the units, and other characteristics of residential housing to be financed by mortgage loans;~~]

[~~(d)~~] (b) rates, fees, charges, and other terms and conditions of originating or servicing mortgage loans in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;

[~~(e)~~] (c) the type and amount of collateral or security to be provided by housing authorities to assure repayment of loans from the agency;

[~~(f)~~] (d) the type of collateral, payment bonds, performance bonds, or other security to be provided for construction loans [~~and for loans for the rehabilitation of residential housing~~];

[~~(g)~~] (e) the nature and amounts of fees to be charged by the agency to provide for expenses and reserves of the agency; [and]

(f) procedures allowing the agency to prohibit persons who fail to comply with the rules of the agency with respect to the operations of any program of the agency from participating, either directly or indirectly, in the programs of the agency;

(g) the terms and conditions under which the agency may purchase and make mortgage loans under each program of the agency;

(h) the terms and conditions under which the agency may provide financial assistance under each program of the agency;

(i) the terms and conditions under which the agency may guarantee mortgage loans under each program of the agency; and

[~~(h)~~] (j) any other matters related to the duties or exercise of powers under this section.

(6) (a) The members of the agency shall appoint the directors, trustees, members, and managers of each subsidiary. Service by a member of the agency in any such capacity does not constitute a conflict of interest for any purpose. The agency may delegate any of its powers and duties under this part to any subsidiary. Subsidiaries shall constitute legal entities separate and distinct from each other, the agency, and the state.

(b) Each note, bond, and other obligation of a subsidiary shall contain on its face a statement to the effect that:

(i) the subsidiary is obligated to pay the same solely from the revenues or other funds of the subsidiary;

(ii) neither the agency nor the state nor any of its political subdivisions is obligated to pay the same; and

(iii) neither the faith and credit nor the taxing power of the state or any of its political subdivisions is pledged to the payment of principal, or redemption price of, or the interest on the note, bond, or other obligation.

(c) Upon dissolution of any subsidiary of the agency, any assets shall revert to the agency or to any successor to the agency or, failing this succession, to the state.

Section 6. Section Enacted.

Section 9-4-925, Utah Code Annotated 1953, is enacted to read:

9-4-925. Low-income housing tax credits.

(1) The agency is designated the "Housing Credit Agency" for the state within the meaning of 26 U.S.C. Sec. 42(h) and for the purposes of carrying out 26 U.S.C. Sec. 42 and any regulations promulgated under that section.

(2) The entire state housing credit ceiling for each calendar year is allocated to the agency.

(3) The allocation of the state housing credit ceiling shall be made under the state's "qualified allocation plan" within the meaning of 26 U.S.C. Sec. 42(m), as amended, and as provided in Subsection (4).

(4) The agency may amend the state's qualified allocation plan as necessary to comply with revisions to the low-income housing tax credit program under 26 U.S.C. Sec. 42, or as may be necessary to further the goals and purposes of the low-income housing tax credit program for the state.

(5) The agency, or a subsidiary of the agency, may have a direct or indirect ownership interest in, and may materially participate in the operation and management of, a housing development or program that has received an allocation of the state housing credit ceiling.

Section 7. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 251
S. B. No. 262
Passed March 2, 1993
Approved March 18, 1993
Effective July 1, 1993

UTAH RENTAL - PURCHASE ACT

By Lyle W. Hillyard

AN ACT RELATING TO RENT TO OWN AGREEMENTS; ENACTING THE UTAH RENTAL PURCHASE ACT; PROVIDING PURPOSES AND RULES OF CONSTRUCTION; DEFINING TERMS; EXEMPTING CERTAIN TRANSACTIONS; REQUIRING DISCLOSURE; PROHIBITING CERTAIN PRACTICES; ALLOWING REINSTATEMENT, RENEGOTIATION, AND EXTENSION UNDER CERTAIN CONDITIONS; PROVIDING ENFORCEMENT PENALTIES; PROVIDING DEFENSES; MAKING CORRELATING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND THE UTAH CONSUMER CREDIT CODE; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
70A-1-201, AS LAST AMENDED BY CHAPTERS 197 AND 294, LAWS OF UTAH 1990
70C-1-202, AS ENACTED BY CHAPTER 159, LAWS OF UTAH 1985

ENACTS:
15-8-1, UTAH CODE ANNOTATED 1953
15-8-2, UTAH CODE ANNOTATED 1953
15-8-3, UTAH CODE ANNOTATED 1953
15-8-4, UTAH CODE ANNOTATED 1953
15-8-5, UTAH CODE ANNOTATED 1953
15-8-6, UTAH CODE ANNOTATED 1953
15-8-7, UTAH CODE ANNOTATED 1953
15-8-8, UTAH CODE ANNOTATED 1953
15-8-9, UTAH CODE ANNOTATED 1953
15-8-10, UTAH CODE ANNOTATED 1953
15-8-11, UTAH CODE ANNOTATED 1953
15-8-12, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 15-8-1, Utah Code Annotated 1953, is enacted to read:

15-8-1. Short title.

This chapter is known as the "Utah Rental Purchase Agreement Act."

Section 2. Section Enacted.

Section 15-8-2, Utah Code Annotated 1953, is enacted to read:

15-8-2. Purpose — Rules of construction.

(1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this chapter are to:

(a) define, simplify, and clarify the law governing consumer rental purchase agreements;

(b) provide certain disclosures to consumers who enter into consumer rental purchase agreements, and further consumer understanding of the terms of consumer rental purchase agreements;

(c) protect consumers against unfair practices;

(d) permit and encourage the development of fair and economically sound rental purchase practices; and

(e) make the law on consumer rental purchase agreements, including administrative rules, more uniform among the various consumer credit code jurisdictions.

Section 3. Section Enacted.

Section 15-8-3, Utah Code Annotated 1953, is enacted to read:

15-8-3. Definitions.

As used in this title:

(1) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental purchase agreement.

(2) "Consumer" means a natural person who rents personal property under a rental purchase agreement to be used primarily for personal, family, or household purposes.

(3) "Consummation" means the time at which a consumer becomes contractually obligated on a rental purchase agreement.

(4) "Lessor" means a person who regularly provides the use of property through rental purchase agreements and to whom rental payments are initially payable on the face of a rental purchase agreement.

(5) "Rental purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes for an initial period of four months or less that is automatically renewable with each payment after the initial period, but which does not obligate or require the consumer to continue renting or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

Section 4. Section Enacted.

Section 15-8-4, Utah Code Annotated 1953, is enacted to read:

15-8-4. Inapplicability of other laws — Exempted transactions.

(1) Rental purchase agreements that comply with this chapter are not governed by the laws relating to:

(a) a security interest as defined in Subsection 70A-1-201(37); or

(b) Title 70C, Utah Consumer Credit Code, except that Sections 70C-2-102 through 70C-2-104 and 70C-2-205 shall apply to lessors as defined in this chapter to the same extent as they apply to creditors under Title 70C.

(2) The chapter does not apply to the following:

(a) rental purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(b) a lease of a safe deposit box;

(c) a lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property; or

(d) a lease of a motor vehicle, as defined in Section 41-1a-102.

Section 5. Section Enacted.

Section 15-8-5, Utah Code Annotated 1953, is enacted to read:

15-8-5. General requirements of disclosure.

(1) A lessor shall disclose to a consumer the information required by this chapter. In a transaction involving more than one lessor, only one lessor needs to make the disclosures, but all lessors shall be bound by the disclosures.

(2) The disclosures shall be made at or before consummation of the rental purchase agreement.

(3) The disclosures shall be made clearly and conspicuously in writing and a copy of the rental purchase agreement shall be provided to the consumer at consummation or at some specified time after consummation, with consent of the consumer. The disclosures required under Subsection 70C-2-202(1) shall be made on the face of the contract, above the line provided for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this chapter.

Section 6. Section Enacted.

Section 15-8-6, Utah Code Annotated 1953, is enacted to read:

15-8-6. Disclosures.

(1) For each rental purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) the total number, total dollar amount, and timing of all payments necessary to acquire ownership of the property;

(b) a statement that the consumer will not own the property until the consumer has made the total payments necessary to acquire ownership;

(c) a statement that the consumer is responsible to the lessor for the fair market value of the property if, and as of the time, it is stolen, damaged, or destroyed;

(d) a brief description of the rented property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used, is not a violation of this chapter;

(e) a statement of the cash price of the property, which, in the case of a single agreement involving a lease of two or more items as a set, is sufficient if it states the aggregate cash price of all items;

(f) the total amount initially payable or required at or before consummation of the agreement or delivery of the property, whichever is later;

(g) a statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the agreement;

(h) a statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula, or method for determining the price at which the property may be so purchased;

(i) a statement identifying the party responsible for maintaining or servicing the property while it is being rented, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(j) the consummation date of the agreement and the identities of the lessor and consumer;

(k) a statement that the consumer may terminate the agreement without penalty upon expiration of any rental period by voluntarily surrendering or returning the property in good repair, along with any past due rental payments; and

(l) a notice of the right to reinstate an agreement as provided in this chapter.

(2) With respect to matters specifically governed by the federal Consumer Credit Protection Act, compliance with that act satisfies the requirements of this section.

Section 7. Section Enacted.

Section 15-8-7, Utah Code Annotated 1953, is enacted to read:

15-8-7. Prohibited practices.

A rental purchase agreement may not contain:

(1) a confession of judgment;

(2) a negotiable instrument;

(3) a claim of a property interest in any goods except those goods delivered by the lessor pursuant to the rental purchase agreement;

(4) a wage assignment;

(5) a waiver by the consumer of claims or defenses;

(6) a provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace while repossessing rented property; or

(7) a provision mandating that the consumer purchase from the lessor insurance or a liability damage waiver for the merchandise.

Section 8. Section Enacted.

Section 15-8-8, Utah Code Annotated 1953, is enacted to read:

15-8-8. Reinstatement.

(1)(a) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options that exist under the agreement, by paying:

(i) all past due rental charges;

(ii) reasonable costs of pickup and redelivery if the consumer reinstates after lessor has been required to pick up the property from the consumer; and

(iii) any applicable late fee.

(b) Any reinstatement payment shall be made within five days after the renewal date if the consumer pays monthly, or within two days after the renewal date if the consumer pays more frequently than monthly.

(2) A consumer who has paid less than 2/3 of the total of payments necessary to acquire ownership and who has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in Subsection (1), may reinstate the agreement. Reinstatement may occur under the circumstance described in this subsection, during a period, as agreed by the parties, which may not be less than 45 days from the date of the return or surrender of the property.

(3) A consumer who has paid 2/3 or more of the total payments necessary to acquire ownership and who has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in Subsection (1), may reinstate the agreement. Reinstatement may occur under the circumstances described in this subsection during a period, as agreed by the parties, which may not be less than 90 days from the date of the return or surrender of the property.

(4) This section does not prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property, if available, or substitute property of comparable quality and condition.

Section 9. Section Enacted.

Section 15-8-9, Utah Code Annotated 1953, is enacted to read:

15-8-9. Receipts and accounts.

A lessor shall, upon request by the consumer, provide a written receipt for each payment made by cash or money order.

Section 10. Section Enacted.

Section 15-8-10, Utah Code Annotated 1953, is enacted to read:

15-8-10. Renegotiations and extensions.

(1) A renegotiation shall occur when an existing rental purchase agreement is satisfied and replaced by a new agreement entered into by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following may not be treated as renegotiations:

(a) the addition or return of property in a multiple item agreement or the substitution of the rental property, if in either case the previous periodic payment allocable to a rental period does not change by more than 25%;

(b) a deferral or extension of one or more periodic payments, or any portion of a periodic payment;

(c) a reduction in charges in the agreement; or

(d) any court proceedings involving an agreement.

(2) Disclosures are not required for any extension of a rental purchase agreement.

Section 11. Section Enacted.

Section 15-8-11, Utah Code Annotated 1953, is enacted to read:

15-8-11. Enforcement — Penalties.

(1) (a) A lessor who fails to comply with the requirements of this chapter is liable to a consumer in an amount equal to the greater of:

(i) the actual damages sustained by the consumer as a result of the lessor's failure to comply with this chapter; or

(ii) 25% of the total payments necessary to acquire ownership, but not less than $100 nor more than $1,000.

(b) A lessor may also be liable to the consumer for the costs of the action and reasonable attorneys' fees, as determined by the court.

(2) A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection (1) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of this chapter as an original action, or as a defense or counterclaim, to an action brought by a lessor against the consumer.

(3) No action under this section may be brought in any court of competent jurisdiction more than two years after the date the consumer made his last rental payment or more than two years after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Section 12. Section Enacted.

Section 15-8-12, Utah Code Annotated 1953, is enacted to read:

15-8-12. Lessor's defenses.

(1) If a lessor established by a preponderance of evidence that a violation of this chapter is unintentional or the result of a bona fide error, no penalty specified in Section 15-8-11 may be imposed and the validity of the transaction is not affected.

(2) A lessor has no liability under this part for any failure to comply with any requirement imposed under this chapter if, within 60 days after discovering an error, and prior to the institution of an action under this chapter or the receipt of written notice of the error from the consumer, the lessor notifies the affected consumer of the error and makes whatever adjustments in the consumer's account as are necessary to correct the error.

(3) A penalty does not apply if any action is performed or omitted in good faith and in conformity with any provision of this chapter, notwithstanding that after an action or omission has occurred, the provision of the chapter is, for any reason, amended, rescinded, or determined by judicial or other competent authority to be invalid.

Section 13. Section Amended.

Section 70A-1-201, Utah Code Annotated 1953, as last amended by Chapters 197 and 294, Laws of Utah 1990, is amended to read:

70A-1-201. General definitions.

In addition to definitions contained in the subsequent chapters of this title and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts as provided in Section 70A-1-103. Compare the definition of "contract" in Subsection (11).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like, including oil and gas, at wellhead or minehead are considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals such as: NONNEGOTIABLE BILL OF LADING is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. In a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. Compare the definition of "agreement" in Subsection (3).

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or

financing is treated as adequately representing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible are considered fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to an instrument, certificated security, or document of title means the person in possession if:

(a) in the case of an instrument, it is payable to bearer or to the order of the person in possession;

(b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or if he is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) (a) A person has "notice" of a fact when:

(i) he has actual knowledge of it;

(ii) he has received a notice or notification of it; or

(iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

(b) A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.

(c) "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know.

(d) The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) (a) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.

(b) A person "receives" a notice or notification when:

(i) it comes to his attention; or

(ii) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this title.

(30) "Person" includes an individual or an organization as provided in Section 70A-1-102.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, execu-

tor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods, notwithstanding shipment or delivery to the buyer as provided in Section 70A-2-401, is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Title 70A, Chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 70A-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Title 70A, Chapter 9. Unless a consignment is intended as security, reservation of title under the consignment is not a "security interest". A consignment in any event is subject to the provisions on consignment sales provided in Section 70A-2-326. Notwithstanding anything in Title 70A to the contrary, "security interest" does not include a rental purchase agreement as defined in Section 15-8-3.

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subsection:

(i) Additional consideration is not nominal if, when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(ii) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(iii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iv) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or the cost of the transmission provided for and properly addressed, and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature or indorsement" means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections as in Sections 70A-3-303, 70A-4-208, and 70A-4-209, a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a preexisting claim;

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

Section 14. Section Amended.

Section 70C-1-202, Utah Code Annotated 1953, as enacted by Chapter 159, Laws of Utah 1985, is amended to read:

70C-1-202. Exemptions to title.

This title does not apply to any of the following:

(1) any extension of credit primarily for business, commercial, or agricultural purposes, or to other than a natural person including government agencies or instrumentalities;

(2) any closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot;

(3) any transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(4) any extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000;

(5) any transaction under public utility or common carrier tariffs if a subdivision of this state or the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

(6) any sale of insurance by an insurer except as otherwise provided in the chapter on insurance, Sections 70C-6-101 through 70C-6-304;

(7) any transaction with a party acting as a pawnbroker and licensed by any governmental authority in this state;

(8) loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965, 20 U.S.C. Sections 1070, et seq.; and

(9) a rental purchase agreement as defined in Section 15-8-3.

Section 15. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 252
S. B. No. 268
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

UNIFORM BUILDING STANDARDS ACT AMENDMENTS

By Stephen J. Rees

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING; AMENDING THE UTAH UNIFORM BUILDING STANDARDS ACT; PROVIDING A DEFINITION; REQUIRING PRINCIPAL BROKERS OF FACTORY BUILT HOUSING TO REMIT SALES FEES; EXEMPTING PRINCIPAL BROKERS FROM REGISTRATION; REPEALING SUPERSEDED SECTION; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATING CLAUSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
58-56-3, AS LAST AMENDED BY CHAPTER 293, LAWS OF UTAH 1990
58-56-16, AS LAST AMENDED BY CHAPTER 262, LAWS OF UTAH 1991
58-56-17, AS ENACTED BY CHAPTER 293, LAWS OF UTAH 1990

REPEALS:
58-56-18, AS LAST AMENDED BY CHAPTER 262, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 58-56-3, Utah Code Annotated 1953, as last amended by Chapter 293, Laws of Utah 1990, is amended to read:

58-56-3. Definitions.

As used in this chapter:

(1) "ANSI" means American National Standards Institute, Inc.

(2) "Code(s)" means the NEC, UBC, UMC, or UPC as defined in this section and as applied in context.

(3) "Commission" means the Uniform Building Codes Commission created under this chapter.

(4) "Compliance agency" means an agency of the state or any of its political subdivisions which issue permits for construction regulated under the codes, or any other agency of the state or its political subdivisions specifically empowered to enforce compliance with the codes.

(5) "Department" means the Department of Commerce.

(6) "Director" means the director of the Division of Occupational and Professional Licensing.

(7) "Division" means the Division of Occupational and Professional Licensing.

(8) "Executive director" means the executive director of the Department of Commerce.

(9) "Factory built housing" means manufactured homes or mobile homes.

(10) "HUD code" means the Federal Manufactured Housing Construction and Safety Standards Act.

(11) "IAPMO" means the International Association of Plumbing and Mechanical Officials.

(12) "ICBO" means the International Conference of Building Officials.

(13) "Installation standard" means the standard adopted and published by the National Conference of States on Building Codes and Standards (NCSBCS), for the installation of manufactured homes titled "The Standard for Manufactured Home Installations," the accompanying manufacturer's instructions for the installation of the manufactured home, or such equivalent standard as adopted by rule.

(14) "Local regulator" means each political subdivision of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

(15) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. All manufactured homes constructed on or after June 15, 1976, shall be identifiable by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.

(16) "Factory built housing set-up contractor" means an individual licensed by the division to set up or install factory built housing on a temporary or permanent basis. The scope of the work included under the license includes the placement and or securing of the factory built housing on a permanent or temporary foundation, securing the units together if required, and connection of the utilities to the factory built housing unit, but does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the factory built housing unit. If a dealer is not licensed as a factory built housing set up contractor, that individual must subcontract the connection services to individuals who are licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(17) "Mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in ac-

cordance with a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(18) "Modular unit" means a structure built from sections which are manufactured in accordance with the construction standards adopted pursuant to Section 58-56-4 and transported to a building site, the purpose of which is for human habitation, occupancy, or use.

(19) "NEC" means the National Electrical Code.

(20) "Opinion" means a written, nonbinding, and advisory statement issued by the commission concerning an interpretation of the meaning of the codes or the application of the codes in a specific circumstance issued in response to a specific request by a party to the issue.

(21) "State regulator" means an agency of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

(22) "UBC" means the Uniform Building Code.

(23) "UMC" means the Uniform Mechanical Code.

(24) "Unlawful conduct" as defined in Section 58-1-10 includes:

(a) engaging in the sale of factory built housing without being registered with the division as a dealer, unless the sale is exempt under Section 58-56-16; and

(b) selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17.

[~~(24)~~] (25) "UPC" means the Uniform Plumbing Code.

Section 2. Section Amended.

Section 58-56-16, Utah Code Annotated 1953, as last amended by Chapter 262, Laws of Utah 1991, is amended to read:

58-56-16. Registration of dealers.

(1) Each person engaged in the sale of factory built housing in the state shall annually register with the division as a [~~"~~]dealer[~~"~~] and shall pay an annual registration fee of $15.

(2) Subsection (1) does not apply to [~~persons~~]:

(a) a person not regularly engaged in the sale of factory built housing who [~~are~~] is selling a unit [~~owned by them~~] he owns for [~~their~~] his own account; [~~or~~]

(b) a principal broker licensed under Title 61, Chapter 2, Division of Real Estate; or

(c) a sales agent or associate broker licensed under Title 61, Chapter 2, Division of Real Estate, who [~~sell new or used factory built housing on rented lots, as part of a cooperative or as an improvement to real property to which the~~] sells factory built housing [~~is permanently affixed~~] as an agent for, and under the supervision, of the licensed principal broker with whom he is affiliated.

Section 3. Section Amended.

Section 58-56-17, Utah Code Annotated 1953, as enacted by Chapter 293, Laws of Utah 1990, is amended to read:

58-56-17. Fees on sale — Escrow agents — Sales tax.

(1) Each dealer shall [~~pay~~] collect and remit a fee of $75 to the division for each factory built home [~~sold by that~~] the dealer [~~whether new or used~~] sells that has not been permanently affixed to real property. The fee shall be payable within 30 days following the close of each calendar quarter for all units sold [~~by that dealer~~] during that calendar quarter. The fee shall be paid to the division with a report as required by the division.

(2) Any principal real estate broker, associate broker, or sales agent exempt from registration as a dealer under Section 58-56-16 who sells a factory built home that has not been affixed to real property shall close the sale only through a qualified escrow agent in this state registered with the Insurance Department or the Department of Financial Institutions.

(3) Each escrow agent through which a sale is closed under Subsection (2) shall remit all required sales tax to the state.

Section 4. Repealer.

Section 58-56-18, Unlawful conduct — Penalty, as last amended by Chapter 262, Laws of Utah 1991, is repealed.

Section 5. Coordinating Clause.

If this bill and S.B. 20, Division of Occupational and Professional Licensing Act Amendments, both pass in the 1993 General Session, it is the intent of the Legislature that the definition of "unlawful conduct" in Section 58-56-3 of this bill take precedence over the same definition in Section 58-56-3 of S.B. 20, except for the cross-reference in the definition to Section 58-1-10 in this bill, which should be changed to Section 58-1-501 as in S.B. 20.

CHAPTER 253
H. B. No. 21
Passed March 3, 1993
Approved March 19, 1993
Effective March 19, 1993

STATE OFFICE OF MUSEUMS

By Afton B. Bradshaw
Eli H. Anderson
Kim R. Burningham
Kevin S. Garn
Patricia B. Larson
J. Brent Haymond
Met Johnson
David Ure
Marda Dillree
Allan C. Rushton
Nancy S. Lyon
Sara Eubank
Steve Barth
David M. Jones

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CREATING A STATE OFFICE OF MUSEUM SERVICES AND ADVISORY BOARD; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
9-4-1001, UTAH CODE ANNOTATED 1953
9-4-1002, UTAH CODE ANNOTATED 1953
9-4-1003, UTAH CODE ANNOTATED 1953
9-4-1004, UTAH CODE ANNOTATED 1953
9-4-1005, UTAH CODE ANNOTATED 1953
9-4-1006, UTAH CODE ANNOTATED 1953
9-4-1007, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-4-1001, Utah Code Annotated 1953, is enacted to read:

Part 10. Office of Museum Services

9-4-1001. Definitions.

As used in this part:

(1) "Museum" means an organized and permanent nonprofit institution, essentially educational or aesthetic in purpose, with permanent staff, which owns or utilizes tangible collections, cares for them, and exhibits them to the public on some regular schedule.

(2) "Office" means the Office of Museum Services.

Section 2. Section Enacted.

Section 9-4-1002, Utah Code Annotated 1953, is enacted to read:

9-4-1002. Office of Museum Services created — Purpose.

(1) There is created within the Division of Community Development the Office of Museum Services.

(2) The office shall assist Utah museums in improving their ability to care for and manage collections, develop quality educational resources such as exhibitions, collections, and publications and provide access to collections for research.

Section 3. Section Enacted.

Section 9-4-1003, Utah Code Annotated 1953, is enacted to read:

9-4-1003. Duties of office.

The office shall:

(1) recommend to the Museum Services Advisory Board:

(a) policies regarding a grants program;

(b) policies regarding the equitable dissemination of office technical assistance; and

(c) guidelines for determining eligibility for office grants;

(2) advise state and local government agencies and employees regarding museum related issues, including museum capital development projects;

(3) provide to Utah museums technical advice and information about sources of direct technical assistance;

(4) assist and advise Utah museums in locating sources of training for their museum staff members;

(5) develop and coordinate programs, workshops, seminars, and similar activities designed to provide training for staff members of the Utah museums;

(6) undertake scholarly research as necessary to understand the training needs of the museum community and to assess how those needs could best be met; and

(7) administer a state Museum Grant Program to assist eligible Utah museums.

Section 4. Section Enacted.

Section 9-4-1004, Utah Code Annotated 1953, is enacted to read:

9-4-1004. Museum Services Advisory Board — Membership.

(1) There is created the Museum Services Advisory Board.

(2) The board shall consist of 11 members appointed by the governor with the consent of the Senate.

(3) The governor shall ensure that the board includes:

(a) at least six members who are qualified, trained, and experienced museum professionals, three of whom shall have a minimum of five years continuous paid work experience in a museum and be drawn from a list proposed by the Utah Museums Association;

(b) other persons with an interest in Utah's museums; and

(c) representation from throughout Utah.

(4) Advisory board members shall be appointed for terms of four years except that three shall initially be appointed for two years, four for three years, and four for four years and shall serve until their successors are appointed and qualified.

(5) The governor shall appoint the chairman of the board. The board shall choose a vice-chairman from its own members. Members may be reappointed for one additional term only, unless the governor determines that unusual circumstances warrant a further term.

(6) Six members of the board shall constitute a quorum for the transaction of business.

(7) The advisory board shall meet at least once a year.

(8) Members of the board shall serve without compensation, but they may be reimbursed for expenses incurred in the performance of their official duties according to rules established by the Division of Finance.

(9) The department shall pay those expenses on warrant to the Division of Finance from money in the budget appropriated for that purpose.

Section 5. Section Enacted.

Section 9-4-1005, Utah Code Annotated 1953, is enacted to read:

9-4-1005. Board — Duties.

(1) The board shall be the policymaking body for the office.

(2) The board shall, in consultation with the director of the office:

(a) set policies and write rules governing the office grants program;

(b) set eligibility guidelines for grants administered through the office; and

(c) set policies and make rules governing the awarding of grants to assist Utah's eligible museums.

Section 6. Section Enacted.

Section 9-4-1006, Utah Code Annotated 1953, is enacted to read:

9-4-1006. Office limitations.

The office may not:

(1) collect, manage, borrow, or purchase artifacts, objects, or other items for its own collection;

(2) operate its own exhibit or display area; or

(3) direct any action to be taken or make any mandatory policies to be followed by individual museums or their parent agencies.

Section 7. Section Enacted.

Section 9-4-1007, Utah Code Annotated 1953, is enacted to read:

9-4-1007. Office director.

The director of the office shall be appointed by the executive director of the department after consultation with the board. The director shall have a graduate degree in museum studies or a related field or comparable nonformal training and preferably a minimum of five years continuous paid work service in a museum.

Section 8. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 254
H. B. No. 120
Passed March 3, 1993
Approved March 19, 1993
Effective July 1, 1993

ENTERPRISE ZONE ACT

By Beverly Ann Evans

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CHANGING QUALIFYING CRITERIA TO BE ELIGIBLE FOR ENTERPRISE ZONE BENEFITS; EXPANDING THE LAW TO INCLUDE ADDITIONAL INDUSTRIES; MODIFYING TAX BENEFITS; PROVIDING A SUNSET DATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-2-404, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-405, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-406, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-412, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992
9-2-413, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF JTAH 1992
9-2-414, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-2-404, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-404. Criteria for designation of enterprise zones — Application.

(1) The governing authority of any county desiring to be designated as an enterprise zone shall file an application with the department that, in addition to complying with other requirements of this part, verifies that the entire county is not located in a metropolitan statistical area and meets at least two of the following criteria:

(a) for the last full year for which data is available, the average county rate of unemployment is 150% or more of the statewide average for the same time period;

(b) [~~average per capita~~] median family income for the county is 80% or less than the statewide average based on the most current data available or the percentage of families living below the poverty rate in the county is 120% or more of the state average for the same time period;

(c) the county has experienced a net population decrease during the past three years.

(2) The application shall be in a form and in accordance with procedures approved by the department, and shall include the following information:

(a) a plan developed by the county that identifies local contributions meeting the requirements of Section 9-2-405;

(b) a county development plan that outlines:

(i) the types of investment and development within the zone that the county expects to take place if the incentives specified in this part are provided;

(ii) the specific investment or development reasonably expected to take place;

(iii) any commitments obtained from businesses;

(iv) the projected number of jobs that will be created and the anticipated wage level of those jobs;

(v) any proposed emphasis on the type of jobs created, including any affirmative action plans; and

(vi) a copy of the county economic development plan to demonstrate coordination between the zone and overall county goals;

(c) the county's proposed means of assessing the effectiveness of the development plan or other programs to be implemented within the zone once they have been implemented;

(d) any additional information required by the department; and

(e) any additional information the county considers relevant to its designation as an enterprise zone.

Section 2. Section Amended.

Section 9-2-405, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-405. Qualifying local contributions.

(1) An area may be designated as an enterprise zone only if the county agrees to make a qualifying local contribution.

(2) The qualifying local contribution may vary from county to county depending on available resources, and may include such elements as:

(a) simplified procedures for obtaining permits;

(b) dedication of available government grants;

(c) dedication of training funds;

(d) waiver of business license fees;

(e) infrastructure improvements;

(f) private contributions;

(g) utility rate concessions;

(h) small business incubator programs; or

(i) management assistance programs.

[~~(2) Each county may designate up to three employee categories in its incentive plan to be available for additional tax credits under Subsection 9-2-412(1)(a). Employee categories may respond to specific county economic challenges, such as major industrial section layoffs, affirmative action needs, or ongoing employment issues such as single heads of households.~~]

Section 3. Section Amended.

Section 9-2-406, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-406. Eligibility review.

(1) The department shall review and evaluate the applications submitted under Section 9-2-404 and shall determine whether each county is eligible for designation as an enterprise zone. In determining whether a county is eligible, if unemployment, income, population, or other necessary data are not available for the county from the federal departments of labor or commerce or a state agency, the department may rely upon other data submitted by the county, if the department determines that it is statistically reliable or accurate.

(2) The department shall designate enterprise zones. The department shall consider and evaluate an application using the following criteria:

(a) the pervasiveness of poverty, unemployment, and general distress in the county;

(b) the extent of chronic abandonment, deterioration, or reduction in value of commercial, industrial, or residential structures in the county, and the extent of property tax arrearages in the county;

(c) the potential for new investment and economic development in the county;

(d) the county's proposed use of other state and federal development funds or programs to increase the probability of new investment and development occurring;

(e) the extent to which the projected development in the zone will provide employment to residents of the county and particularly individuals who are unemployed or who are economically disadvantaged;

(f) the degree to which the county application promotes innovative solutions to economic development problems and demonstrates local initiative; and

(g) other relevant factors that the department specifies in its recommendation.

(3) A county that is located, all or in part, in a metropolitan statistical area or fails to meet at least two of the criteria under Subsection 9-2-404(1) may not be designated as an enterprise zone.

Section 4. Section Amended.

Section 9-2-412, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-412. Businesses qualifying for tax incentives.

The tax incentives described in this part are available only to business firms meeting the following qualifications:

(1) at least 51% of the employees employed at facilities of the firm located in the enterprise zone are individuals who, at the time of employment, reside in the enterprise zone; and

(2) the firm operates within the enterprise zone a [~~primarily manufacturing~~] business[~~, that is, an industry~~] whose primary activity lies within standard industrial codes 2011 through 3999, 4221 through 4231, 5093, 7371 through 7375, and codes 7379, telemarketing firms within 7389, 7629, 7692, 7694, and 7699, as set forth in the [~~1972~~] 1987 Revisions of the Standard Industrial Classification Manual.

Section 5. Section Amended.

Section 9-2-413, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-413. State tax credits.

(1) The following state tax credits against income tax or corporate franchise tax are applicable in an enterprise zone:

(a) a tax credit of $750 for each new full-time position filled in a nonretail capacity for not less than six months during a given tax year, and an additional $500 tax credit if the new position [~~is in one of the special employee categories identified in the county incentive plan under Subsection 9-2-405(2)~~] pays at least 125% of the county average monthly nonagricultural payroll wage for the respective industry as determined by the Utah Department of Employment Security. In the event this information is not available for the respective industry, the job must pay at least 125% of the total average monthly nonagricultural payroll wage in the respective county; and

(b) an investment tax credit of 10% of the first [~~$10,000~~] $100,000 in investment, and 5% of the next [~~$90,000, and 2% of the remaining~~] $250,000 qualifying investment [of] in plant, equipment, or other depreciable property.

(2)(a) Construction jobs are not eligible for the tax credit under Subsection (1)(a).

(b) During the existence of an enterprise zone, a business may claim the tax credit under Subsection (1)(a) only once for each increase in the number of positions. For example, if a business increased from 30 to 35 full-time positions, it could claim a tax credit on five positions. After once having done so, any additional tax credits the business might claim could be based only on new positions beyond 35 positions, notwithstanding any fluctuation in the number of positions below 35. A business existing in an enterprise zone on the date of its designation shall calculate the number of full-time positions based on the average number of employees reported to the Department of Employment Security.

(3) Tax credits not claimed by a business on its state income tax return within [five] three years are forfeited.

Section 6. Section Amended.

Section 9-2-414, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-2-414. Annual report.

Each county designated as an enterprise zone shall annually report to the department regarding the economic activity that has occurred in the zone following the designation. This information shall include the number of jobs created in the zone, the number of economically disadvantaged individuals [~~hired~~] receiving public job training assistance in the zone, the average wage level of the jobs created, descriptions of any affirmative action programs undertaken by the county in connection with the enterprise zone, the amount of the county's local contribution, and the number of businesses qualifying for, or directly benefiting from, the local contribution.

Section 7. Sunset date.

Title 9, Chapter 2, Part 4, Enterprise Zone Act, expires January 1, 1998.

Section 8. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 255
H. B. No. 130
Passed March 3, 1993
Approved March 19, 1993
Effective July 1, 1993

INCREASING ACCESS TO HEALTH CARE

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AN ACT RELATING TO ACCESS TO HEALTH CARE; ENACTING A PROGRAM TO EXPAND PRIMARY CARE; FACILITATING PRICE AND VALUE COMPARISONS FOR INSURANCE POLICIES; REQUIRING UNIFORM CLAIMS PROCESSING; AMENDING PREFERRED PROVIDER CONTRACT PROVISIONS; PROVIDING QUALIFIED IMMUNITY FOR CHARITY CARE; REQUIRING DISCLOSURE OF FINANCIAL INTEREST; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
31A-22-617, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1985
31A-22-714, AS LAST AMENDED BY CHAPTER 261, LAWS OF UTAH 1989

ENACTS:
26-18-301, UTAH CODE ANNOTATED 1953
26-18-302, UTAH CODE ANNOTATED 1953
26-18-303, UTAH CODE ANNOTATED 1953
26-18-304, UTAH CODE ANNOTATED 1953
26-18-305, UTAH CODE ANNOTATED 1953
31A-22-610.5, UTAH CODE ANNOTATED 1953
31A-22-613.5, UTAH CODE ANNOTATED 1953
31A-22-614.5, UTAH CODE ANNOTATED 1953
31A-22-622, UTAH CODE ANNOTATED 1953
58-12-23.5, UTAH CODE ANNOTATED 1953
58-12-44, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 26-18-301, Utah Code Annotated 1953, is enacted to read:

26-18-301. Definitions.

As used in this part:

(1) "Medically underserved population" means the population of an urban or rural area or a population group designated by the department as having a shortage of primary health care services.

(2) "Primary health care" means:

(a) basic and general health care services given when a person seeks assistance to screen for or to prevent illness and disease, or for simple and common illnesses and injuries; and

(b) care given for the management of chronic diseases.

(3) "Primary health care services" include, but are not limited to:

(a) services of physicians, all nurses, physician's assistants, and dentists licensed to practice in this state under Title 58;

(b) diagnostic and radiologic services;

(c) preventive health services including, but not limited to, perinatal services, well-child services, and other services that seek to prevent disease or its consequences;

(d) emergency medical services;

(e) preventive dental services; and

(f) pharmaceutical services.

Section 2. Section Enacted.

Section 26-18-302, Utah Code Annotated 1953, is enacted to read:

26-18-302. Department to award grants — Applications.

(1) Within appropriations specified by the Legislature for this purpose, the department may make grants to public and nonprofit entities for the cost of operation of providing primary health care services to medically underserved populations.

(2) Grants by the department shall be awarded based on applications submitted to the department in the manner and form prescribed by the department and by Section 26-18-303. The application shall contain a requested award amount, budget, and narrative plan of the manner in which the applicant intends to provide the primary care services described in this chapter.

(3) Applicants under this chapter must demonstrate to the department that they will operate in a manner such that no person shall be denied service by reason of his inability to pay. This does not preclude the applicant from seeking payment from the patient, a third party, or government agency that is

authorized or that is under legal obligation to pay such charges.

Section 3. Section Enacted.

Section 26-18-303, Utah Code Annotated 1953, is enacted to read:

26-18-303. Content of applications.

Applications for grants under this chapter shall include:

(1) a statement of specific, measurable objectives, and the methods to be used to assess the achievement of those objectives;

(2) the precise boundaries of the area to be served by the entity making the application, including a description of the medically underserved population to be served by the grant;

(3) the results of an assessment of need demonstrating that the population to be served has a need for the services provided by the applicant;

(4) a description of the personnel responsible for carrying out the activities of the grant along with a statement justifying the use of any grant funds for the personnel;

(5) letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the services to be provided under the grant;

(6) a list of services to be provided by the applicant;

(7) the schedule of fees to be charged by the applicant;

(8) the estimated number of medically underserved persons to be served with the grant award; and

(9) other provisions as determined by the department.

Section 4. Section Enacted.

Section 26-18-304, Utah Code Annotated 1953, is enacted to read:

26-18-304. Process and criteria for awarding grants.

The department shall establish rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, governing the application form, process, and criteria it will use in awarding grants under this chapter. In awarding grants, the department shall consider the extent to which the applicant:

(1) demonstrates that the area or a population group to be served under the application has a shortage of primary health care and that the services will be located so that they will provide assistance to the greatest number of persons residing in such area or included in such population group;

(2) utilizes other sources of funding, including private funding, to provide primary health care;

(3) demonstrates the ability and expertise to serve traditionally medically underserved populations including persons of limited English-speaking ability, single heads of households, the elderly, persons with low incomes, and persons with chronic diseases;

(4) demonstrates that it will assume financial risk for a specified number of medically underserved persons within its catchment area for a predetermined level of care on a prepaid capitation basis; and

(5) meets other criteria determined by the department.

Section 5. Section Enacted.

Section 26-18-305, Utah Code Annotated 1953, is enacted to read:

26-18-305. Report on implementation.

The department shall report to the Health and Environment Interim Committee by November 1, 1994, and every year thereafter on the implementation of the grant program for primary care services. The report shall include a description of the scope and level of coverage provided to low-income persons by primary care grant programs and by the medical assistance program established in Section 26-18-10. The report shall also include recommendations to minimize the loss of revenue by hospitals that serve a disproportionate share of persons under Section 26-18-10.

Section 6. Section Enacted.

Section 31A-22-610.5, Utah Code Annotated 1953, is enacted to read:

31A-22-610.5. Dependent coverage.

Any individual or group insurance policy, health maintenance organization, or preferred provider organization that provides coverage for any dependents shall offer coverage for all unmarried dependents up to age 22 and otherwise eligible. This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents 19 to 22 years of age.

Section 7. Section Enacted.

Section 31A-22-613.5, Utah Code Annotated 1953, is enacted to read:

31A-22-613.5. Price and value comparisons of health insurance.

(1) This section applies generally to all health insurance disability policies.

(2) Immediately after the effective date of this section, the commissioner shall appoint a Health Benefit Plan Committee. The committee shall be composed of representatives of carriers, employers, employees, and health care providers and producers.

(3) The committee shall serve as an advisory committee to the commissioner and shall recommend benefit levels, cost-sharing factors, exclusions, and limitations for two designated health care plans to be marketed in the state.

(a) The plans recommended by the committee may include cost containment features such as:

(i) standardized utilization review of health care services, including review of the medical necessity of hospital and physician services;

(ii) case management benefit alternatives;

(iii) selective contracting with hospitals, physicians, and other health care providers;

(iv) reasonable benefit differentials applicable to participating and nonparticipating providers; and

(v) other managed care provisions.

(b) The committee shall submit the plans to the commissioner within 180 days after the appointment of the committee in accordance with this section.

(c) The commissioner shall adopt two health benefit plans within 60 days after the committee submits recommendations.

(d) If the committee fails to submit recommendations to the commissioner within 180 days after appointment, the commissioner shall within 90 days, after notice and hearing, develop and adopt two designated health benefit plans.

(4) Within 180 days after the adoption of the designated benefit plans by the commissioner, an insurer offering health insurance policies for sale in this state shall, at the request of a potential buyer, provide an estimated premium quote for one of the designated plans based on factors such as that buyer's previous claims experience, group size, demographic characteristics, and health status.

(5) The designated benefit plans are intended to facilitate price and value comparisons by consumers. The designated benefit plans are not minimum standards for health insurance policies. An insurer offering the designated benefit plans may offer policies that provide more or less coverage than the designated benefit plans.

(6) (a) The commissioner shall annually publish a table comparing the rates charged by insurers for the designated health plans and other health insurance plans in this state.

(b) The comparison shall list the top 20 insurers writing the greatest volume by premium dollar per calendar year and others requesting inclusion in the comparison.

(c) In conjunction with the rate comparison described in this subsection, the commissioner shall publish for each of the listed health insurers a table comparing the complaints filed and the combined loss and expense ratio as described in Subsection 31A-2-208.5(2) and (3).

Section 8. Section Enacted.

Section 31A-22-614.5, Utah Code Annotated 1953, is enacted to read:

31A-22-614.5. Uniform claims processing.

(1) Beginning July 1, 1993, all insurers offering health insurance shall use a uniform claim form and uniform billing and claim codes.

(2) The uniform claim forms and billing codes shall be adopted and approved by the commissioner in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The commissioner shall consult with the director of the Division of Health Care Financing, the National Uniform Claim Form Task Force, and the National Uniform Billing Committee when adopting the uniform claims and billing codes.

(3)(a) Beginning July 1, 1995, all insurers shall offer compatible systems of electronic billing approved by the commissioner in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The systems approved by the commissioner may include monitoring and disseminating information concerning eligibility and coverage of individuals.

(b) The commissioner shall regulate any fees charged by insurers to the providers for uniform claim forms or electronic billing.

Section 9. Section Amended.

Section 31A-22-617, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-22-617. Preferred provider contract provisions.

Health insurance policies may provide for insureds to receive services or reimbursement under the policies in accordance with preferred health care provider contracts as follows:

(1) Subject to restrictions under this section, any insurer or third party administrator may enter into contracts with health care providers as defined in Section 78-14-3 under which the health care providers agree to supply services, at prices specified in the contracts, to persons insured by an insurer. The health care provider contract may require the health care provider to accept the specified payment as payment in full, relinquishing the right to collect additional amounts from the insured person. The insurance contract may reward the insured for selection of preferred health care providers by reducing premium rates, reducing deductibles, coinsurance, or other copayments, or in any other reasonable manner.

(2) (a) Subject to Subsections (2) (b) through (2) [(e)] (f), an insurer using preferred health care provider contracts shall pay for the services of health care providers not under the contract, unless the illnesses or injuries treated by the health care provider are not within the scope of the insurance contract. As used in this section, "class of health care providers" means all health care providers licensed or licensed and certified by the state within the same professional, trade, occupational, or facility licensure or licensure and certification category established pursuant to Titles 26 and 58.

(b) When the insured receives services from a health care provider not under contract, the insurer shall reimburse the insured for at least 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers.

The commissioner may adopt a rule dealing with the determination of what constitutes 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers.

(c) When reimbursing for services of health care providers not under contract, the insurer may make direct payment to the insured.

(d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider contracts may impose a deductible on coverage of health care providers not under contract, but that deductible may not exceed [~~$100 per person and $300 per family annually. The commissioner of insurance shall periodically adjust these limits by rule or order to reflect changes in health care prices~~] the limits established by the commission.

(e) [~~An insurer cannot discriminate between classes of health care providers when~~] When selecting health care providers with whom to contract under Subsection (1), [~~but it can~~] an insurer may not discriminate between classes of health care providers, but may discriminate within a class of health care providers, subject to Subsection (7).

(f) For purposes of this section, discrimination between classes of health care providers shall include:

(i) refusal to contract with class members in reasonable proportion to the number of insureds covered by the insurer and the expected demand for services from class members; and

(ii) refusal to cover procedures for one class of providers which are:

(A) commonly utilized by members of the class of health care providers for the treatment of illnesses, injuries, or conditions;

(B) otherwise covered by the insurer; and

(C) within the scope of practice of the class of health care providers.

(3) Before the insured consents to the insurance contract, the insurer shall fully disclose to the insured that it has entered into preferred health care provider contracts. The insurer shall provide sufficient detail on the preferred health care provider contracts to permit the insured to agree to the terms of the insurance contract. The insurer shall provide at least the following information:

(a) a list of the [~~physicians and other~~] health care providers under contract, including their office and business locations, and specialties;

(b) a description of the insured benefits, including any deductibles, coinsurance, or other copayments;

(c) a description of the quality assurance program required under Subsection (4); and

(d) a description of the grievance procedures required under Subsection (5).

(4) (a) An insurer using preferred health care provider contracts shall maintain a quality assurance program for assuring that the care provided by the health care providers under contract meets prevailing standards in the state of Utah.

(b) The commissioner in consultation with the executive director of the Department of Health may designate qualified persons to perform an [annual] audit of the quality assurance program. The auditors shall have full access to all records of the organization and its health care providers, including medical records of individual patients.

(c) The information contained in the medical records of individual patients shall remain confidential. All information, interviews, reports, statements, memoranda, or other data furnished for purposes of the audit and any findings or conclusions of the auditors are privileged. Such information may not be used or received in evidence in any legal proceeding except hearings before the commissioner concerning alleged violations of this section.

(5) An insurer using preferred health care provider contracts shall provide a reasonable procedure for resolving complaints and grievances initiated by the insureds and health care providers.

(6) An insurer may not contract with a health care provider for treatment of illness or [injuries] injury unless the health care provider is licensed to perform [the] that treatment.

(7) (a) No health care provider or insurer may discriminate against a preferred health care provider for agreeing to a contract under Subsection (1).

(b) Any health care provider licensed to treat any illness or injury within the scope of [~~their~~] the health care provider's practice, who is willing and able to meet the terms and conditions established by the insurer for designation as a preferred health care provider, shall be able to apply for and receive the designation as a preferred health care provider. Contract terms and conditions may include reasonable limitations on the number of designated preferred health care providers based upon substantial objective and economic grounds, or expected use of particular services based upon prior provider-patient profiles.

(8) Upon the written request of a provider excluded from a provider contract, the commissioner may hold a hearing to determine if the insurer's exclusion of the provider is based on the criteria set forth in Subsection (7)(b).

(9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.

(10) Nothing in this section is to be construed as to require an insurer to offer a certain benefit or service as part of a health benefit plan.

Section 10. Section Enacted.

Section 31A-22-622, Utah Code Annotated 1953, is enacted to read:

31A-22-622. Health insurance market evaluation.

(1) The commissioner shall study and report to the Human Services Interim Committee and to the Health and Environment Interim Committee by

November 1994 on the commissioner's market evaluation of the health insurance industry in this state.

(2) The report shall:

(a) analyze the effectiveness of the insurance regulations and statutes, as well as insurance carrier compliance, in promoting rate stability, product availability, and affordability of coverage including banding or grouping of companies for insurance rates or health care purchasing coalitions;

(b) contain recommendations for actions to improve the overall effectiveness of the health insurance market, administrative rules, or statutes;

(c) address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to employers and individuals in this state; and

(d) contain recommendations for market conduct, or other regulatory standards or legislative action.

Section 11. Section Amended.

Section 31A-22-714, Utah Code Annotated 1953, as last amended by Chapter 261, Laws of Utah 1989, is amended to read:

31A-22-714. Extension of benefits.

(1) In addition to the right of the employee to have a converted policy issued to him, and on the same bases of eligibility as for conversion of coverage under Sections 31A-22-703 and 31A-22-704, the employee has the right to continue his coverage under the group policy for a period of [~~two~~] six months, unless the employee was terminated for gross misconduct. Where applicable, any extension of coverage required by federal law may run concurrently with the requirements of this section. This right to continue coverage includes any dependent coverages.

(2) In addition to the terminated insured, those classes of persons defined in Section 31A-22-710 are also entitled to the continuation of coverage as provided in this section.

(3) No group policy that provides coverage to children of group members may deny eligibility for coverage to a child solely because the child does not reside with the group member or solely because the child is solely dependent on a former spouse of the group member rather than on the group member. A child who does not reside with the group member may be excluded on the same basis as children who do reside with the group member.

(4) The employer shall provide the terminated insured written notification of the right to continue group coverage and the payment amounts required for continued coverage, including the manner, place, and time in which the payments shall be made. This notice shall be given not more than five days after the termination date of the group coverage. The payment amount for continued group coverage may not exceed the group rate in effect for a group member, including an employer's contribution, if any, for a group insurance policy, or the amount specified by federal law, whichever is applicable. The notice may be sent to the terminated insured's home address as shown on the records of the employer.

(5) If the terminated insured or, with respect to a minor, the parent or guardian of the terminated insured elects to continue group coverage and tenders to the employer the amount required within 30 days after receiving notice as prescribed by this section, coverage of the terminated insured and coverage of the covered spouse and dependents of the terminated insured continues without interruption and may not terminate unless:

(a) the terminated insured establishes residence outside of this state;

(b) the terminated insured fails to make timely payment of a required contribution;

(c) the terminated insured violates a material condition of the contract;

(d) the terminated insured becomes eligible for similar coverage under another group policy; or

(e) the employer's coverage is terminated.

(6) If the employer replaces coverage with similar coverage under another group policy, without interruption, the terminated insured has the right to obtain coverage under the replacement group policy for the balance of the period that the terminated insured would have continued coverage under the replaced group policy, provided the terminated insured is otherwise eligible for continuation of coverage.

(7) At the end of the continued benefit period as provided in this section, the covered person remains eligible for a converted policy under this chapter and shall be so informed by the employer in the same manner and according to the same terms as required by Section 31A-22-703.

Section 12. Section Enacted.

Section 58-12-23.5, Utah Code Annotated 1953, is enacted to read:

58-12-23.5. Qualified immunity — Health professionals — Charity care.

(1) The Legislature finds that many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost. The Legislature also finds that many physicians, charity health care facilities, and other health care providers in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with the practice of medicine. The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer medical care in charity care settings in exchange for a limitation on liability for the physicians, surgeons, health care facilities, and other health care providers who provide those volunteer services.

(2) For purposes of this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary pur-

pose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(b) "Health care professional" shall include physicians, osteopaths, podiatrists, chiropractors, dentists, dental hygienists, nurses, nurse midwives, and nurse practitioners that are licensed to practice in this state under Title 58.

(c) "Remuneration or compensation" means:

(i) direct or indirect receipt of any payment by the physician, surgeon, health care facility, other health care provider, or organization, on behalf of the patient, including payment or reimbursement under medicare, or medicaid, or under the state program for the medically indigent on behalf of the patient;

(ii) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated medical care; and

(iii) "Remuneration or compensation" shall not include any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated medical care such as medical supplies or drugs;

(3) A health care professional who provides medical treatment at a health care facility is not liable in a medical malpractice action if:

(a) the medical treatment was within the scope of the health care professional's license under this title;

(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation and that in exchange for receiving uncompensated care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care shall not be liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21.

Section 13. Section Enacted.

Section 58-12-44, Utah Code Annotated 1953, is enacted to read:

58-12-44. Disclosure of financial interest by practitioners.

Beginning January 1, 1994, persons licensed under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment and rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, or lithotripsy in which the licensee or a member of the licensee's immediate family has any financial relationship, as that term is described in 42 U.S.C.A 1935nn, unless the licensee at the time of making the referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

Section 14. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 256
H. B. No. 140
Passed February 26, 1993
Approved March 19, 1993
Effective July 1, 1993

HISTORICAL MARKERS INVENTORY AND PROMOTION

By R. Mont Evans

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; REQUIRING THE DIVISION OF STATE HISTORY TO INVENTORY AND PROMOTE UTAH HISTORICAL MARKERS AND MONUMENTS; APPROPRIATING $9,900 FOR FISCAL YEAR 1993-94; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-8-203, AS RENUMBERED AND AMENDED BY CHAPTERS 150, 286, AND 241, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 9-8-203, Utah Code Annotated 1953, as renumbered and amended by Chapters 150, 286, and 241, Laws of Utah 1992, is amended to read:

9-8-203. Division duties.

(1) The division shall:

(a) stimulate research, study, and activity in the field of Utah history and related history;

(b) maintain a specialized history library;

(c) mark and preserve historic sites, areas, and remains;

(d) collect, preserve, and administer historical records relating to the history of Utah;

(e) administer, collect, preserve, document, interpret, develop, and exhibit historical artifacts, documentary materials, and other objects relating to the history of Utah for educational and cultural purposes;

(f) edit and publish historical records;

(g) cooperate with local, state, and federal agencies and schools and museums to provide coordinated and organized activities for the collection, documentation, preservation, interpretation, and exhibition of historical artifacts related to the state;

(h) provide grants and technical assistance as necessary and appropriate; and

(i) comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings.

(2) The division may acquire or produce reproductions of historical artifacts and documentary materials for educational and cultural use.

(3) To promote an appreciation of Utah history and to increase heritage tourism in the state, the division shall:

(a) create and maintain an inventory of all historic markers and monuments that are accessible to the public throughout the state;

(b) enter into cooperative agreements with other groups and organizations to collect and maintain the information needed for the inventory;

(c) encourage the use of volunteers to help collect the information and to maintain the inventory;

(d) publicize the information in the inventory in a variety of forms and media, especially to encourage Utah citizens and tourists to visit the markers and monuments;

(e) work with public and private landowners, heritage organizations, and volunteer groups to help maintain, repair, and landscape around the markers and monuments; and

(f) make the inventory available upon request to all other public and private history and heritage organizations, tourism organizations and businesses, and others.

[~~(3) Nothing in this~~] (4) This chapter may not be construed to authorize the division to acquire by purchase any historical artifacts, documentary materials, or specimens that are restricted from sale by federal law or the laws of any state, territory, or foreign nation.

Section 2. Appropriation.

There is appropriated for fiscal year 1993-94 $9,900 from the General Fund to the Division of State History to carry out this act.

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 257
H. B. No. 352
Passed March 3, 1993
Approved March 19, 1993
Effective May 3, 1993

ELECTION DATES AMENDMENTS

By Rob W. Bishop

AN ACT RELATING TO ELECTION LAW; MODIFYING UTAH CAUCUS, CONVENTION, PRIMARY, AND ELECTION PROCESS AND DATES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
20-3-8, AS LAST AMENDED BY CHAPTER 76, LAWS OF UTAH 1987
20-3-13, AS LAST AMENDED BY CHAPTERS 22 AND 68, LAWS OF UTAH 1984
20-3-17, AS LAST AMENDED BY CHAPTER 110, LAWS OF UTAH 1983
20-4-3, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1989
20-4-7, AS LAST AMENDED BY CHAPTER 87, LAWS OF UTAH 1992
20-4-9, AS LAST AMENDED BY CHAPTER 226, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 20-3-8, Utah Code Annotated 1953, as last amended by Chapter 76, Laws of Utah 1987, is amended to read:

20-3-8. Regular primary election day — Successful candidates.

(1) The [~~second~~] fourth Tuesday of [~~September~~] June of each even-numbered year is designated as regular primary election day.

(2) Each political party entitled and intending to make nominations for the next general election shall nominate its candidate for all elective offices and positions at the regular primary election.

(3) Candidates receiving the highest number of votes cast for each office at the regular primary election shall be nominated by the party for that office.

Section 2. Section Amended.

Section 20-3-13, Utah Code Annotated 1953, as last amended by Chapters 22 and 68, Laws of Utah 1984, is amended to read:

20-3-13. Designating offices to be filled — Publishing or posting of notice.

On or before [~~March~~] February 1 in each even-numbered year the lieutenant governor shall prepare and transmit to each county clerk a notice in writing, designating the offices for which candidates are to be nominated at such primary election. Within ten days thereafter each county clerk shall publish once in a newspaper published in such county so much of said notice as may be applicable to his county. If no newspaper [be] is published in such county, the clerk shall cause a copy of such notice to be posted in a conspicuous place most likely to give notice of such election to the electors thereof in each voting district of such county and make affidavit of such posting, showing a copy of the notice and the places where posted.

Section 3. Section Amended.

Section 20-3-17, Utah Code Annotated 1953, as last amended by Chapter 110, Laws of Utah 1983, is amended to read:

20-3-17. Certified lists of candidates transmitted to county clerks.

The lieutenant governor shall transmit to each county clerk a certified list containing the names and post-office address of each person for whom nomination papers have been filed in the office of the lieutenant governor. The certified list shall also indicate the party emblem and specify the candidates who will appear on the individual county ballots at the regular primary elections. This certified list shall be mailed to the county clerks not later than [~~July fifth~~] the Tuesday after the convention.

Section 4. Section Amended.

Section 20-4-3, Utah Code Annotated 1953, as last amended by Chapter 138, Laws of Utah 1989, is amended to read:

20-4-3. Time and place of state primary convention — Election of nominees — Adoption of state platform — Selection of presidential electors, national convention delegates and alternates, and national committeeman and committeewoman.

(1) [~~During the month of June~~] On or before May seventh of each even-numbered year, the delegates elected to the state primary convention of each political party by the several county primary conventions of the party shall convene at a place in the state designated by the state central committee in a state primary convention.

(2) At the convention, the delegates shall organize and elect nominees to run on the party ticket at the regular primary election for all appropriate elective offices and adopt a state platform for the political party for the ensuing election.

(3) (a) In years of presidential elections, they shall also select presidential electors and the necessary delegates and alternates to the national convention and select the national committeeman and committeewoman for the state of Utah.

(b) Each political party shall require a pledge from each candidate for presidential elector that, if elected, he will cast his electoral ballots for the candidates nominated by that party.

Section 5. Section Amended.

Section 20-4-7, Utah Code Annotated 1953, as last amended by Chapter 87, Laws of Utah 1992, is amended to read:

20-4-7. County primary convention — Selection of nominees for county offices and of delegates to state primary

convention — Composition of county committee — Party caucus of electors in county — Election of district officers and delegates to county primary convention.

(1) (a) Before the state party convention in each even-numbered year, the delegates elected by the respective parties at the district party caucuses in each county shall convene as a county primary convention at a time and place designated by the county organization of each respective party.

(b) At the county convention, the delegates shall:

(i) organize and select nominees to run on the party ticket at the regular primary election; and

(ii) select the delegates to the party's state primary convention.

(2) (a) The county central committee of a political party shall consist of the party's county officers and the chairman and vice-chairman elected by the party in each voting district.

(b) In those counties where the chairman and vice-chairman of each legislative district are elected by delegates to the county convention, the chairman and vice-chairman shall also be members of each political party's central committee.

(3) (a) Each political party in each county shall call a party caucus of citizens in each voting district to be held at 7 p.m. on the last Monday in [~~April~~] March in each year in which a general election is to be held.

(b) Each political party shall designate a place within the district, or a public building within an adjacent or nearby district, where the party caucus shall be held.

(c) (i) Each political party shall cause notice of the time and place of the meeting to be posted in at least three public places in the district at least five days before the date of meeting.

(ii) The notice shall specify the number of delegates to the county primary convention to be chosen at the meeting.

(iii) The party shall give any further notice of the meeting that is required by conditions existing in the voting district.

(d) All citizens may attend the party caucuses, but persons wishing to vote shall meet the following criteria:

(i) be at least 18 years old by the next general election; and

(ii) reside in the voting district for which the party caucus is held.

(e) (i) Each voting district party caucus may select one delegate to the county primary convention of each political party for each definite number of votes cast at the last November election within the voting district for all the party's candidates for the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer, excluding the vote for any candidate who had no opposition.

(ii) The county central committee shall determine the number of votes required for each delegate, provided that each voting district is entitled to at least one delegate.

(4) (a) The party caucus for each district shall convene at 7 p.m. at the place appointed by the county central committee.

(b) At the meeting, a voting district chairman and vice-chairman, who shall be of the opposite sex, a secretary, a treasurer, at least three committee members, and the delegates to the party's county primary convention shall be elected by ballot according to the procedures outlined in Section 20-4-9.

(c) Balloting shall continue for at least one hour after the time the meeting opens for business.

(d) The result of the election for county delegates and voting district officers shall be certified by the party caucus chairman and secretary and delivered to the county clerk and the county party chairman within seven days.

(e) (i) If any voting district fails to elect delegates to any party's county primary convention, the county central committee then in office may fill the vacancy from qualified members of the party in the voting district.

(ii) The secretary of the county central committee shall certify the appointed delegates to the county clerk and the county party chairman within seven days.

Section 6. Section Amended.

Section 20-4-9, Utah Code Annotated 1953, as last amended by Chapter 226, Laws of Utah 1992, is amended to read:

20-4-9. Declarations of candidacy — Balloting procedure — Party nominees — Rules of procedure.

(1) (a) All persons intending to become candidates at a primary convention for any elective precinct, county, or district office solely within a county that is to be filled at the next general election shall file a declaration of candidacy with the county clerk between [the] March [~~15~~] 10 and [April ~~15~~] March 17 before the next general election.

(b) All persons intending to become candidates at a primary convention for all other offices except the office of lieutenant governor, including the offices of United States senator or representative, that are to be filled at the next general election shall file a declaration of candidacy with the lieutenant governor between [the] March [~~15~~] 5 and [April] March 15 before the next general election.

(c) If [April] March 15 is a Saturday or Sunday, the filing time shall be extended until 5:00 p.m. on the following Monday.

(2) Before the filing officer accepts any declaration of candidacy, he shall:

(a) read to the candidate the constitutional and statutory requirements for candidacy; and

(b) require the candidate to state whether or not the candidate fulfills the requirements of candidacy.

(3)(a) If the candidate states that he does not meet the requirements of candidacy, the filing officer shall not accept the candidate's declaration of candidacy.

(b) If the candidate states that he meets the requirements of candidacy, the filing officer shall:

(i) accept the candidate's declaration of candidacy; and

(ii) provide a certified copy of the declaration of candidacy to the chairman of the county or state political party of which the candidate is a member.

(4) The form of the declaration of candidacy shall be substantially as follows:

.....

State of Utah
County of ____

I, _____, hereby declare my intention of becoming a candidate for nomination by the ____ party for the office of ____. I do solemnly swear that I can qualify to hold said office, both legally and constitutionally, if selected, and I reside at No. ____ Street in the City or Town of ____, state of Utah, Zip Code ____, Phone No. ____, and that if nominated as a candidate of the ____ party at the ensuing election, I will accept the nomination and not withdraw; and that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state, and that I will qualify for the office if elected thereto.

_____

Subscribed and sworn before me this ____ day of ____, 19__.

_____

Notary Public (or other officer qualified to administer oath.)

.....

(5) Any person who fails to file a declaration of candidacy within the time provided in this chapter is ineligible for nomination to office.

(6) At the time and place set for the state, district, county, or precinct primary conventions, the name of any person who has filed a declaration of candidacy may be placed in nomination for the office for which the declaration was filed.

(7) (a) Following all nominating and seconding speeches made on behalf of any candidate for governor at a state primary convention, the delegates shall proceed to vote as provided in this chapter.

(b) The gubernatorial candidate nominated by the convention shall nominate a candidate for lieutenant governor who meets the eligibility requirements of the statutes and constitution. If the convention fails to affirmatively ratify the nominee for lieutenant governor, the gubernatorial nominee shall nominate other candidates until the convention affirmatively ratifies a nominee.

(c) The governor and lieutenant governor nominated by the convention according to the requirements of this chapter shall run as a joint office in the primary and general elections.

(d) Within 120 days of nomination, the lieutenant governor candidate shall file a declaration of candidacy with the lieutenant governor and pay the fee required by Section 20-3-14. Any candidate for lieutenant governor who fails to file within 120 days shall be disqualified and another candidate shall be nominated by the gubernatorial candidate to replace the disqualified candidate.

(8) (a) Prior to any precinct, county, district, or state primary convention, the county clerk or lieutenant governor shall provide printed ballots to the convention that contain the names of all persons who have filed declarations of candidacy.

(b) If an elected delegate dies, resigns, or is disqualified prior to the convention, the county central committee of the delegate's political party shall appoint a replacement from the voting district of the deceased or disqualified delegate.

(c) Where the number of candidates filing declarations of candidacy is not greater than the number of nominees required for the next general election, those candidates shall be declared to be the party's nominees for those offices and shall not be required to run at either the primary convention or the primary election.

(d) (i) Following the nominating and seconding speeches made on behalf of any candidate for an office to be filled by a precinct, county, district, or state primary convention the delegates shall vote.

(ii) At the precinct, county, or district primary conventions, the delegates shall vote by secret ballot.

(iii) At the state primary convention, the delegates shall vote by secret ballot.

(iv) If the delegates to the state primary convention choose to vote by county, each county committee chairman shall poll his delegation for their votes and announce the county's total votes for each candidate when called upon by the secretary of the convention.

(v) Each convention shall provide adequate time and voting facilities so that all delegates may vote.

(e) Each delegate shall cast one vote for each office to be filled, except that if two or more candidates are to be elected to any office at the next general election, each delegate shall cast as many votes for candidates for the office as there are candidates to be elected to the office at the general election.

(f) After voting, the delegate shall fold the ballot so that no person can see the marks and shall deposit the ballot in a common ballot box.

(g) (i) The ballots shall be counted by judges selected by the primary convention.

(ii) (A) If there are less than four candidates, the two candidates receiving the highest number of votes for any office to be filled at the next general

election shall be declared the party's nominees to run at the next primary election unless more than one candidate is to be elected to any office at the next general election.

(B) In that instance, the convention may nominate twice the number of the candidates to be elected at the next general election, and that number of candidates who receive the highest votes at the primary convention shall be declared the party's nominees to run at the next primary election.

(iii)(A) If there are four or more candidates for any office to be filled at the next general election, the convention may, after January 1, 1993, use multiple ballots.

(B) If multiple ballots are used, no more than four candidates may be placed on the second ballot.

(C) The candidate receiving the fewest number of votes cast on each successive ballot may not be placed on the next ballot, until two candidates remain.

(D) Those two candidates shall be declared the party's nominees to run at the next primary election.

(h) Where only one office is to be filled, a candidate for that office that receives 70% or more of the votes cast at the primary convention shall become the party's candidate in the general election without the necessity of running in the primary election.

(i) [~~The~~] By 5:00 p.m. on the Monday after the convention, the secretary of each primary convention shall immediately certify to the county clerk or the lieutenant governor, as appropriate, the names of the party's nominees.

(j) Each political primary convention shall establish rules to govern its procedure that are consistent with the laws of this state.

CHAPTER 258
H. B. No. 368
Passed March 3, 1993
Approved March 19, 1993
Effective July 1, 1993

APPROPRIATION FOR INDIAN BURIAL REPOSITORY

By Eli H. Anderson
Rob W. Bishop
James Gowans
M. Keele Johnson
Arlo D. James
Kurt E. Oscarson
Met Johnson
Stephen M. Bodily
Dan Q. Price
Beverly Ann Evans
Kevin S. Garn
Douglas S. Peterson
Martin R. Stephens
Kelly C. Atkinson
John L. Valentine
Michael R. Styler
Tom Matthews
Grant D. Protzman
Christine R. Fox
Blake D. Chard
Haynes R. Fuller
Ronald J. Greensides
Patricia B. Larson
Sara Eubank
Lowell A. Nelson
Kim R. Burningham
Russell A. Cannon
Irby N. Arrington
David Ure
Daniel H. Tuttle
Tim Moran
John B. Arrington
Melvin R. Brown
Bill Wright
Clark L. Reber
Robert H.M. Killpack
Phil H. Uipi
DeMar Bowman
David M. Jones
Mary Carlson
Nancy S. Lyon
Brad Johnson
Brent H. Goodfellow
Gene Davis
Jordan Tanner
Marda Dillree
Paul Shepherd
Allan C. Rushton
Steve Barth
Judy Ann Buffmire
Byron L. Harward
Afton B. Bradshaw

AN ACT RELATING TO PARKS AND RECREATION; APPROPRIATING $60,000 FOR FISCAL YEAR 1993-94 FROM THE GENERAL FUND TO THE DIVISION OF PARKS AND RECREATION FOR THE REBURIAL COSTS FOR NATIVE AMERICAN REMAINS RECOVERED FROM SITES THROUGHOUT THE STATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriation.

(1) There is appropriated for fiscal year 1993-94 from the General Fund to the Division of Parks and Recreation $60,000 for the following:

(a) the reburial costs for the Native American remains which have been recovered from various sites within the state, including those remains of the Northwestern Band of the Shoshoni Nation which have been recovered from the shores of the Great Salt Lake;

(b) the reburial vault, which shall be:

(i) located at Pioneer Trail State Park;

(ii) approximately 12 feet high by 12 feet wide by 30 feet long; and

(iii) built partially underground, of concrete and steel, with a bronze outer door, a steel inner door, and a sufficient space to provide approximately 500 reburial caskets to serve existing and anticipated future needs; and

(c) $10,000 shall be given to the Northwestern Band of the Shoshoni Nation to build approximately 100 reburial caskets from oak or some other appropriate wood, each measuring one foot by one foot by three feet, with bronze identification tags.

(2) The funds appropriated under Subsection (1) are nonlapsing.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 259
S. B. No. 23
Passed March 3, 1993
Approved March 19, 1993
Effective May 3, 1993

EDUCATIONAL TECHNOLOGY PROGRAM AMENDMENTS

By Haven J. Barlow
David H. Steele
Scott N. Howell
LeRay McAllister
Millie M. Peterson
Stephen J. Rees
Joseph L. Hull

AN ACT RELATING TO PUBLIC EDUCATION; REAUTHORIZING THE TECHNOLOGY INITIATIVE PROJECT OFFICE; MODIFYING FUNDING PROVISIONS; AND MAKING CERTAIN TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-1-701, AS LAST AMENDED BY CHAPTER 81, LAWS OF UTAH 1991
53A-1-702, AS LAST AMENDED BY CHAPTER 49, LAWS OF UTAH 1992
53A-1-703, AS LAST AMENDED BY CHAPTER 81, LAWS OF UTAH 1991
53A-1-704, AS LAST AMENDED BY CHAPTER 81, LAWS OF UTAH 1991
53A-1-705, AS LAST AMENDED BY CHAPTER 81, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 53A-1-701, Utah Code Annotated 1953, as last amended by Chapter 81, Laws of Utah 1991, is amended to read:

53A-1-701. Legislative declaration and authorization.

(1) The Legislature recognizes that the quality of public education can be enhanced in the state by providing for educational technology programs that:

(a) support and encourage the use of educational technology in the state's public schools;

(b) train teachers and prospective teachers [in the ~~state's colleges of education~~] to effectively use educational technology in the classroom;

(c) promote a strong technology partnership between public education and private enterprise;

(d) promote student performance in the basic curriculum areas of science, mathematics, reading, and language arts and encourage achievement in other curriculum areas identified by each local school board;

(e) focus public and private funding on critical educational areas that directly support student achievement and economic development;

(f) support the development of educational technology in Utah and encourage the expansion of high technology industry in the state; and

(g) are available to each school district so that all students enrolled in the state's public elementary and secondary schools may have access to educational technology programs.

(2) School districts and colleges of education [~~are authorized and encouraged to~~] shall develop [and], establish, and maintain educational technology programs in conjunction with the guidelines provided in this part.

Section 2. Section Amended.

Section 53A-1-702, Utah Code Annotated 1953, as last amended by Chapter 49, Laws of Utah 1992, is amended to read:

53A-1-702. Appropriation — Allocations — Contributions from school districts, the business community, and technology vendors.

(1)(a) [~~There is appropriated an amount as determined by the Legislature for fiscal year 1991-92~~] The Legislature shall provide an annual appropriation to help [~~implement~~] fund the technology programs authorized in this part.

(b) [~~These monies are~~] The appropriation is nonlapsing.

(2) The appropriation is allocated as follows:

(a) the State Board of Education shall receive the amount appropriated for allocation to the state's 40 school districts and the School for the Deaf and School for the Blind, [~~distributed~~] and distribute it in two parts:

(i) the board shall distribute the first part, 25% of the appropriation, equally among the state's [40] school districts[~~, including the School for the Deaf and School for the Blind~~]; and

(ii) the board shall distribute the second part, 75% of the appropriation, based on the ratio of a district's average daily membership [~~for the 1991-92 school year~~] to the state total average daily membership [~~for 1991-92~~];

(b) the State Board of Regents shall receive the amount appropriated for allocation to the state colleges of education and distribute it based on each state college's student teacher training enrollment FTE's [~~for 1991-92~~] as compared to the total student teacher training enrollment FTE's for all state colleges of education [~~for 1991-92~~]; and

(c) $150,000 is allocated to the Technology Initiative Project Office established under this part for program administration and coordination costs.

(i) The office shall use part of its allocation to help establish or promote private sector partnerships whose primary purpose is to obtain additional fund-

ing for the technology programs authorized in this part.

(ii) The Technology Initiative Steering Committee shall determine what portion of the allocation shall be used under Subsection (c)(i).

[~~(d) The Technology Initiative Steering Committee shall review the need to include applied technology centers and higher education institutions providing ATC services to areas of the state not served by the centers in the technology programs authorized in this part.~~]

(3) (a) [~~It is the intent of the Legislature that neither~~] Neither the State Board of Education nor the State Board of Regents may establish rules that restrict school districts or colleges of education in their purchases of educational technology under this part or use any of the money appropriated [~~under this section~~] for this part for administrative or overhead costs, other than the allocation provided to the Technology Initiative Project Office under Subsection (2)(c).

(b) The monies shall flow through the respective state boards directly to the school districts and colleges, subject to any qualifications established under this part.

[~~(4) It is the intent of the Legislature that the Legislature shall appropriate additional monies for the programs authorized under this part for fiscal year 1992-93.~~]

[~~(5)~~] (4) School districts and colleges shall match state appropriations for the technology programs on a one to three basis, that is one dollar in local resources for every three state dollars, either through local funding efforts or through in-kind services, which may include providing an infrastructure, planning services, training services, maintenance, or the use of technical assistance specialists.

[~~(6)~~] (5) (a) School districts, individual public schools, and public institutions of higher education shall solicit contributions from and enter into partnerships with private business to obtain additional resources for the technology programs authorized under this part.

(b) The Technology Initiative Project Office shall solicit contributions for district technology programs from federal sources.

(c) The additional resources obtained under this section shall remain with the respective district, school, or institution as part of its technology program.

(d) Contributions made at the state level by private business or federal sources shall flow to selected districts, schools, or colleges of education based on specific technology projects as approved and selected by the Technology Initiative Steering Committee.

[~~(7)~~] (6) Vendors who participate in the technology program shall make contributions to the program in terms of vendor discounts, inservice training, and continuing support services under standards established by the Technology Initiative Steering Committee.

[~~(8)~~] (7) As used in this part, "school district" includes the School for the Deaf and the School for the Blind.

Section 3. Section Amended.

Section 53A-1-703, Utah Code Annotated 1953, as last amended by Chapter 81, Laws of Utah 1991, is amended to read:

53A-1-703. Technology Initiative Steering Committee — Composition — Compensation.

(1) There is established a Technology Initiative Steering Committee, hereafter referred to as the committee, consisting of [~~13~~] members selected or appointed as follows:

(a) three business members appointed by the governor;

(b) one member appointed by the governor, representing the executive branch;

(c) the state chief procurement officer or his designee;

(d) the state superintendent of public instruction or his designee;

(e) a school district superintendent, appointed by the Utah School Superintendents Association;

(f) a local school board member, appointed by the Utah School Boards Association, except that the board member and district superintendent may not be from the same school district;

(g) two public school classroom teachers who have experience and expertise in the use of educational technology, one selected by the other members of the committee and one selected by the state's largest teacher association;

(h) a member of the Utah PTA, selected by the state PTA board;

[~~(h)~~] (i) the commissioner of higher education or his designee; and

[~~(i)~~] (j) two members who have experience and expertise in the use of educational technology, one appointed by the speaker of the House of Representatives and one by the president of the Senate.

(2) The members of the committee appointed or selected under Subsection (1) may, by majority vote, select up to two additional members to serve on the steering committee at the pleasure of the committee.

[~~(2)~~] (3) The committee shall elect one of the three business members to serve as chairman.

[~~(3)~~] (4) Members of the committee shall serve without compensation.

[~~(4)~~] (5) A majority of the committee is a quorum for the purpose of conducting business. Members are appointed or selected for four-year terms.

[~~(5)~~] (6) Members of the committee may not benefit financially, either directly or indirectly, or re-

ceive payments for goods or services, or be affiliated with any vendor that may benefit financially from this act.

Section 4. Section Amended.

Section 53A-1-704, Utah Code Annotated 1953, as last amended by Chapter 81, Laws of Utah 1991, is amended to read:

53A-1-704. Duties and responsibilities.

(1) The committee has the following duties and responsibilities:

(a) to establish a Technology Initiative Project Office, which shall cease to exist on June 30, [~~1993~~] 1998, unless reauthorized by the Legislature;

(b) to appoint a director for the project office who is not affiliated with any technology vendors;

(c) to review, approve, and update school district and college of education plans and reports related to the technology programs authorized and funded under this part, incorporating broad, objective, functional requirements and guidelines within the approval process;

(d) to review and provide criteria on an ongoing basis for technology products to be used in the programs, which criteria shall give consideration to at least any one or all of the following:

(i) technology that emphasizes instruction;

(ii) technology discounts, which may include installation and maintenance of a technology product;

(iii) a sound inservice component for educators;

(iv) upgrading of options in the original technology, at the same discount rate as given in the original purchase or lower for at least five years after the purchase of the original technology;

(v) technology of proven worth;

(vi) available technology evaluations;

(vii) submission of technology for evaluation by a committee of instructional software users;

(viii) cost effectiveness of the technology being offered;

(ix) identification of discontinued technology;

(x) compatibility of the technology with other technology products, using industry-wide standards; and

(xi) identification of the closest multiple sites and contact persons where the technology is being used and can be observed;

(e) to coordinate raising of funds from federal and private sources to supplement the appropriation authorized under this part for technology programs in the public schools and colleges of education; and

(f) to verify that an appropriate evaluation of each plan is included in the plan itself.

(2) The project office has the following duties:

(a) to assist the committee in fulfilling its duties set out in Subsections (1)(c), (d), (e), and (f) as directed by the committee; and

(b) to establish a technical review committee in the project office, consisting of volunteers who have educational technology expertise and are not affiliated with any vendors participating in the technology programs.

Section 5. Section Amended.

Section 53A-1-705, Utah Code Annotated 1953, as last amended by Chapter 81, Laws of Utah 1991, is amended to read:

53A-1-705. Educational technology plans — Components — Review and approval — Reports.

(1) (a) Each school district shall prepare and submit a plan to the committee for review and approval of the district's proposed use of its technology allocation.

(b) The approval is of the plan and not of specific products or technology.

(c) Each district shall review and update its plan on an annual basis.

(2) The plan shall include the following components:

(a) the technology purchases to be made and proposed installation, maintenance, and replacement costs;

(b) specific, focused educational goals and measurable academic objectives to be accomplished in the district with the program, giving consideration to the respective size and needs of both student and teacher populations;

(c) valid instructional strategies, including inservice training for teachers;

(d) procedures to optimize the cooperation of all levels of education in the program, particularly in the planning process, including principals and teachers;

(e) methods to evaluate the program; and

(f) details of how the new technology will integrate with existing technology in the district.

(3) (a) Each college of education shall prepare and submit a plan to the committee for review and approval of the proposed use of its appropriation.

(b) The plan shall focus on training teachers and prospective teachers to use the technology which school districts may acquire under this part.

(c) Each college shall review and update its plan on an annual basis.

(4) A school district or college of education may not spend any of the monies appropriated under this part until the plans for its technology program have been reviewed and approved by the committee on an annual basis.

(5) (a) Each school district and college of education shall prepare and submit a yearly report to the com-

mittee on the actual use of its allocation under this part.

(b) The reports shall include information on how the technology is being used to reach the performance goals established under Subsections (2)(b) and (4) and the progress on attaining the goals.

(c) The district or college of education shall submit the report by December 31 of each year and send a copy of the report to the governor and the Legislature.

[~~(d) The districts and colleges shall submit additional annual evaluation reports for each year the Legislature provides appropriations for the technology programs.~~]

[~~(e)~~] (d) (i) The committee shall annually review and approve the plans submitted by school districts and colleges of education under this section.

(ii) The committee shall review each component of the plans as required under this section and recommend approval or revision.

[~~(f)~~] (e) The committee shall make regular reports to the Education Interim Committee of the Legislature on the status of the programs authorized under this part.

CHAPTER 260
H. B. No. 169
Passed March 3, 1993
Approved March 18, 1993
Effective May 3, 1993

COUNTY ACCOUNTING PRACTICES

By Blake D. Chard

AN ACT RELATING TO COUNTY ACCOUNTING PRACTICES; CLARIFYING ACCOUNTING PRACTICES INVOLVING THE COUNTY ASSESSOR; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17-17-1, UTAH CODE ANNOTATED 1953
17-19-1, AS LAST AMENDED BY CHAPTER 59, LAWS OF UTAH 1990
59-2-1305, AS REPEALED AND REENACTED BY CHAPTER 3, LAWS OF UTAH 1988

REPEALS AND REENACTS:
51-4-2, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 17-17-1, Utah Code Annotated 1953, is amended to read:

17-17-1. Duties of assessor.

The assessor, in cooperation with the State Tax Commission, shall [~~perform the duties prescribed by law.~~]:

(1) perform the duties required in Title 59, Chapter 2, Part 13, Collection of Taxes; and

(2) perform any other duties required by law.

Section 2. Section Amended.

Section 17-19-1, Utah Code Annotated 1953, as last amended by Chapter 59, Laws of Utah 1990, is amended to read:

17-19-1. County auditor's powers and duties.

(1) All persons holding claims against a county shall present the claims to the county auditor.

(2) The county auditor shall:

(a) investigate and examine all of those claims;

(b) recommend approval or disapproval of each of those claims and endorse the recommendation upon each claim;

(c) report the claims and his recommendation to the county governing body at the next regular meeting after the investigation is completed; and

(d) keep, in a book kept for that purpose, a complete record of all claims, his recommendation on the claims, the reasons for the recommendation, and the action of the board on the claims.

(3) Before any warrant for the payment of any bills, claims, accounts, or charges for materials of any kind or nature that are purchased by or on behalf of the county by any of the county officers or contracted for by the county governing body may be paid, the county auditor shall:

(a) investigate, examine, and inspect the bills, claims, accounts, or charges; and

(b) recommend approval or disapproval of each bill, claim, account, or charge.

(4) (a) At least annually, the county auditor shall examine the books and accounts of the county governing body, [~~the county assessor,~~] county attorney, county treasurer, county clerk, county recorder, county sheriff, and county surveyor.

(b) At least quarterly, the county auditor shall examine and reconcile the books and accounts of the county assessor.

[~~(b)~~] (c) At least annually, the county auditor shall examine the books and accounts of the justice court judges.

[~~(c)~~] (d) The county auditor may examine the books and accounts of all other county offices or administrative units of the county.

(5) (a) To fulfill the requirements of this section, each county officer, office, or administrative unit shall give the county auditor complete and free access to all books, records, and papers.

(b) (i) If the county auditor finds that the books and accounts of any county officer, office, or administrative unit are not kept according to law or that incorrect or improper reports have been made by those officers, offices, or administrative units, he shall report his findings to the county governing body at their next regular meeting.

(ii) If the county auditor finds that the records of a justice court judge are not kept according to law or that incorrect or improper reports have been made by the justice court judge, the county auditor shall provide a copy of his report to the state court administrator, in addition to reporting his findings to the county governing body.

Section 3. Section Repealed and Reenacted.

Section 51-4-2, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1987, is repealed and reenacted to read:

51-4-2. Deposits by political subdivisions.

(1) As used in this section:

(a) "Officer" means each:

(i) county treasurer, county auditor, county assessor, county clerk, clerk of the circuit court, city treasurer, city clerk, justice of the peace; and

(ii) other officer of a political subdivision.

(b) "Political subdivision" means a county, city, town, school district, and special district.

(2) (a) Each officer shall deposit all public funds daily whenever practicable but not later than three days after receipt.

(b) Each officer shall deposit all public funds only in qualified depositories unless the public funds need to be deposited in a bank outside Utah in order to provide for:

(i) payment of maturing bonds or other evidences of indebtedness; or

(ii) payment of the interest on bonds or other evidences of indebtedness.

(3) (a) (i) Each officer shall require all checks to be made payable to the office of the officer receiving funds or to the political subdivision's treasurer.

(ii) An officer may not accept a check unless it is made payable to the office of the officer receiving funds or to the political subdivision's treasurer.

(b) Each officer shall deposit all monies he collects into an account controlled by his political subdivision's treasurer.

(4) (a) Except as provided in Subsection (b) and unless a shorter time for depositing funds is otherwise required by law, each political subdivision that has collected funds that are due to the state or to another political subdivision of the state shall, on or before the tenth day of each month, pay all of those funds that were receipted during the last month:

(i) to a qualified depository for the credit of the appropriate public treasurer; or

(ii) to the appropriate public treasurer.

(b) Property tax collections shall be apportioned and paid according to Section 59-2-1365.

Section 4. Section Amended.

Section 59-2-1305, Utah Code Annotated 1953, as repealed and reenacted by Chapter 3, Laws of Utah 1988, is amended to read:

59-2-1305. Entries of payments made — Payments to county treasurer.

(1) The assessor shall note on the assessment roll, opposite the names of each person against whom taxes have been assessed, the amount of the taxes paid.

[~~(2) The assessor shall deposit daily into the county treasury all moneys collected and, on the first Monday of each month, shall make a settlement with the county treasurer for all moneys collected during the preceding month.~~]

(2) (a) The assessor shall require all checks to be made payable to the office of the county assessor.

(b) If the assessor receives checks made payable to a payee other than the office of the county assessor, the assessor shall immediately endorse the check with a restrictive endorsement that makes the check payable to the office of the county treasurer.

(3) The assessor shall deposit all monies he collects into an account controlled by the county treasurer.

CHAPTER 261
H. B. No. 45
Passed March 3, 1993
Approved March 22, 1993
Effective January 1, 1994

UNIVERSAL INCOME WITHHOLDING

By Irby N. Arrington
Neal B. Hendrickson

AN ACT RELATING TO CHILD SUPPORT; REQUIRING THAT, AS OF JANUARY 1, 1994, ALL CHILD SUPPORT ORDERS INCLUDE A PROVISION FOR IMMEDIATE, UNIVERSAL INCOME WITHHOLDING; PROVIDING EXCEPTIONS; PROVIDING PROCEDURES FOR IMPLEMENTATION OF IMMEDIATE, UNIVERSAL INCOME WITHHOLDING; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
30-3-5, AS LAST AMENDED BY CHAPTER 257, LAWS OF UTAH 1991
62A-11-401, AS LAST AMENDED BY CHAPTER 62, LAWS OF UTAH 1989
62A-11-403, AS LAST AMENDED BY CHAPTER 251, LAWS OF UTAH 1990
62A-11-404, AS LAST AMENDED BY CHAPTER 251, LAWS OF UTAH 1990
62A-11-404.5, AS ENACTED BY CHAPTER 251, LAWS OF UTAH 1990
62A-11-405, AS LAST AMENDED BY CHAPTER 251, LAWS OF UTAH 1990
62A-11-412, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
78-45-7.1, AS LAST AMENDED BY CHAPTER 166, LAWS OF UTAH 1990

ENACTS:
62A-11-501, UTAH CODE ANNOTATED 1953
62A-11-502, UTAH CODE ANNOTATED 1953
62A-11-503, UTAH CODE ANNOTATED 1953
62A-11-504, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 30-3-5, Utah Code Annotated 1953, as last amended by Chapter 257, Laws of Utah 1991, is amended to read:

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; [and]

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders[.];

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5; and

(e) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional $7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other relatives, the court shall consider the welfare of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment

by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) When a petition for modification of child custody or visitation provisions of a court order is made and denied, the court may order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted in good faith.

Section 2. Section Amended.

Section 62A-11-401, Utah Code Annotated 1953, as last amended by Chapter 62, Laws of Utah 1989, is amended to read:

62A-11-401. Definitions.

As used in this part and in Part 5:

(1) "Child" means a son or daughter who is under the age of 18 years, or who is physically or mentally handicapped and incapable of earning income sufficient to support himself.

(2) "Child support" means a financial obligation ordered by a court or administrative body for the support of a child, including current periodic payments and all arrearages. Child support includes court ordered obligations for the support of a spouse or former spouse with whom the child resides if the spousal support is collected with the child support.

(3) "Child support order" means a judgment, decree, or order of a court or administrative body whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise, which:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or confirms a child support order under Title 77, Chapter 31.

(4) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.

(5) "Income" means earnings or compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or contract payment, or denominated as advances on future wages, salary, commission, bonus, contract payment, or otherwise. "Income" specifically includes, but is not limited to:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(b) periodic payments made under pension or retirement programs or insurance policies of any type;

(c) unemployment compensation benefits; and

(d) workers' compensation benefits.

(6) "Jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(7) "Obligor" means a person owing a duty of child support.

(8) "Obligee" means a person to whom a duty of support is owed, or who is entitled to reimbursement of support or public assistance.

(9) "Office" means the Office of Recovery Services.

(10) "Payor" means an employer or any person who is a source of income to an obligor.

Section 3. Section Amended.

Section 62A-11-403, Utah Code Annotated 1953, as last amended by Chapter 251, Laws of Utah 1990, is amended to read:

62A-11-403. Provision for income withholding in child support order —Immediate income withholding.

(1) Whenever a child support order is issued or modified in this state the obligor's income is subject to income withholding for the child support described in the order, in accordance with the provisions of this [~~part~~] chapter.

(2) In every child support order issued or modified on or after January 1, 1994, the court or administrative body shall include:

(a) a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order the obligor's income is nevertheless subject to income withholding; and

(b) with regard to child support orders that are subject to income withholding, an order assessing against the obligor an additional $7 per month check processing fee to be included in the amount withheld and paid to the office for the purposes of income withholding in accordance with the provisions of this chapter.

(3) With regard to persons receiving IV-D services:

(a) Each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order regardless of whether a delinquency occurs, unless:

(i) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or

(ii) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and by the office in cases pursued under Title IV-D of the Social Security Act where there is an assignment of support rights to the state, and re-

viewed and entered in the record by the court or administrative body.

(b) For purposes of Subsection (a):

(i) "good cause" shall be based on, at a minimum:

(A) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and

(B) proof of timely payment of any previously ordered support;

(ii) in determining "good cause", the court or administrative body may, in addition to any other requirement that it deems appropriate, consider whether the obligor has:

(A) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

(B) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.

(c) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:

(i) the date payment of child support becomes delinquent;

(ii) the date the obligor requests;

(iii) the date the custodial parent requests, if the office determines that the request should be approved based on procedures and standards the office has established; or

(iv) on such date as the office selects.

(d) Income withholding implemented under this section is subject to termination under Section 62A-11-408.

(4) Appropriate income withholding procedures [~~shall~~] apply to existing and future payors, and all withheld income shall be submitted to the office. Income withholding under the order may be effective until the obligor no longer owes child support to the obligee.

Section 4. Section Amended.

Section 62A-11-404, Utah Code Annotated 1953, as last amended by Chapter 251, Laws of Utah 1990, is amended to read:

62A-11-404. Procedure for obligee seeking income withholding.

(1) An obligee may apply for income withholding services by the office under Title IV-D of the Social Security Act. Alternately, an obligee may seek income withholding in a district court of competent jurisdiction, when a delinquency occurs under a child support order entered prior to October 13, 1990, and not modified after that date, if that order includes authorization of income withholding. With regard to child support orders entered after October 13, 1990 but prior to, and not modified after, January 1, 1994, an obligee may seek income withholding in a court of competent jurisdiction, when a delinquency occurs, whether or not the order includes authorization of income withholding. In order to proceed with a civil action, the obligee shall petition the court for a determination of delinquency and for implementation of income withholding procedures.

(2) When an obligee proceeds with a civil action under this section, the court shall:

(a) make an initial ex parte determination of delinquency as defined in this chapter;

(b) proceed with notice to the obligor, an opportunity for hearing, and income withholding procedures similar to those required for the office under this part;

(c) order that, when a payor is notified, a duplicate notice be served on the office, and order the payor to submit all withheld income to the office; the office shall promptly distribute those payments to the obligee; and

(d) designate the circumstances under which an obligor may petition the court for termination of income withholding procedures.

(3) If the obligee's child support order does not contain a provision authorizing income withholding, the obligee shall petition the court for an amendment of the order to include that authorization before commencing a civil action under this section.

Section 5. Section Amended.

Section 62A-11-404.5, Utah Code Annotated 1953, as enacted by Chapter 251, Laws of Utah 1990, is amended to read:

62A-11-404.5. Income withholding requirement — Procedures for orders entered or modified after October 13, 1990.

(1) The office shall proceed in accordance with the provisions of this part to withhold income as a means of collecting child support for obligees to whom it provides services under Title IV-D of the Social Security Act.

(2) (a) If the office is enforcing a child support order issued or modified on or after October 13, 1990[,] but prior to January 1, 1994, the obligor's income is subject to immediate [~~and automatic~~] income withholding as of the effective date of the order[,] regardless of whether a delinquency [~~exists~~] occurs, unless:

(i) the court or administrative body that entered the order finds that [~~there is~~] one of the parties has demonstrated good cause not to require immediate income withholding[,]; or [~~that~~]

(ii) a written agreement [~~executed by the parties is sufficient and that immediate income withholding is not needed~~] that provides an alternative arrangement is executed by the obligor and obligee,

and by the office in cases pursued under Title IV-D of the Social Security Act where there is an assignment of support rights to the state, and reviewed and entered in the record by the court or administrative body.

(b) For purposes of Subsection (a)[;]:

(i) "good cause" [means that damage to the obligor caused by immediate income withholding substantially outweighs the benefit to the child or to the office. The exception of "good cause" includes but is not limited to a determination that] shall be based on, at a minimum:

[(i) no previously ordered child support is past due;]

(A) a determination and explanation on the record by the court or administrative body that implementation of immediate income withholding would not be in the best interest of the child; and

(B) proof of timely payment of any previously ordered support;

(ii) in determining "good cause", the court or administrative body may, in addition to any other requirements that it deems appropriate, consider whether the obligor has:

[(ii)] (A) [the obligor has] obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

[(iii)] (B) [the obligor has] arranged to deposit all child support payments into a checking account belonging to the obligee, or has made arrangements [to insure] insuring that a reliable and independent record of the date and place of child support payment will be maintained.

(3) To be effective, an exception from immediate [automatic] income withholding described in Subsection (2) must be included in the court or administrative body's child support order.

[(4) The "written agreement" exception from immediate automatic income withholding described in Subsection (2)(a) does not apply to collection of public assistance, as defined in Subsection 62A-11-103 (8).]

[(5)] (4) [Income that is not subject to withholding under Subsection (2) becomes subject to income withholding] In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:

(a) the date payment of child support becomes delinquent;

(b) the date the obligor requests;

(c) the date the custodial parent requests, if the office determines that the request should be approved based upon procedures and standards the office has established; or

(d) on such date as the office selects.

[(6)] (5) Income withholding implemented under this section is subject to termination under Section 62A-11-408.

Section 6. Section Amended.

Section 62A-11-405, Utah Code Annotated 1953, as last amended by Chapter 251, Laws of Utah 1990, is amended to read:

62A-11-405. Orders issued prior to October 13, 1990 — Office procedures for income withholding — Notice to obligor — Opportunity for hearing — Appeal — Payment of overdue child support may not be sole basis for not withholding income.

(1) With regard to child support orders issued prior to October 13, 1990, and not otherwise modified after that date, the office shall proceed to withhold income as a means of collecting child support, whether or not the relevant child support order includes authorization of income withholding, under the provisions of [Subsection 62A-11-404.5(5)] Section 62A-11-404, or if a delinquency has occurred under the order.

(2) Upon receipt of a verified statement or affidavit alleging that a delinquency has occurred, the office shall serve, by personal service or certified mail, a written advance notice on the obligor. The "advance notice" shall state:

(a) the names of the children for whom child support is sought, and the amount of current child support;

(b) the amount of child support which is claimed to be overdue and the amount of child support to be withheld from income;

(c) that the income withholding will apply to present and future payors;

(d) that the obligor has 15 days after service of the notice in which to contact the office in writing to contest the withholding, that the only basis for contesting the withholding is mistake of fact, and that if he contests the withholding he must specifically contest the amount of current child support stated in the notice, or state that child support in an amount at least equal to child support payable for one month is not overdue;

(e) that if he wishes to contest the withholding, he has the right to an administrative hearing and to be accompanied by an attorney at that hearing; and

(f) that failure to contest the withholding will result in notification to present and future payors to withhold income.

(3) (a) If, within 15 days of service of the advance notice described in Subsection (2), the obligor does not contest the withholding in writing, the office shall, based upon all information available to it, determine whether a delinquency has occurred. If the office determines that a delinquency has occurred,

it shall proceed with income withholding under this part.

(b) If the obligor contests the withholding in the manner described in Subsection (2), the department shall, within 45 days:

(i) provide an opportunity for the obligor to present his case at an administrative hearing;

(ii) decide, based upon the facts set forth at the administrative hearing, whether income withholding shall occur;

(iii) notify the obligor of its decision and, if withholding is authorized by the decision, give the approximate date on which it will begin, and specify the information which will be provided to the payor under Section 62A-11-406; and

(iv) notify the obligor that he may, within 30 days, appeal the decision to a court of competent jurisdiction.

(4) If the obligor appeals the department's decision to withhold income under Subsection (3):

(a) the obligor shall file an appeal within 20 days after service of the notice under Subsection (3), immediately notify the office in writing of his decision to appeal; and

(b) the office shall proceed with income withholding under this part during the appeal, but shall hold all funds it receives, except current child support, in a reserve account pending the court's decision on appeal. The funds, plus interest at the legal rate, shall be paid to the party determined by the court.

(5) An obligor's payment of overdue child support may not be the sole basis for not implementing income withholding in accordance with this part.

Section 7. Section Amended.

Section 62A-11-412, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-11-412. Income withholding regardless of residence of child or jurisdiction in which order entered — Governing law.

(1) The office shall proceed under this part and Part 5 for the withholding of income derived within this state, even though the effective child support order was entered in another jurisdiction, and without regard to the residence of the child on whose behalf the child support is payable.

(2) The office shall notify the jurisdiction in which the child support order was entered when an obligor terminates employment in this state, and shall give the last-known address of the obligor and the name and address of the new payor, if known.

(3) The law of this state shall govern all actions and proceedings concerning the issuance, enforcement, and duration of a Notice to Withhold Income issued by a court or agency of this state, which is based upon a child support order of another jurisdiction, except that:

(a) the law of the jurisdiction which issued the child support order shall govern the following:

(i) the interpretation of the child support order as to the amount, form of payment, and duration of child support;

(ii) the amount of overdue child support necessary to issue a Notice to Withhold Income; and

(iii) the costs, in addition to the periodic child support obligation, to be included as overdue child support and enforced by income withholding, including, but not limited to, interest, attorney's fees, court costs, and costs of paternity testing[.]:

(b) the statute of limitations of the jurisdiction which issued the child support order shall govern if it is longer than this state's applicable statute of limitations.

Section 8. Section Enacted.

Section 62A-11-501, Utah Code Annotated 1953, is enacted to read:

Part 5. Universal Income Withholding — Non IV-D Obligees

62A-11-501. Definitions — Application.

(1) The requirements of this part apply only to cases in which the obligee does not receive IV-D services.

(2) For purposes of this part the definitions contained in Section 62A-11-401 apply.

Section 9. Section Enacted.

Section 62A-11-502, Utah Code Annotated 1953, is enacted to read:

62A-11-502. Child support orders issued or modified on or after January 1, 1994 — Immediate income withholding.

(1) With regard to obligees who are not receiving IV-D services, each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:

(a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or

(b) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.

(2) For purposes of this section:

(a) "good cause" shall be based on, at a minimum:

(i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and

(ii) proof of timely payment of any previously ordered support;

(b) in determining "good cause", the court or administrative body may, in addition to any other re-

quirement that it deems appropriate, consider whether the obligor has:

(i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

(ii) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.

(3) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:

(a) the date payment of child support becomes delinquent;

(b) the date the obligor requests; or

(c) the date the court or administrative body so modifies that order.

(4) The court shall include in every child support order issued or modified on or after January 1, 1994:

(a) a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order, the obligor's income is nevertheless subject to income withholding; and

(b) with regard to child support orders that are subject to income withholding, an order assessing against the obligor a $7 per month check processing fee to be included in the amount withheld and paid to the office for the purposes of income withholding in accordance with the provisions of this chapter.

Section 10. Section Enacted.

Section 62A-11-503, Utah Code Annotated 1953, is enacted to read:

62A-11-503. Income withholding for obligees not receiving IV-D services — Responsibilities of the court.

(1) As of January 1, 1994, with regard to child support orders that are subject to income withholding, the court may not modify or issue any final child support order or any other document, including a divorce decree, that contains a final child support order unless and until it receives from the parties documentation regarding employment and information sufficient to process income withholding in accordance with the requirements of this chapter.

(2) The court shall order the parties to provide the court with the information described in Subsection (1). The court shall provide that information, together with a copy of the child support order, to the office at the time it issues the order.

(3) If an obligor under a child support order issued or modified on or after January 1, 1994, has no source of income and there is no identifiable payor, he shall swear to that fact in an affidavit submitted to the court. The court may issue or modify the order, and shall provide a copy of that affidavit, together with a copy of the order and the information described in Subsection (1), to the office.

(4) If an obligor cannot be located through the reasonable efforts of the obligee and the court, and for that reason the information described in Subsection (1) cannot be obtained, a verified representation of the obligor's employment or source of income, based on the best evidence available, shall be submitted to the court. The court may issue or modify the order, and shall provide a copy of that verified representation, together with a copy of the order, to the office.

Section 11. Section Enacted.

Section 62A-11-504, Utah Code Annotated 1953, is enacted to read:

62A-11-504. Income withholding for obligees not receiving IV-D services — Responsibilities of the office.

(1) Upon receipt of the information described in Section 62A-11-503, the office shall proceed with income withholding in accordance with the requirements of this part with regard to obligees who have not applied for services under Title IV-D of the federal Social Security Act. If for any reason the information provided to it by the court is incomplete or insufficient, and the office is unable to proceed with income withholding, it shall provide notice to the obligee that it cannot proceed with income withholding until the obligee provides the office with sufficient information.

(2) The office shall:

(a) provide a Notice to Withhold Income to the payor in accordance with Section 62A-11-406; and

(b) receive payments of withheld amounts from the payor, track and monitor those payments, and distribute them expeditiously in accordance with Section 62A-11-413 and federal law.

(3) A payor that receives a Notice to Withhold Income from the office under this part is subject to the provisions of Sections 62A-11-407 through 62A-11-411.

(4) Procedures for termination of income withholding described in Section 62A-11-408 apply to income withheld under this part.

Section 12. Section Amended.

Section 78-45-7.1, Utah Code Annotated 1953, as last amended by Chapter 166, Laws of Utah 1990, is amended to read:

78-45-7.1. Medical and dental expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding.

[~~When no prior court order exists or the~~ prior ~~court order makes no specific provision for the payment of medical and dental expenses for~~ dependent

children, the] The court shall include the following in its order:

(1) [shall include] a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children; [and]

(2) [may include] a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for [those] the dependent children, if [insurance] coverage is or becomes available at a reasonable cost[.];

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5; and

(4) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional $7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.

Section 13. Effective Date.

This act takes effect on January 1, 1994.

CHAPTER 262
H. B. No. 67
Passed March 3, 1993
Approved March 22, 1993
Effective March 22, 1993

UTAH HEALTH COVERAGE AND COST CONTAINMENT COMMISSION

By J. Brent Haymond

AN ACT RELATING TO COMMISSIONS; CREATING THE HEALTH CARE POLICY OPTION COMMISSION; PRESCRIBING ITS MEMBERSHIP AND DUTIES; ESTABLISHING AN EFFECTIVE DATE AND A SUNSET DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Health Care Policy Option Commission — Membership — Chairs — Quorum.

(1) The Health Care Policy Option Commission is created to propose options for reform of the state's health care delivery and financing system.

(2) The membership shall include:

(a) four members of the Legislature appointed as follows:

(i) two members of the Senate, one who belongs to the majority party appointed by the president of the Senate, and one who belongs to the minority party, appointed by the minority leader of the Senate; and

(ii) two members of the House of Representatives, one who belongs to the majority party appointed by the Speaker of the House of Representatives, and one who belongs to the minority party, appointed by the minority leader of the House of Representatives;

(b) two members of the executive department, appointed by the governor; and

(c) six persons, appointed by the governor, who:

(i) broadly represent the public interest;

(ii) are not involved with the delivery, administration, financing or insuring of health care; and

(iii) are appointed with regard to balance in terms of geography, sex, and ethnicity.

(3) All members appointed to the commission must have the unanimous consent of the governor, the speaker of the House of Representatives, the minority leaders of the House of Representatives and the Senate, and the president of the Senate.

(4)(a) A vacancy occurs if a member of the Legislature resigns, is unable to serve, or ceases to be a member of the Legislature. The appropriate legislative leader shall fill the vacancy by appointing a legislator who has the unanimous consent required in Subsection (3).

(b) If a member appointed by the governor resigns, or is unable to serve, the governor shall fill the vacancy by appointing a person who has the unanimous consent required in Subsection (3).

(5) The governor or his designee shall serve as chair and facilitator for the commission and will not be a voting member of the commission.

(6) Seven members of the commission constitute a quorum. All actions of the commission are by unanimous consent. The action of a unanimous consensus of a quorum represents the action of the commission.

(7) The governor shall designate and fund the staff for the commission.

(8) Salaries and expenses of the legislators shall be paid in accordance with Section 36-2-2. Members of the commission who are not legislators may receive travel expenses and mileage as permitted by the Division of Finance.

Section 2. Commission duties — Referendum — Education of the electorate.

The commission shall:

(1) on or before December 31, 1993, propose to the governor, at least two distinct options that the state should undertake to:

(a) limit increases in health care expenditures;

(b) develop a system of coverage for health care for all residents of this state;

(c) consider proposals submitted by interested groups;

(d) provide estimates of costs of each alternative and propose methods of funding; and

(e) improve the quality of the health care.

(2) The governor may:

(a) submit to the 1994 General Session of the Legislature, a concurrent resolution calling for a nonbinding referendum during the 1994 general election in which the electorate may either select one of the options proposed by the commission under Subsection (1) or reject all options proposed by the commission; or

(b) submit to the 1994 General Session of the Legislature options for health care reform.

(3) If the Legislature chooses to submit the proposed options to the electorate, the commission shall provide to the public, in the manner and form it desires, objective information regarding each policy option in order to ensure that the electorate has sufficient knowledge to make an informed choice regarding these policy options. This information may include:

(a) a statement of the arguments for and against each option;

(b) the cost to the public and private sectors to implement each of the options;

(c) how each option is meant to control increases in health care costs, ensure universal coverage, and improve quality; and

(d) other information that the commission deems appropriate.

Section 3. Sunset Date.

This act is repealed on April 1, 1995.

Section 4. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 263
H. B. No. 86
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

PUBLIC NOTICE OF STATE PROJECTS

By Grant D. Protzman

AN ACT RELATING TO ADMINISTRATIVE SERVICES; REQUIRING NOTICE TO LOCAL ENTITIES WHEN A STATE PROJECT HAS CHANGED SIGNIFICANTLY WHICH AFFECTS THEM; AND PROVIDING FOR A HEARING ON THE MATTER.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-1-38.1, AS LAST AMENDED BY CHAPTERS 30 AND 255, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-1-38.1, Utah Code Annotated 1953, as last amended by Chapters 30 and 255, Laws of Utah 1992, is amended to read:

63-1-38.1. Construction, alteration, and repair of state facilities — Powers of director — Expenditure of appropriations.

(1) As used in this section:

(a) "Analysis" means an economic assessment of competing design and maintenance alternatives, the object of which is to reduce cost and conserve energy.

(b) "Capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of $1,000,000 or more;

(ii) addition of new space that will cost more than $100,000; or

(iii) land acquisition where an appropriation is requested.

(c) "Capital improvements" means any:

(i) remodeling, alteration, repair project with a total cost of less than $1,000,000; or

(ii) site and utility improvement with a total cost of less than $1,000,000.

(d) "Life cycle cost-effective" means the lowest cost of owning and operating a facility over a 25-year period, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(f) "State-owned facilities" means those facilities identified in Section 63-1-38.7.

(2) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the various buildings and improvements, and other work carried out by the division.

(3) (a) (i) Except as provided in Subsection (a)(ii), the director shall recommend the need for and exercise direct supervision over the design and construction of all alterations, repairs, and improvements to all existing facilities of the state, its departments, commissions, institutions, and agencies if the total project construction cost is greater than $100,000.

(ii) The director may:

(A) authorize a department, commission, institution, or agency to control design and construction of alterations, repairs, and improvements when the total project construction cost is greater than $100,000 by following the delegation requirements and procedures of Subsection (c); or

(B) by rule, authorize a particular department, commission, institution, or agency to control design and construction on projects within a particular dollar range and a particular project type.

(b) Except for the placement or installation of works of art through [~~the~~] Title 9, Chapter 6, Part 4, Percent-for-Art Program, [~~under Title 64, Chapter 2a,~~] an existing facility may not be altered, repaired, or improved on the property of any state institution, department, commission, or agency if the total project construction cost exceeds $100,000 until the location, design, plans, and specifications are approved by the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency.

(c) (i) The director may delegate control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis if the state entity requests that delegation in writing and the building board approves the delegation.

(ii) (A) The director, his designee, or the state entity to whom control has been designated pursuant to Subsection (5)(c)(i) shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding $250,000, if:

(I) the nature of the project has been significantly altered since prior notification or approval;

(II) the project would significantly change the nature of the functions presently conducted at the location;

(III) the project adds 50% or more square feet to the area of the facility; or

(IV) the project is new construction.

(B) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss these issues.

[~~(ii)~~] (iii) The state entity to whom control is delegated shall assume fiduciary control over project fi-

nances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

[~~(iii)~~] (iv) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the building board.

[~~(iv)~~] (v) State entities that receive a delegated project may not have access to the building board contingency funds authorized in Section 63-1-38.4 for the delegated project.

(4) (a) The director shall be responsible to ensure that state-owned facilities are life cycle cost-effective.

(b) The estimated cost of the analysis shall be included in each program budget document and in the project funding request submitted to the building board, the governor, and the Legislature.

(c) The final cost estimate shall reflect the most life cycle cost-effective building.

(d) The director, in consultation with the State Building Board and Division of Energy, shall make rules to implement this subsection by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) The building board may exempt a facility from being life cycle cost-effective pursuant to rules, after reviewing and concurring with a written request and justification from the director.

(5) (a) The director shall recommend the need for and exercise direct supervision over the design and construction of all new facilities of the state, its departments, commissions, institutions, and agencies if the total project construction cost is in excess of $100,000.

(b) (i) Except for the placement or installation of works of art through [~~the~~] Title 9, Chapter 6, Part 4, Percent-for-Art Program [~~under Title 64, Chapter 2a,~~] a new facility may not be constructed on the property of any state department, commission, institution, or agency if the total project construction cost of the facility, regardless of the funding source, exceeds $100,000, until the construction of the facility has been approved by the Legislature in an Appropriations Act or by other specific legislation, and the location, design, plans, and specifications are approved by the director and the official charged with the administration of the affairs of the particular department, commission, institution, or agency.

(ii) Facilities to be built with nonstate funds and owned and occupied by nonstate entities within research park areas are exempt from this Subsection (5)(b).

(iii) Facilities to be built for the Utah National Guard for which the funding for construction, operations, and maintenance are derived totally from the United States Government are exempt from the requirement of obtaining legislative approval required by this Subsection (5)(b).

(c) (i) The director may delegate control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis if the state entity requests that delegation in writing and the building board approves the delegation.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the building board.

(iv) State entities that receive a delegated project may not have access to the building board contingency funds authorized in Section 63-1-38.4 for the delegated project.

(6) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(7) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

(8) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

CHAPTER 264
H. B. No. 99
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

PROTECTED WILDLIFE

By Brad Johnson

AN ACT RELATING TO WILDLIFE RESOURCES; ALLOWING RED FOX OR STRIPED SKUNK TO BE TAKEN WITHOUT A LICENSE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
23-18-6, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 23-18-6, Utah Code Annotated 1953, is enacted to read:

23-18-6. Taking red fox or striped skunk.

Red fox or striped skunk may be taken anytime without a license as provided by this title or rules or a proclamation of the Wildlife Board.

CHAPTER 265
H. B. No. 115
Passed March 3, 1993
Approved March 22, 1993
Effective May 1, 1993

REAUTHORIZATION OF ADMINISTRATIVE RULES

By Byron L. Harward

AN ACT RELATING TO ADMINISTRATIVE RULES; REAUTHORIZING RULES OF STATE AGENCIES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Rules reauthorized.

All rules of Utah state agencies are reauthorized.

Section 2. Effective Date.

This act takes effect on May 1, 1993.

CHAPTER 266
H. B. No. 137
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

DIRECTOR AND OFFICER LIABILITY AMENDMENTS

By John L. Valentine

AN ACT RELATING TO CORPORATIONS; AMENDING PROVISIONS RELATING TO THE LIABILITY OF AN OFFICER OR DIRECTOR; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
16-10A-840, AS ENACTED BY CHAPTER 277, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 16-10a-840, Utah Code Annotated 1953, as enacted by Chapter 277, Laws of Utah 1992, is amended to read:

16-10a-840. General standards of conduct for directors and officers.

(1) Each director shall discharge his duties as a director, including duties as a member of a committee, and each officer with discretionary authority shall discharge his duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) in a manner the director or officer reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of a director, a committee of the board of directors of which he is not a member, if the director reasonably believes the committee merits confidence.

(3) A director or officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (2) unwarranted.

(4) A director or officer is not liable to the corporation, its shareholders, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as an officer or director, as the case may be, [if ~~the duties of the office have been performed in compliance with this section~~] unless:

(a) the director or officer has breached or failed to perform the duties of the office in compliance with this section; and

(b) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the corporation or the shareholders.

CHAPTER 267
H. B. No. 150
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

WILDLIFE HERITAGE PROGRAM

By David M. Jones

AN ACT RELATING TO WILDLIFE RESOURCES; CREATING A WILDLIFE HERITAGE ADVISORY COMMITTEE TO ADVISE THE WILDLIFE BOARD AND DIVISION OF WILDLIFE RESOURCES REGARDING A PROGRAM FOR NONCONSUMPTIVE WILDLIFE MANAGEMENT; CREATING A WILDLIFE HERITAGE CERTIFICATE AND SPECIFYING USES OF REVENUE FROM SALES OF CERTIFICATES; AND PROVIDING AN EFFECTIVE DATE AND A SUNSET DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-223, AS LAST AMENDED BY CHAPTER 7, LAWS OF UTAH 1992

ENACTS:
23-26-1, UTAH CODE ANNOTATED 1953
23-26-2, UTAH CODE ANNOTATED 1953
23-26-3, UTAH CODE ANNOTATED 1953
23-26-4, UTAH CODE ANNOTATED 1953
23-26-5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 23-26-1, Utah Code Annotated 1953, is enacted to read:

23-26-1. Short title.

This chapter shall be known as the "Wildlife Heritage Act."

Section 2. Section Enacted.

Section 23-26-2, Utah Code Annotated 1953, is enacted to read:

23-26-2. Definitions.

As used in this chapter:

(1) "Committee" means the Wildlife Heritage Advisory Committee.

(2) "Program" means the Wildlife Heritage program, a program administered by the Division of Wildlife Resources for the purposes of:

(a) addressing the growing public demand for nonconsumptive wildlife management; and

(b) demonstrating the importance of wildlife for all Utahn's by emphasizing the ecological role of wildlife.

Section 3. Section Enacted.

Section 23-26-3, Utah Code Annotated 1953, is enacted to read:

23-26-3. Wildlife Heritage Advisory Committee — Purpose — Membership — Duties.

(1) There is created the Wildlife Heritage Advisory Committee to advise the Wildlife Board and division regarding the development and promotion of the Wildlife Heritage program.

(2) The committee shall consist of five members who demonstrate commitment to the purposes of the program and are appointed by the executive director of the Department of Natural Resources as follows:

(a) three members shall represent nonconsumptive wildlife interests;

(b) one member shall represent consumptive wildlife interests; and

(c) one member shall represent agricultural interests.

(3) The committee shall advise:

(a) the Wildlife Board, regarding rules and broad policy affecting the program; and

(b) the division, regarding broad administrative matters relating to the Wildlife Heritage program.

(4) The committee may make recommendations on:

(a) incentives and public relations strategies to develop and increase participation in the program; and

(b) the funding of specific projects within the program.

(5) Committee members shall receive no compensation or expenses for their service on the committee.

Section 4. Section Enacted.

Section 23-26-4, Utah Code Annotated 1953, is enacted to read:

23-26-4. Wildlife Heritage certificate — Benefits — Use of revenue.

(1)(a) A resident or nonresident, 12 years of age or older, upon payment of $15, may receive a Wildlife Heritage certificate.

(b) A resident or nonresident, under 12 years of age, upon payment of $5, may receive a Wildlife Heritage certificate.

(2) The Wildlife Heritage certificate allows the holder to receive the benefits and participate in the activities of the Wildlife Heritage program as determined by the Wildlife Board and the division.

(3) Revenue from the sale of Wildlife Heritage certificates shall be used for activities and projects that fulfill the program's purposes as specified in Section 23-26-2, including:

(a) information and education;

(b) the establishment and enhancement of non-consumptive wildlife management areas that are managed consistent with Section 23-14-18;

(c) wildlife and ecosystem research; and

(d) administration, development, and promotion of the program.

(4) Revenue from the sale of Wildlife Heritage certificates may be used for emergency feeding of wildlife.

Section 5. Section Enacted.

Section 23-26-5, Utah Code Annotated 1953, is enacted to read:

23-26-5. Wildlife Heritage Account — Contents — Use of fund monies.

(1) There is created a restricted account within the General Fund known as the Wildlife Heritage Account.

(2) The contents of the account shall consist of:

(a) revenue from the sale of Wildlife Heritage certificates;

(b) donations received for the Wildlife Heritage program; and

(c) interest accrued on account monies.

(3) Monies in the account shall be used as provided in Section 23-26-4.

(4) The Wildlife Board shall report to the 1994 Legislature on funds received and programs developed.

Section 6. Section Amended.

Section 63-55-223, Utah Code Annotated 1953, as last amended by Chapter 7, Laws of Utah 1992, is amended to read:

63-55-223. Repeal dates, Title 23.

(1) The Division of Wildlife Resources, created in Section 23-14-1, is repealed July 1, 1999.

(2) The Wildlife Board, created in Sections 23-14-2 and 63-34-3, is repealed July 1, 1999.

(3) The Board of Big Game Control, created in Sections 23-14-5 and 63-34-3, is repealed July 1, 1999.

(4) Section 23-19-36, which provides reduced fishing license fees for disabled and mentally retarded persons, is repealed July 1, 1993.

(5) Title 23, Chapter 26, Wildlife Heritage Act, is repealed December 31, 1998.

Section 7. Effective Date.

This act takes effect on May 3, 1993, except that Sections 23-26-4, and 23-26-5 take effect January 1, 1994.

CHAPTER 268
H. B. No. 162
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

JAIL REIMBURSEMENT TO COUNTIES

By Christine R. Fox
Kelly C. Atkinson
Ray Short
Frank R. Pignanelli
John L. Valentine
Haynes R. Fuller
Grant D. Protzman
Rob W. Bishop
Dan Q. Price

AN ACT RELATING TO COUNTIES; PROVIDING FOR RESPONSIBILITY AND REIMBURSEMENT FOR CERTAIN INCARCERATION COSTS; APPROPRIATING $250,000 FOR INCARCERATION COST REIMBURSEMENT; REQUIRING THE DEPARTMENT OF CORRECTIONS TO REQUEST APPROPRIATIONS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CALCULATE CERTAIN COSTS AND PERFORM CERTAIN ADMINISTRATIVE FUNCTIONS; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
64-13B-101, UTAH CODE ANNOTATED 1953
64-13B-201, UTAH CODE ANNOTATED 1953
64-13B-301, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 64-13b-101, Utah Code Annotated 1953, is enacted to read:

64-13b-101. Definitions.

(1) "Daily state inmate cost" means the per inmate per day cost of incarcerating department inmates at the state prison calculated as provided in Section 64-13b-201.

(2) "Department" means the Department of Corrections.

(3) "Estimated total annual jail reimbursement cost" means the daily state inmate cost multiplied times the projected number of state subsidized inmates for the next fiscal year multiplied times 365.

(4) "Estimated total jail reimbursement rate" means 80% of the total annual jail reimbursement cost.

(5) "Jail reimbursement rate" means 80% of the daily state inmate cost.

(6) "State subsidized inmates" means offenders committed to a county correctional facility as a condition of probation when they have been convicted of a felony.

Section 2. Section Enacted.

Section 64-13b-201, Utah Code Annotated 1953, is enacted to read:

64-13b-201. Reimbursement for incarceration of state prisoners.

(1) To the extent that the Legislature appropriates monies for that purpose, the department shall, as agent for the state, reimburse a county for the costs of incarcerating state subsidized inmates.

(2) The jail reimbursement rate for each state subsidized inmate incarcerated in a county jail shall be 80% of the daily state inmate cost.

(3) By July 1 of each year, the department shall calculate:

(a) the reimbursement rate;

(b) the estimated total annual jail reimbursement cost; and

(c) the estimated total jail reimbursement rate.

(4) In calculating the daily state inmate cost, the department shall include:

(a) the total annual direct costs of incarceration, including personnel costs, contract services, health care costs, and miscellaneous costs; and

(b) the total annual indirect costs of incarceration, including the Division of Institutional Operations' costs for accounting, data processing, legal representation, purchasing, personnel, finance, and insurance.

Section 3. Section Enacted.

Section 64-13b-301, Utah Code Annotated 1953, is enacted to read:

64-13b-301. Budget for jail reimbursement.

(1) Each year, the department shall calculate the estimated total annual jail reimbursement cost and the estimated total jail reimbursement rate for the next fiscal year.

(2) The department shall, in its budget requests submitted as required by Section 63-38-2, request an appropriation for the estimated total jail reimbursement rate equal to:

(a) 40% of the estimated total jail reimbursement rate for fiscal year 1994-95;

(b) 60% of the estimated total jail reimbursement rate for fiscal year 1995-96;

(c) 80% of the estimated total jail reimbursement rate for fiscal year 1996-97; and

(d) 100% of the estimated total jail reimbursement rate for fiscal year 1997-98.

(3) The governor shall include in his budget an amount for jail reimbursement.

Section 4. Appropriation.

There is appropriated from the General Fund for fiscal year 1993-94 $250,000 to the Department of Corrections to be used to compensate counties for the costs of incarcerating certain prisoners.

CHAPTER 269
H. B. No. 171
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

PRIVATE PROPERTY PROTECTION ACT

By Evan L. Olsen
Met Johnson
Rob W. Bishop
Ronald J. Greensides
Neal B. Hendrickson
Bradley T. Johnson
James F. Yardley
James Gowans
Dan Q. Price
Melvin R. Brown
Eli H. Anderson
Christine R. Fox
David Ure
Bill Wright
Tom Matthews
Tim Moran
John B. Arrington
Daniel H. Tuttle
Arlo D. James
Paul Shepherd
Pete Suazo

AN ACT RELATING TO JUDICIAL CODE; ENACTING THE PRIVATE PROPERTY PROTECTION ACT; PROVIDING THAT RULES OR ACTIONS BY STATE AGENCIES SUBSTANTIALLY INTERFERING WITH OR TAKING PRIVATE PROPERTY MUST BE COMPENSATED FOR; REQUIRING AGENCIES TO CREATE GUIDELINES TO DETERMINE WHETHER THERE IS A TAKING; PROVIDING FOR AN ASSESSMENT TO BE MADE BEFORE THE ACTION IS TAKEN; AND PROVIDING FOR EMERGENCIES WHEN HEALTH AND SAFETY IS AN ISSUE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
78-34A-1, UTAH CODE ANNOTATED 1953
78-34A-2, UTAH CODE ANNOTATED 1953
78-34A-3, UTAH CODE ANNOTATED 1953
78-34A-4, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 78-34a-1, Utah Code Annotated 1953, is enacted to read:

78-34a-1. Short title.

This chapter shall be known as the "Private Property Protection Act."

Section 2. Section Enacted.

Section 78-34a-2, Utah Code Annotated 1953, is enacted to read:

78-34a-2. Definitions.

As used in this chapter:

(1) "Constitutional taking" or "taking" means due to a governmental action private property is taken such that compensation to the owner of the property is required by either:

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

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

(2) (a) "Governmental action" or "action" means:

(i) proposed rules and emergency rules by a state agency that if adopted and enforced may limit the use of private property unless its provisions are in accordance with applicable state or federal statutes;

(ii) proposed or implemented licensing or permitting conditions, requirements, or limitations to the use of private property unless its provisions are in accordance with applicable state or federal statutes, rules, or regulations;

(iii) required dedications or exactions from owners of private property; or

(iv) statutes and rules.

(b) "Governmental action" or "action" does not mean:

(i) activity in which the power of eminent domain is exercised formally;

(ii) repealing rules discontinuing governmental programs or amending rules in a manner that lessens interference with the use of private property;

(iii) law enforcement activity involving seizure or forfeiture of private property for violations of law or as evidence in criminal proceedings;

(iv) school and institutional trust land management activities and disposal of land and interests in land conducted pursuant to Title 65A;

(v) orders and enforcement actions that are issued by a state agency or a court of law in accordance with applicable federal or state statutes.

(3) "Private property" means any school or institutional trust lands and any real or personal property in this state that is protected by either the Fifth or Fourteenth Amendment of the Constitution of the United States or Article I, Section 22 of the Utah Constitution.

(4) "State agency" means an officer or unit of the executive branch of state government that is authorized by law to adopt rules. State agency does not include the legislative or judicial branches of state government.

Section 3. Section Enacted.

Section 78-34a-3, Utah Code Annotated 1953, is enacted to read:

78-34a-3. State agencies to adopt guidelines.

(1) Each state agency shall adopt guidelines to assist them in the identification of actions that have constitutional taking implications.

(2) In creating the guidelines, the state agency shall take into consideration recent court rulings on the taking of private property.

(3) The state agency shall complete the guidelines on or before January 1, 1994, and review and update the guidelines annually to maintain consistency with court rulings.

Section 4. Section Enacted.

Section 78-34a-4, Utah Code Annotated 1953, is enacted to read:

78-34a-4. Agency actions.

(1) Using the guidelines prepared under Section 78-34a-3, each state agency shall:

(a) determine whether an action has constitutional taking implications; and

(b) prepare an assessment of constitutional taking implications that includes an analysis of the following:

(i) the likelihood that the action may result in a constitutional taking, including a description of how the taking affects the use or value of private property;

(ii) alternatives to the proposed action that may:

(A) fulfill the government's legal obligations of the state agency;

(B) reduce the impact on the private property owner; and

(C) reduce the risk of a constitutional taking; and

(iii) an estimate of financial cost to the state for compensation and the source of payment within the agency's budget if a constitutional taking is determined.

(2) In addition to the guidelines prepared under Section 78-34a-3, each state agency shall adhere, to the extent permitted by law, to the following criteria if implementing or enforcing actions that have constitutional taking implications:

(a) If an agency requires a person to obtain a permit for a specific use of private property, any conditions imposed on issuing the permit shall directly relate to the purpose for which the permit is issued and shall substantially advance that purpose.

(b) Any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress.

(c) If an action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before taking an action restricting private property use for the protection of public health or safety, the state agency, in internal deliberative documents, shall:

(i) clearly identify, with as much specificity as possible, the public health or safety risk created by the private property use;

(ii) establish that the action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(iii) establish, to the extent possible, that the restrictions imposed on the private property are proportionate to the extent the use contributes to the overall risk; and

(iv) estimate, to the extent possible, the potential cost to the government if a court determines that the action constitutes a constitutional taking.

(3) If there is an immediate threat to health and safety that constitutes an emergency and requires an immediate response, the analysis required by paragraph (2)(b) of this Section may be made when the response is completed.

(4) Before the state agency implements an action that has constitutional taking implications, the state agency shall submit a copy of the assessment of constitutional taking implications to the governor and the Legislative Management Committee.

CHAPTER 270
H. B. No. 172
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

STATE BIDDING PROCESSES

By Ray Short

AN ACT RELATING TO PUBLIC CONSTRUCTION BIDS; CLARIFYING DISCLOSURE OF SUBCONTRACTOR BIDS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-1-44, AS LAST AMENDED BY CHAPTER 244, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 63-1-44, Utah Code Annotated 1953, as last amended by Chapter 244, Laws of Utah 1990, is amended to read:

63-1-44. Public construction bids to list subcontractors — Changing subcontractors — Bidders as subcontractors.

(1)(a) On each public construction project, the director shall require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each subcontractor's name and bid amount.

(i) On projects where the contractor's total bid is less than $250,000, subcontractors whose bid is less than $5,000 need not be listed.

(ii) On projects where the contractor's total bid is $250,000 or more, subcontractors whose bid is less than $25,000 need not be listed.

(b)(i) [~~This list~~] The bidders shall [~~be submitted~~] submit this list within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays.

(ii) This list does not limit the director's right [~~after that time~~] to authorize a change in the listing of any subcontractor.

(c)(i) The apparent low contractors shall verify that all subcontractors listed as part of their bids are licensed as required by state law.

(ii) If the director finds that any subcontractors are not licensed as required by state law, he may require the contractor to provide a substitute at no increased cost to the project.

[~~(c) After the lapse of the~~] (d) 24 hours [~~from~~] after the bid opening, the contractor may change his subcontractors only [~~with~~] after:

(i) receiving permission [~~of~~] from the director; and [~~after having established~~]

(ii) establishing that:

(A) the change is [~~considered to be~~] in the best interest of the state; or [~~that~~]

(B) there [~~exists a good~~ and] is a sufficient reason for the change, such as error in bid figures, financial irresponsibility, inability of a subcontractor to perform, or other good reason. [~~Any approved~~]

(e) If the director approves any changes in subcontractors that result in a net lower contract price for subcontracted work [~~shall accordingly reduce the total sum of the prime contract~~], the total of the prime contract may be reduced to reflect the changes.

(2)(a) [Bidders] A bidder may not list [~~themselves or "self" under any category~~] himself as a subcontractor unless [~~they intend~~] the bidder:

(i) intends to perform[~~,~~] the work; and [~~are~~]

(ii) is currently licensed to perform[~~, those portions~~] the portion of the work for which [~~they list themselves or "self"~~] the bidder listed himself as a subcontractor.

(b)(i) [~~If a bidder lists himself, rather than a subcontractor, for a portion of the work, the~~] The director may, by written request, require [~~the~~] that a bidder who lists himself as a subcontractor [~~to submit, within three business days of the bidder's receipt of the director's written request for such information, written~~] provide the director with information indicating the bidder's:

(A) previous experience in the type of work to be performed; and

(B) qualifications for performing [~~such~~] the work.

(ii) The bidder must respond in writing within five business days of receiving the director's written request.

(c) If the bidder's submitted information causes the director to reasonably believe that self-performance of the portion of the work by the bidder is likely to yield a substandard finished product, the director shall:

(i) require the bidder to [~~utilize~~] use a subcontractor for the portion of the work in question; or

(ii) reject the bidder's bid.

(3) The division may not disclose any subcontractor bids obtained under this section until the division has awarded the project to a contractor.

CHAPTER 271
H. B. No. 198
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

INSURANCE COVERAGE ON UNINSURED MOTORIST

By James F. Yardley

AN ACT RELATING TO MOTOR VEHICLE INSURANCE; CLARIFYING CONDITIONS OF LIABILITY; AMENDING UNINSURED MOTORIST COVERAGE PROVISION; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
31A-22-304, AS LAST AMENDED BY CHAPTER 132, LAWS OF UTAH 1992
31A-22-305, AS LAST AMENDED BY CHAPTERS 1 AND 132, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 31A-22-304, Utah Code Annotated 1953, as last amended by Chapter 132, Laws of Utah 1992, is amended to read:

31A-22-304. Motor vehicle liability policy minimum limits.

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following:

(1)(a) $25,000 because of liability for bodily injury to or death of one person, arising out of the use of a motor vehicle in any one accident;

(b) subject to the limit for one person in Subsection (a), in the amount of $50,000 because of liability for bodily injury to or death of two or more persons arising out of the use of a motor vehicle in any one accident; and

(c) in the amount of $15,000 because of liability for injury to, or destruction of, property of others arising out of the use of a motor vehicle in any one accident; or

(2) [~~$50,000~~] $65,000 in any one accident whether arising from bodily injury to or the death of others, or from destruction of, or damage to, the property of others.

Section 2. Section Amended.

Section 31A-22-305, Utah Code Annotated 1953, as last amended by Chapters 1 and 132, Laws of Utah 1992, is amended to read:

31A-22-305. Uninsured and underinsured motorist coverage.

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle referred to in the policy or owned by a self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a)(i) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii)(A) a vehicle covered with lower liability limits than required by Section 31A-22-304;

(B) the vehicle described in Subsection (ii) (A) is uninsured to the extent of the deficiency;

(b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator; or

(c)(i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is declared insolvent by a court of competent jurisdiction;

(ii) the vehicle described in Subsection (c) (i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) Uninsured motorist coverage under Subsection 31A-22-302 (1) (b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death in limits that at least equal the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(4)(a) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least $25,000 per person and $500,000 per accident.

(i) This coverage is secondary to any other insurance covering an injured [occupant] covered person.

(ii) This coverage does not apply to an employee, who is injured by an uninsured motorist, whose exclusive remedy is provided by Title 35, Chapter 1, Workers' Compensation.

(c) As used in this subsection:

(i) "Governmental entity" has the same meaning as under Section 63-30-2.

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) [~~(a)~~] The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

[~~(b) If uninsured motorist coverage is available to an injured person under more than one insurance policy, the injured person shall elect the policy under which he desires to collect uninsured motorist benefits.~~]

[~~(c) Claimants are not barred against making subsequent elections if recovery is unavailable under previous elections.~~]

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (b), a covered person injured in a vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) The following individuals may also recover uninsured motorist benefits under any other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, his resident spouse, or a resident relative of the covered person.

(c) A covered person in Subsection (b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

[~~(7)~~] (8) (a) As used in this section, "underinsured motor vehicle" includes a vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

(b) The term "underinsured motor vehicle" does not include an uninsured motor vehicle as defined in Subsection (2).

[~~(8)~~] (9) (a) Underinsured motorist coverage under Subsection 31A-22-302 (1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death in limits of at least $10,000 for one person in any one accident, and at least $20,000 for two or more persons in any one accident.

(b) The named insured's underinsured motorist coverage, as described in Subsection (a), is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection [~~(7)~~] (8). Underinsured motorist coverage may not be set off against the liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of the owner or operator of the underinsured motor vehicle to determine the limit of coverage available to the injured person.

(c) (i) For new policies or contracts written after January 1, 1993, a named insured may reject underinsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302 (1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests underinsured motorist coverage from that liability insurer.

(ii) In conjunction with the first three renewal notices sent after January 1, 1993, for policies existing on that date, the insurer shall notify the insured of the availability of underinsured motorist coverage along with estimated ranges of premiums for the coverage. The department shall provide standard language to be used by insurers to fulfill the insurers' duty under this subsection.

[~~(9)~~] (10) (a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (c), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

(b) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine

the limit of insurance coverage available to an injured person for any one accident.

(c) If a named insured is injured as a pedestrian or while occupying or using a vehicle not described in Subsection (a) and is covered by more than one policy including underinsured motorist coverage, the injured person may elect the policy under which he collects underinsured motorist benefits. An injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

CHAPTER 272
H. B. No. 205
Passed March 2, 1993
Approved March 22, 1993
Effective July 1, 1993

TRANSIENT ROOM TAX AMENDMENTS

By Rob W. Bishop

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING THAT THE EXISTING 1/2% TRANSIENT ROOM TAX MAY BE USED TO DEVELOP, OPERATE, AND MAINTAIN UTAH'S TOURIST, RECREATION, CULTURAL, AND CONVENTION FACILITIES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-12-603, AS LAST AMENDED BY CHAPTERS 5, 37, AND 265 LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 59-12-603, Utah Code Annotated 1953, as last amended by Chapters 5, 37, and 265 Laws of Utah 1991, is amended to read:

59-12-603. County tax — Bases — Rates — Ordinance required.

(1) In addition to any other taxes, any county legislative body may impose a tourism, recreation, cultural, and convention tax as follows:

(a) not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except such leases and rentals of motor vehicles when made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(b) not to exceed 1% of all sales of prepared foods and beverages that are sold by restaurants; and

(c) not to exceed 1/2% of the rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar public accommodations.

(2) The revenue from the imposition of the tax provided for in Subsections (1)(a) [~~and~~], (b), and (c) may be imposed for the purposes of financing, in whole or in part, tourism promotion, and the development, operation, and maintenance of tourist, recreation, cultural, and convention facilities as defined in Section 59-12-602.

(3) The tax imposed under Subsection (1)(c) shall be in addition to the transient room tax imposed under Part 3 and may be imposed only by a county of the first class. [~~The revenues from the tax imposed under Subsection (1)(c) shall be used only for tourism promotion.~~]

(4) (a) [~~Taxes~~] A tax imposed under this part shall be levied at the same time and collected in the same manner as provided in Part 2, The Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to the provisions of Subsection 59-12-205 (2).

(b) A tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county under Title 11, Chapter 14, Utah Municipal Bond Act, to finance tourism, recreation, cultural, and convention facilities.

(5) In order to impose the tax under Subsection (1), each county legislative body shall adopt annually an ordinance imposing the tax. This ordinance shall include provisions substantially the same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on those items and sales described in Subsection (1). The name of the county as the taxing agency shall be substituted for that of the state where necessary, and an additional license is not required if one has been or is issued under Section 59-12-106.

(6) In order to maintain in effect its tax ordinance adopted under this part, each county legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable amendments to Part 1, Tax Collection.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 273
H. B. No. 211
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

PUBLIC EDUCATION REVENUE BONDS

By Grant D. Protzman
John B. Arrington
Patricia B. Larson
Haynes R. Fuller
Dan Q. Price
Eli H. Anderson
James Gowans
Kim R. Burningham
Beverly Ann Evans
James F. Yardley
Michael R. Styler
Bradley Johnson

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING THAT THE STATE BOARD OF EDUCATION MAY ISSUE REVENUE BONDS ON BEHALF OF PUBLIC EDUCATION INSTITUTIONS FOR THE ACQUISITION AND CONSTRUCTION OF FACILITIES; PROVIDING FOR THE TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING FOR THE ISSUANCE OF UP TO $600,000 IN REVENUE BONDS, ON BEHALF OF SEVIER VALLEY APPLIED TECHNOLOGY CENTER, TO FINANCE THE PARTIAL COST OF A TECHNOLOGY PROGRAM/ADMINISTRATION BUILDING AT THE CENTER AND FOR THE ISSUANCE OF UP TO $2,800,000 TO FINANCE THE PARTIAL COST OF A TECHNICAL TRAINING/COMMUNITY SERVICES BUILDING AT THE SEVIER VALLEY APPLIED TECHNOLOGY CENTER; AND PROVIDING A REPEALER PROVISION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-253, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992, THIRD SPECIAL SESSION

ENACTS:
53A-20A-101, UTAH CODE ANNOTATED 1953
53A-20A-102, UTAH CODE ANNOTATED 1953
53A-20A-103, UTAH CODE ANNOTATED 1953
53A-20A-104, UTAH CODE ANNOTATED 1953
53A-20A-105, UTAH CODE ANNOTATED 1953
53A-20A-106, UTAH CODE ANNOTATED 1953
53A-20A-107, UTAH CODE ANNOTATED 1953
53A-20A-108, UTAH CODE ANNOTATED 1953
53A-20A-109, UTAH CODE ANNOTATED 1953
53A-20A-110, UTAH CODE ANNOTATED 1953
53A-20A-111, UTAH CODE ANNOTATED 1953
53A-20A-112, UTAH CODE ANNOTATED 1953
53A-20A-113, UTAH CODE ANNOTATED 1953
53A-20A-114, UTAH CODE ANNOTATED 1953
53A-20A-115, UTAH CODE ANNOTATED 1953
53A-20A-116, UTAH CODE ANNOTATED 1953
53A-20A-117, UTAH CODE ANNOTATED 1953
53A-20A-201, UTAH CODE ANNOTATED 1953
53A-20A-202, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-20a-101, Utah Code Annotated 1953, is enacted to read:

Part 1. Public Education Revenue Bond Act

53A-20a-101. Short title.

This chapter is known as the "Public Education Revenue Bond Act."

Section 2. Section Enacted.

Section 53A-20a-102, Utah Code Annotated 1953, is enacted to read:

53A-20a-102. Definitions.

As used in this chapter:

(1) "Board" means the State Board of Education.

(2) "Bonds" means bonds, notes, certificates, or other evidences of indebtedness of the board issued pursuant to this chapter.

(3) "Institution" means one of the following public education institutions:

(a) an applied technology center;

(b) the School for the Deaf;

(c) the School for the Blind;

(d) a public education rehabilitation institution.

(4) "Project" means any building, improvement, facility, or other project financed pursuant to this chapter.

Section 3. Section Enacted.

Section 53A-20a-103, Utah Code Annotated 1953, is enacted to read:

53A-20a-103. Financing of projects or buildings — Issuance of bonds — Sale price determined by board — Payment of bonds — Bonds exempt from income taxation.

(1) In order to pay all or part of the cost of the acquisition, purchase, construction, improvement, remodeling, addition to, extension, equipment, and furnishing of any project, including the acquisition of all necessary land, the board, on behalf of the institution for which this is to be done, may do the following:

(a) borrow money on the credit of the income and revenues to be derived from the operation of the project, the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from other legally available sources and, in anticipation of the collection of this income and revenues, issue negotiable bonds of the institution in an amount as the board determines is necessary for these purposes; and

(b) provide for the payment of these bonds and the rights of their holders as provided in this chapter.

(2) Bonds may:

(a) be issued in one or more series;

(b) bear any date or dates;

(c) mature at any time or times not exceeding 40 years from their date;

(d) be in any denominations;

(e) be in any form, either coupon or registered;

(f) carry registration and conversion privileges;

(g) be executed in any manner;

(h) be payable in any medium of payment at any place;

(i) be subject to any terms of redemption with or without premium; and

(j) bear interest at any rate or rates as provided by resolution adopted by the board at or prior to the sale of the bonds.

(3) (a) The bonds may be sold in a manner, at the lowest obtainable rate or rates of interest, and at a price or prices as determined by the board.

(b) These determinations are conclusive.

(4) The board may authorize one issue of bonds for the acquisition, purchase, construction, improvement, remodeling, adding to, extending, furnishing, or equipping of more than one project, including the acquisition of all necessary land, and may make the bonds payable from the combined revenues of all the projects as well as from student building fees, land grant interest, net profits from proprietary activities, and from other legally available sources.

(5) The bonds issued under this chapter have all of the qualities and incidents of negotiable paper and are not subject to state or local income taxation.

Section 4. Section Enacted.

Section 53A-20a-104, Utah Code Annotated 1953, is enacted to read:

53A-20a-104. Bonds do not create state indebtedness — Special obligations — Discharge of bonded indebtedness — Agreements and covenants by the board regarding bonds — Enforcement by court action.

(1)(a) The bonds issued under this chapter are not an indebtedness of the state, of the institution for which they are issued, or of the board.

(b) They are special obligations payable solely from the revenues derived from the operation of the building and student building fees, land grant interest, net profits from proprietary activities, and any other legally available sources pledged as provided in Sections 53A-20a-103 and 53A-20a-113.

(2) The board shall pledge all or any part of the revenues to the payment of principal of and interest on the bonds.

(3) In order to secure the prompt payment of principal and interest and the proper application of the revenues pledged, the board may, by appropriate provisions in the resolution authorizing the bonds, do the following:

(a) covenant as to the use and disposition of the proceeds of the sale of the bonds;

(b) covenant as to the operation of the project and the collection and disposition of the revenues derived from the operation;

(c) collect student building fees, as appropriate, from students and pledge the fees to the payment of building bonds;

(d) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;

(e) covenant and agree to carry insurance on the project, and its use and occupancy, and provide that the cost of any insurance is part of the expense of operating the project;

(f) vest in a trustee:

(i) the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of the bonds issued under this chapter, and to hold, apply, and dispose of the income and revenue; and

(ii) the right to:

(A) enforce any covenant made to secure the bonds;

(B) execute and deliver a trust agreement which sets forth the powers and duties and the remedies available to the trustee and limits the trustee's liabilities; and

(C) prescribe the terms and conditions upon which the trustee or the holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all covenants and resort to any appropriate remedies;

(g) (i) fix rents, charges, and fees, including student building fees, to be imposed in connection with and for the use of the project, which are:

(A) income and revenues derived from the operation of the project; and

(B) expressly required to be fully sufficient either by themselves or with land grant interest and net profits from proprietary activities, or from other legally available sources to assure the prompt payment of principal of and interest on the bonds as each becomes due; and

(ii) make and enforce rules and regulations with reference to the use of the project and with reference to requiring any class or classes of students to use the project as desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this chapter;

(h) covenant to maintain a maximum percentage of occupancy of the project;

(i) covenant against the issuance of any other obligations payable from the revenues to be derived from the project, unless subordinated;

(j) make provision for refunding;

(k) covenant as to the use and disposition of legally available sources of revenues, and pledge those sources of revenues to the payment of bonds issued under this chapter;

(l) make other covenants considered necessary or advisable to effect the purposes of this chapter; and

(m) delegate to the chairman or other board member the authority:

(i) to approve any changes with respect to interest rate, price, amount, redemption features, and other terms of the bonds as are within reasonable parameters set forth in the resolution; and

(ii) to approve and execute all documents relating to the issuance of the bonds.

(4)(a) The agreements and covenants entered into by the board under this section are binding in all respects upon the board and its officials, agents, and employees, and upon its successors.

(b) They are enforceable by appropriate action or suit at law or in equity brought by any holder or holders of bonds issued under this chapter.

Section 5. Section Enacted.

Section 53A-20a-105, Utah Code Annotated 1953, is enacted to read:

53A-20a-105. Agreements with federal government for funds.

The board may enter into an agreement with the federal government in order to obtain funds for the following purposes:

(1) to supplement bond proceeds used to pay for the projects referred to in Section 53A-20a-103; and

(2) to supplement income and revenues which, under this chapter, are used to pay debt service on bonds issued under this chapter.

Section 6. Section Enacted.

Section 53A-20a-106, Utah Code Annotated 1953, is enacted to read:

53A-20a-106. Deposit of bond proceeds — State Building Board responsibilities — Approval of Division of Facilities Construction and Management.

(1) The board's treasurer or other fiscal officer, with the approval of the state treasurer, shall deposit the proceeds from the sale of bonds under this chapter into a special construction trust fund account established in compliance with the State Money Management Act of 1974.

(2) The proceeds are credited to the board on behalf of the institution for which the bonds were issued.

(3) The proceeds are kept in a separate fund and used solely for the purpose for which they were authorized by the board.

(4) The State Building Board shall make all contracts and execute all instruments which it considers necessary to provide for the projects referred to in Section 53A-28-103.

(5) The proceeds in the special construction trust fund account shall be disbursed only upon receipt of written statements supported by itemized estimates and claims presented to the Division of Facilities Construction and Management as provided in the resolution authorizing the issuance of the bonds.

Section 7. Section Enacted.

Section 53A-20a-107, Utah Code Annotated 1953, is enacted to read:

53A-20a-107. Disposition and use of income from operation of buildings — Payment of principal and interest on bonds.

(1) Except for the revenues paid directly to a trustee under Section 53A-20a-104, all income and revenues from the operation of the projects under this chapter shall be deposited as collected in a fund established in compliance with the State Money Management Act of 1974.

(2) (a) These moneys are for the payment of the principal and interest on the bonds authorized under this chapter.

(b) They shall also be used, to the extent provided in the resolution authorizing the bonds, to pay for the cost of maintaining and operating the project and to establish reserves for that purpose.

(3) The board's treasurer or other designated fiscal officer shall, not less than 15 days prior to the date interest and principal payments are due, transmit to the paying agent sufficient money from the fund to pay the obligation.

Section 8. Section Enacted.

Section 53A-20a-108, Utah Code Annotated 1953, is enacted to read:

53A-20a-108. Examination and certification of bonds by attorney general — Recital of certification — Incontestability of bonds.

(1) The resolutions and proceedings authorizing the issuance and confirming sale of bonds under this chapter shall be submitted to the attorney general for examination.

(2) When the resolutions and proceedings have been examined and the bonds certified as legal obligations by the attorney general, the bonds are incontestable in any court in the state unless suit is brought within 30 days from the date of the approval.

(3) A bond authorized under this section shall contain a recital on its face in substantially the following form: "This bond is one of a series of bonds which were certified as legal obligations by the attorney general of the state of Utah on ....."

(4) Bonds authorized, issued, and sold under resolutions and proceedings approved by the attorney general are prima facie valid and binding obligations according to their terms.

(5) The only defense which may be offered in any suit instituted after the 30-day period has expired is forgery, fraud, or violation of the constitution.

Section 9. Section Enacted.

Section 53A-20a-109, Utah Code Annotated 1953, is enacted to read:

53A-20a-109. Investment in bonds by private and public entities — Approval as collateral security.

(1) Any bank, savings and loan association, trust, or insurance company organized under the laws of this state or federal law may invest its capital and surplus in bonds issued under this chapter.

(2) The officers having charge of a sinking fund or any county, city, town, township, or school district may invest the sinking fund in bonds issued under this chapter.

(3) The bonds shall also be approved as collateral security for the deposit of any public funds and for the investment of trust funds.

Section 10. Section Enacted.

Section 53A-20a-110, Utah Code Annotated 1953, is enacted to read:

53A-20a-110. Financing project by contract or lease agreement instead of by bond issue — Authority of board — Term of lease — Terms of agreement — Board covenants.

(1) Whenever the board, by resolution, finds and declares it preferable to acquire a project under this chapter by purchase or lease of the facilities constituting the project under an agreement which provides the consideration for the purchase or lease to be paid in installments during a period not exceeding 40 years, rather than through the issuance of revenue bonds by the board in the manner provided in this chapter, it may do so upon compliance with this section.

(2) The board may lease any portion of the campus of the institution necessary as a site for a project which the board is authorized to acquire, to any person, for a term not exceeding 40 years.

(3) The agreement authorized to be entered into by the board shall provide that the person shall construct, improve, remodel, add to, or extend a project of the type and construction described in the agreement on the part of the part of the campus to be leased to the person, or on any real property as may be acquired for that purpose by the person.

(4) The agreement shall further provide for the leasing of the project, including necessary equipment, furnishings, and land, from the person to the board executing the agreement, for a period not exceeding 40 years.

(5) Prior to the execution of the agreement, the person proposing to lease the project, including the necessary equipment, furnishings, and land, to the board shall submit to the board all plans, specifications, and estimates for the project.

(6) The plans, specifications, and estimates shall be approved by resolution of the board prior to the execution of the agreement.

(7) The board may, by appropriate provisions in the agreement:

(a) covenant as to the use which will be made of the project;

(b) covenant as to the operation, maintenance, and supervision of the project;

(c) covenant to collect fees and charges from all students and other persons availing themselves of the use of the accommodations and facilities of the project;

(d) covenant to levy and collect student building fees, where appropriate, from students enrolled at the institution for the use and availability of the project;

(e) covenant as to the collection, use, and disposition of the proceeds arising from the collection of all the revenues, fees, and charges;

(f) covenant to impose and collect fees and charges in amounts adequate to pay all costs incurred in maintaining and operating the project and to pay the amortization of the acquisition cost of the project, including necessary equipment and furnishings, and interest on the unpaid part of the acquisition cost, whether represented by rental installments or otherwise;

(g) covenant to pledge all revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project to the payment of the rental installments provided for under the terms of the contract or lease agreement;

(h) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement contained in the agreement;

(i) covenant and agree to carry any insurance on the project, and its use and occupancy, as the board considers desirable, and to provide that the cost of the insurance shall be included as a part of the cost of operating the project;

(j) covenant to make and enforce parietal rules and regulations with reference to the use of the facilities comprising the project, or any part of the project, and with reference to requiring any class of students to use the project, or any part of the project, as the board determines desirable for the institution; and

(k) covenant against the pledging of the revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project for any purpose other than the payment of the rental installments required to be paid under the agreement, or against the issuance of any obligations payable therefrom, unless the pledge or ob-

ligations are made subordinate to the agreement. Nothing in this section prevents the board from providing conditions and terms under which pledges may be made and obligations issued on a parity with the pledge of revenues, fees, and charges under the agreement.

(8) The agreement shall provide that the board is not obligated to pay the rental installments or amortization of the acquisition cost of the project, and interest on the unpaid part of the acquisition cost, from any source other than the revenues, fees, and charges arising from the ownership and operation of the project, including student building fees levied for the use and availability of the facilities of the project.

(9) Each agreement shall provide that the rental installments, or amortization of the acquisition cost of the project, including necessary equipment, furnishings, and land, and interest on the unpaid part of the acquisition cost, are not an obligation of the state.

(10) The agreement shall provide that when the amortized acquisition cost, as represented by the rental installments, has been paid in full and when all obligations, if any, issued by the person to finance the cost of the acquisition of the project have been paid in full as to both principal and interest, the agreement terminates and title to the project, including the land upon which the project is situated, and all equipment and furnishings, vests in the board.

(11) The agreement may provide that the board may purchase the project, including the land upon which the project is situated, and all equipment and furnishings, which is subject to the agreement upon terms wherein rental installments previously made, or a portion of them, are deducted from the cost of acquisition of the project, including the land upon which the project is situated, and all equipment and furnishings, as provided for in the agreement.

(12) (a) The board may furnish without charge heat, light, water, power, and similar facilities for any project leased by the board for operation by the board under this section.

(b) All projects acquired and constructed under this section are exempt from taxation.

(13) The agreement may provide that the board may lease the project, including the land upon which the project is situated, and all equipment and furnishings, to any person for a term not exceeding 40 years for operation by any person.

(14) (a) A lease may not be entered into unless the rental to be paid to the board by the person is sufficient to satisfy the rental to be paid by the board to the person from which the project was originally leased.

(b) In no event may the rental paid to the board be less than the fair rental value of the property leased.

Section 11. Section Enacted.

Section 53A-20a-111, Utah Code Annotated 1953, is enacted to read:

53A-20a-111. Student building fees.

(1) The board issuing bonds under this chapter may impose and collect student building fees from students in attendance at the institution in behalf of which the bonds are issued, where appropriate.

(2) The board may also pledge the fees in the same manner provided for the pledging of other revenues of the board or institution under this chapter.

Section 12. Section Enacted.

Section 53A-20a-112, Utah Code Annotated 1953, is enacted to read:

53A-20a-112. Refunding bonds — Issuance — Proceeds.

(1) Bonds may be issued under the terms and provisions of Title 11, Chapter 27, Utah Refunding Bond Act, for the purpose of refunding any bonds previously issued under authority of this chapter.

(2) (a) These refunding bonds shall have such details, bear such rate of interest, and be otherwise issued and secured as provided by the board authorizing the issuance of the bonds and as otherwise provided in this chapter and in Title 11, Chapter 27, Utah Refunding Bond Act.

(b) The changes in the security and revenues pledged to the payment of the bonds may be made by the board as may be provided by it in the proceedings authorizing the bonds, but in no event shall the refunding bonds ever be secured by revenues not authorized by this chapter to be pledged to the payment of bonds issued for other than refunding purposes.

(3) (a) Refunding bonds issued under this chapter may be exchanged for a like principal amount of the bonds to be refunded, may be sold in the manner provided in this chapter for the sale of other bonds, or may be exchanged in part and sold in part.

(b) If sold, the proceeds of the sale not required for the payment of expenses may be invested in United States Government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing resolution, so long as these investments will mature with interest so as to provide funds to pay when due, or called for redemption, the bonds to be refunded together with interest and redemption premiums, if any.

(4) The proceeds or obligations shall, and other funds legally available to the board for such purposes may, be deposited in trust with an FDIC insured bank doing business in Utah, or its successor, to be held for the payment and redemption of bonds to be refunded.

(5) The deposit and any reinvestment shall be held in trust by the escrow agent for the payment of bonds with interest and redemption premiums, if any, on maturity or upon an available redemption date or upon an earlier voluntary surrender with the consent of the board.

Section 13. Section Enacted.

Section 53A-20a-113, Utah Code Annotated 1953, is enacted to read:

53A-20a-113. Authorized loans for acquisition, construction, furnishing, and equipping of projects — Evidence of indebtedness — Provisions — Agreements with lending institutions — Satisfaction and discharge — Exemption from taxation.

(1) For the purpose of paying all or part of the costs of a project under Section 53A-20a-103, the board, on behalf of the institution for which the project is to be acquired, constructed, furnished, and equipped, may borrow money on the credit of the income and revenues to be derived from the operation of the project, and from the imposition of student building fees, land grant interest, and net proceeds from proprietary activities or from other legally available sources, and to evidence the indebtedness may execute any promissory note or other evidence of indebtedness appropriate, if the note or other evidence of indebtedness specifies on its face that it does not constitute a general obligation of the state.

(2) The board may, in order to secure the payment of the loan, grant a mortgage, trust deed, or other security device covering all or part of the project, and the land acquired for the project and upon which the project is situated.

(3) The rights and remedies available in the event of a default to the mortgagee, trustee, or other lender are subject to agreement as contained in the mortgage, trust deed, or other security instrument.

(4) (a) The agreement may provide that, in the event of a default in the payment or the violation of any agreement contained in the document, the mortgage, trust deed, or other security instrument may be foreclosed or otherwise realized in any manner permitted by law.

(b) No deficiency judgment shall lie in any event and no breach of the agreement shall impose any general obligations or liability upon the state or the borrowing institution.

(5) The note or other evidence of indebtedness may have all the qualities and incidents of negotiable paper, and is not subject to taxation by the state, except for the corporate franchise tax, or to taxation by any county, municipality, or political subdivision of the state.

(6) The note or other evidence of indebtedness and mortgage may contain additional provisions with respect to repayment out of the income and revenues derived from the operation of the building, from the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from other legally available sources as the board considers necessary and proper.

(7) The board may enter into an agreement it considers necessary with the lending institution as to the use which will be made of any project, the operation, maintenance, and supervision of the project, the imposition of fees, charges, and rentals for its use, including the equipment contained in the project and the collection and disposition to be made of the proceeds of fees, charges, and rentals.

(8) In order to secure the prompt payment of principal and interest and to pay the cost of the maintenance and operation of the project, the board has the same power and authority with respect to the indebtedness created under this section as it has in respect to the issuance of bonds under the other provisions of this chapter.

(9) When any obligation owing to finance the cost of any project constructed or acquired under this section has been fully paid as to principal and interest, the mortgage is satisfied and discharged.

(10) All buildings and additions to existing buildings erected, and the equipment for the buildings, is exempt from taxation as long as the legal title remains in the borrowing agency.

Section 14. Section Enacted.

Section 53A-20a-114, Utah Code Annotated 1953, is enacted to read:

53A-20a-114. Financing projects and buildings — Security instruments — Terms.

(1) In connection with the financing of any project or building under this chapter, the board, on behalf of an institution, may grant a purchase money mortgage, trust deed, or other security device pledging any land, buildings, furnishings, equipment, or other facilities to be acquired or constructed and paid for from the proceeds of the financing.

(2) The rights and remedies available in the event of a default to the mortgagee, trustee, or lender shall be as agreed upon between the board and the lender and contained in the document.

(3) In making any agreements, the board does not have the power to obligate itself or the state, except with respect to:

(a) the project and the application of the revenues from it; and

(b) the revenues from any special fund pledged to repay it.

(4) Any purchase money mortgage, trust deed, or other security device made or granted by the board to secure the loan or other method of financing may also provide that in the event of a default in payment or the violation of any agreement, the mortgage, trust deed, or security device may be foreclosed or otherwise realized in any manner permitted by law.

(b) No deficiency judgment shall lie in any event and the breach of the agreement does not impose any general obligation or liability upon the board, the state, the proceeds of ad valorem taxes, or appropriations from the Legislature.

(5) The purchase money mortgage, trust deed, or other security device may provide that any mortgagee, trustee, lender, or the holder of any evidence of indebtedness secured by the security instrument

may become the purchaser at any foreclosure sale, if the highest bidder.

Section 15. Section Enacted.

Section 53A-20a-115, Utah Code Annotated 1953, is enacted to read:

53A-20a-115. Limitation on issuance of bonds.

No bonds, other than refunding bonds, may be authorized or issued by the board or any institution under this chapter without the prior approval of the Legislature.

Section 16. Section Enacted.

Section 53A-20a-116, Utah Code Annotated 1953, is enacted to read:

53A-20a-116. Grants and loans from Permanent Community Impact Fund Board.

The board is a state agency to which the Permanent Community Impact Fund Board created under Section 9-4-304 may make grants and loans under Section 9-4-305.

Section 17. Section Enacted.

Section 53A-20a-117, Utah Code Annotated 1953, is enacted to read:

53A-20a-117. Liberal construction.

The terms and provisions of this chapter shall be construed liberally to authorize actions of the board with respect to the issuance of bonds hereunder in order to realize fully the benefits that this chapter is intended to provide to the board and the public education institutions in connection with the financing of needed educational facilities in the state at the lowest possible borrowing cost.

Section 18. Section Enacted.

Section 53A-20a-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Public Education Capital Projects

53A-20a-201. Sevier Valley Applied Technology Center Revenue Bonds — Technology programs/administration building.

(1) The State Board of Education, on behalf of Sevier Valley Applied Technology Center, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Sevier Valley Applied Technology Center to borrow money on the credit of the income and revenues of the Sevier Valley Applied Technology Center, other than appropriations of the Legislature, to finance the partial cost of constructing, furnishing, and equipping a technology programs/administration building.

(2) The bonds or other evidences of indebtedness authorized by this section may not exceed a construction fund budget of $600,000 plus such additional amounts necessary to pay costs incident to the insurance and sale of the bonds, to pay capitalized interest on the bonds, and to fund any debt service reserve requirements for the bonds, and shall be issued in accordance with Part 1 of this chapter, under terms and conditions and in amounts that the board, by resolution, determines are reasonable and necessary.

Section 19. Section Enacted.

Section 53A-20a-202, Utah Code Annotated 1953, is enacted to read:

53A-20a-202. Sevier Valley Applied Technology Center revenue bonds — Technical training/community services building.

(1) The State Board of Education, on behalf of Sevier Valley Applied Technology Center, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Sevier Valley Applied Technology Center to borrow money on the credit of the income and revenues of Sevier Valley Applied Technology Center, other than appropriations of the Legislature, to finance the partial cost of constructing, furnishing, and equipping a technical training/community services building.

(2) The bonds or other evidences of indebtedness authorized by this section may not exceed a construction fund budget of $2,800,000 plus such additional amounts necessary to pay costs incident to the insurance and sale of the bonds, to pay capitalized interest on the bonds, and to fund any debt service reserve requirements for the bonds, and shall be issued in accordance with Part 1 of this chapter under terms and conditions and in amounts that the board, by resolution, determines are reasonable and necessary.

Section 20. Section Amended.

Section 63-55-253, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, Third Special Session, is amended to read:

63-55-253. Repeal dates, Titles 53A, 53B.

(1) The following provisions of Title 53A are repealed on the following dates:

(a) The State Textbook Commission, created in Section 53A-14-101, is repealed July 1, 2001.

(b) Section 53A-15-204, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection 21-2-2 (1)(a)(i), is repealed July 1, 1997.

(c) The advisory council for the Division of Services for the Visually Handicapped, appointed in Section 53A-24-305, is repealed July 1, 1996.

(d) The institutional council for the Schools for the Deaf and Blind, created in Section 53A-25-301, is repealed July 1, 1995.

(e) Title 53A, Chapter 20a, Public Education Revenue Bonds program is repealed July 1, 1995.

(2) The following provisions of Title 53B are repealed on the following dates:

(a) The State Board of Regents, created in Section 53B-1-103, is repealed July 1, 2001.

(b) The following Boards of Trustees, created in Section 53B-2-103, are repealed on the following dates:

(i) University of Utah is repealed July 1, 2002.

(ii) Utah State University is repealed July 1, 1993.

(iii) Weber State University is repealed July 1, 1994.

(iv) Southern Utah University is repealed July 1, 1999.

(v) Snow College is repealed July 1, 1997.

(vi) Dixie College is repealed July 1, 2000.

(vii) College of Eastern Utah is repealed July 1, 1998.

(viii) Utah Valley Community College is repealed July 1, 1996.

(ix) Salt Lake Community College is repealed July 1, 1995.

CHAPTER 274
H. B. No. 213
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

USED TIRE MANAGEMENT AMENDMENTS

By David Ure
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AN ACT RELATING TO HEALTH; AMENDING THE WASTE TIRE RECYCLING ACT; AMENDING THE AMOUNT REIMBURSED FOR RECYCLING WASTE TIRES; PROVIDING FOR CLEAN-UP OF EXISTING TIRE PILES; PROHIBITING THE DISPOSAL OF WASTE TIRES IN A LANDFILL; REQUIRING RECYCLERS RECEIVING PARTIAL REIMBURSEMENT TO REMOVE WASTE TIRES FROM THROUGHOUT THE STATE; AMENDING THE SUNSET DATE; AND PROVIDING REGISTRATION OF WASTE TIRE TRANSPORTERS AND RECYCLERS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
26-32A-103, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
26-32A-104, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
26-32A-107, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
26-32A-108, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
26-32A-111, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
26-32A-112, AS ENACTED BY CHAPTER 185, LAWS OF UTAH 1990
63-55-226, AS LAST AMENDED BY CHAPTER 131, LAWS OF UTAH 1992

ENACTS:
26-32A-103.5, UTAH CODE ANNOTATED 1953
26-32A-104.5, UTAH CODE ANNOTATED 1953
26-32A-107.5, UTAH CODE ANNOTATED 1953
26-32A-111.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 26-32a-103, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-103. Definitions.

As used in this chapter:

(1) "Abandoned waste tire pile" means a waste tire pile regarding which the local department of health has not been able to:

(a) locate the persons responsible for the tire pile; or

(b) cause the persons responsible for the tire pile to remove it.

(2) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

[~~(1)~~] (3) "Commission" means the Utah State Tax Commission.

[~~(2)~~] (4) "Consumer":

(a) means a person who purchases a new tire to satisfy a direct need, rather than for resale[~~,~~]; and [~~"Consumer"~~]

(b) includes a person who purchases a new tire for a motor vehicle to be rented or leased.

[~~(3)~~] (5) "Dispose" or "disposal" means to deposit, dump, or permanently place any waste tire on any land or in any water in the state.

(6) "Division" means the Division of Solid and Hazardous Waste created in Section 19-1-105, within the Department of Environmental Quality.

(7) "Executive secretary" means the executive secretary of the Utah Solid and Hazardous Waste Control Board created in Section 19-1-106.

[~~(4)~~] (8) "Local health department" means the city-county health department or district health department, as defined in Section [~~26-24-2~~] 26A-1-102, with jurisdiction over the recycler.

(9) "Materials derived from waste tires" means tire sections, tire chips, tire shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

[~~(5)~~] (10) "New motor vehicle" means a motor vehicle which has never been titled or registered.

[~~(6)~~] (11) "Proceeds of the fee" means the money collected by the commission from payment of the recycling fee including interest and penalties on delinquent payments.

[~~(7)~~] (12) "Recycler" means a person who uses or can reasonably be expected within the next year to use a minimum of 100,000 waste tires per year to produce energy or an ultimate product, but does not include a person who stores, disposes of, or retreads tires.

[~~(8)~~] (13) "Recycling fee" means the fee provided for in Section 26-32a-104.

[~~(9)~~] (14) "Store" or "storage" means the placing of waste tires in a manner that does not constitute disposal of the waste tires.

[~~(10)~~] (15) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.

[~~(11)~~] (16) "Tire retailer" means any person engaged in the business of selling new tires either as replacement tires or as part of a new vehicle sale.

[~~(12)~~] (17) "Trust fund" means the Waste Tire Recycling Expendable Trust Fund provided for in Section 26-32a-105.

[~~(13)~~] (18) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(19) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

(20) "Waste tire transporter":

(a) means a person engaged in picking up or transporting more than ten waste tires per year generated in Utah for the purpose of storage, processing, or disposal;

(b) includes any person engaged in the business of collecting, hauling, or transporting waste tires or who performs these functions for another person;

(c) does not include a person transporting tires generated solely by:

(i) that person's personal vehicles;

(ii) a commercial vehicle fleet owned or operated by that person or that person's employer;

(iii) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated by that person or that person's employer; or

(iv) a retail tire business and hauled by the business owner or an employee of the business;

(d) does not include a person transporting tires by rail as a common carrier subject to federal regulation.

Section 2. Section Enacted.

Section 26-32a-103.5, Utah Code Annotated 1953, is enacted to read:

26-32a-103.5. Landfilling of tires prohibited — Tire materials limitations.

(1) After January 1, 1994, a waste tire transporter may not dispose of whole tires in a landfill or any other location in the state, except for purposes authorized by board rule. Rules implementing this provision shall be made on or before January 1, 1994. Tires are exempt from this subsection if:

(a) the original tire is from any device moved exclusively by human power; or

(b) the original tire has a rim diameter greater than 24.5 inches.

(2) A waste tire transporter may dispose of material derived from waste tires in a landfill or other location in the state authorized by the division only if the division determines in consultation with the local health department that a recycler accepting waste tires or the specified materials derived from waste tires is not reasonably available.

(3) (a) Any waste tire transporter violating this section is subject to enforcement proceedings and a civil penalty of not more than $100 per waste tire or per amount of materials equivalent to one tire disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this subsection.

(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the board, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.

(c) Penalties collected under this section shall be deposited in the trust fund.

Section 3. Section Amended.

Section 26-32a-104, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-104. Recycling fee.

(1)(a) Beginning July 1, 1990, a recycling fee is imposed upon each purchase from a tire retailer of a new tire by a consumer. The fee shall be paid by the consumer to the tire retailer at the time the new tire is purchased.

(b) The recycling fee does not apply to recapped or resold used tires.

(2) [~~The recycling fee paid by the consumer shall be based upon the size of the tire purchased by the consumer.~~] The fee is $1 for each tire with a rim diameter [~~of: (a) 14 inches or less is $1; (b) greater than 14 inches up to and including 19.5 inches, excluding dual bead capacity, is $1.50; (c) 19.5 inch dual bead capacity is $2; or (d) at least 20 inches~~] up to and including [~~26~~] 24.5 inches, single or dual bead capacity[~~, is $2~~].

Section 4. Section Enacted.

Section 26-32a-104.5, Utah Code Annotated 1953, is enacted to read:

26-32a-104.5. Registration of waste tire transporters and recyclers.

(1) (a) The executive secretary shall register each applicant for registration to act as a waste tire transporter if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire transporter shall:

(i) submit an application in a form prescribed by the executive secretary;

(ii) pay a fee as determined by the board under Subsection 63-38-3(2);

(iii) provide the name and business address of the operator; and

(iv) provide proof of liability insurance or other form of financial responsibility in an amount deter-

mined by board rule, but not more than $300,000, for any liability the waste tire transporter may incur in transporting waste tires.

(c) The holder of a registration under this section shall advise the executive secretary in writing of any changes in application information provided to the executive secretary within 20 days of the change.

(d) If the board has reason to believe a waste tire transporter has disposed of tires other than as allowed under this chapter, the board shall conduct an investigation and, after complying with the procedural requirements of Title 63, Chapter 46b, Administrative Procedures Act, may revoke the registration.

(2) (a) The executive secretary shall register each applicant for registration to act as a waste tire recycler if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire recycler shall:

(i) submit an application in a form prescribed by the executive secretary;

(ii) pay a fee as determined by the board under Subsection 63-38-3(2);

(iii) provide the name and business address of the operator of the recycling business; and

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than $300,000, for any liability the waste tire recycler may incur in storing and recycling waste tires.

(c) The holder of a registration under this section shall advise the executive secretary in writing of any changes in application information provided to the executive secretary within 20 days of the change.

(d) If the board has reason to believe a waste tire recycler has falsified any information provided in an application for partial reimbursement under this section, the board shall, after complying with the procedural requirements of Title 63, Chapter 46b, Administrative Procedures Act, revoke the registration.

(3) (a) A person registered or licensed as a waste tire transporter or recycler by a local governmental entity on the effective date of this act may continue to function under that authorization through April 30, 1994, or when that authorization expires, whichever is earlier.

(b) On and after May 1, 1994, or the expiration of a local registration or licensure, whichever occurs first, a person acting under Subsection (3)(a) shall be registered in accordance with this section in order to act as a waste tire transporter or recycler under this chapter.

Section 5. Section Amended.

Section 26-32a-107, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-107. Partial reimbursement.

(1) (a) Any [~~person~~] recycler within the state who on or after [~~January 1, 1991,~~] the effective date of this act uses waste tires or [~~chips or similar~~] materials [~~generated in the state~~] derived from waste tires that meet requirements of Subsection (4) and used exclusively for energy recovery[~~,~~] or creation of ultimate products[~~, or other appropriate use identified by the local health department under Section 26-32a-112,~~] may submit an application under Section 26-32a-108 to [~~their~~] the local health department having jurisdiction over the applicant's business address for partial reimbursement of the cost of [~~such use~~] transporting and processing.

(b) A recycler who recycles, at an out-of-state location, tires that are generated within the state:

(i) shall apply to the executive secretary for partial reimbursement, rather than to a local health department; and

(ii) qualifies for partial reimbursement under this section only if the executive secretary determines no economically feasible market for the tires exists in Utah.

(c) A recycler who qualifies under this section for partial reimbursement may waive the reimbursement and request in writing that the reimbursement be paid to a person who processes the waste tires prior to the recycler's receipt of the waste tires or his receipt of materials derived from the waste tires for recycling.

(2) Subject to the limitations in Section 26-32a-111, a recycler is entitled to [~~$21~~] $65 as partial reimbursement for each ton of tires recycled on and after the effective date of this act.

(3) (a) In order for a recycler within the state to be eligible for partial reimbursement, the recycler shall establish in cooperation with tire retailers or transporters, or with both, a reasonable schedule to remove waste tires in sufficient quantities to allow for economic transportation of waste tires located in any municipality within the state as defined in Section 10-1-104.

(b) A recycler complying with Subsection (3)(a) may also receive partial reimbursement for recycling tires received from locations other than those associated with retail tire businesses, including waste tires from waste tire piles and abandoned waste tire piles, under Section 26-32a-107.5.

(4) A recycler under Subsection (1) shall also demonstrate the waste tires or materials derived from waste tires that qualify for the reimbursement:

(a) (i) were removed and transported by a registered tire transporter, a registered recycler, or a person under Subsection 26-32a-103(20)(c); or

(ii) were generated by a private person who is not a waste tire transporter as defined in Section 26-32a-103, and that person brings the waste tires to the recycler; and

(b) were generated in the state; and

(c) if the tires are from a waste tire pile or abandoned waste tire pile, the recycler complies with the applicable provisions of Section 26-32a-107.5.

Section 6. Section Enacted.

Section 26-32a-107.5, Utah Code Annotated 1953, is enacted to read:

26-32a-107.5. Recycling tires from abandoned piles and other piles.

(1) A registered recycler may be reimbursed for recycling tires from an abandoned tire pile if:

(a) prior to recycling any of the tires, he receives an affidavit from the local health department of the jurisdiction where the tire pile is located, stating the tire pile is abandoned and the local health department has not been able to locate the persons responsible for the tire pile or has not been able to cause the persons responsible for the tire pile to remove it;

(b) the waste tire transporter who transports the tires to the recycler is registered, has received from the local health department an affidavit stating it has authorized the transporter to remove the tires and deliver them to a recycler, and provides a copy of the affidavit to the recycler; and

(c) the recycler provides to the local health department, in a form it requires, proof of compliance with this subsection in addition to the information required under Section 26-32a-107.

(2) A registered recycler may receive the partial reimbursement for recycling waste tires from waste tire piles that are not abandoned if:

(a) prior to recycling any of the waste tires, he receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating the tire pile is not abandoned;

(b) he obtains an affidavit from the owner of the waste tire pile or his authorized designee stating:

(i) the tires are from a pile to which no tires have been added after June 30, 1991; or

(ii) if the tires are from a tire pile to which tires have been added after June 30, 1991, all the tires provided to the recycler were generated within the state;

(c) the tires are transported to the recycler by a registered waste tire transporter, who provides a manifest to the recycler; and

(d) the recycler provides to the local health department, in a form it requires, proof of compliance with this subsection in addition to the information required under Section 26-32a-107.

(3) (a) Owners of tire piles created on and after April 23, 1990, shall pay into the trust fund a fee of 15 cents per tire for each tire removed from the tire pile that qualifies for the partial reimbursement under this chapter.

(b) Partial reimbursement under this chapter may not be paid for tires removed from piles under this subsection until proof is submitted with the application for reimbursement, demonstrating the fee under Subsection (a) has been paid.

Section 7. Section Amended.

Section 26-32a-108, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-108. Application for partial reimbursement — Penalty.

(1) An application for partial reimbursement shall be on the form prescribed by the local health department and include:

(a) the recycler's name and a brief description of the recycler's business;

(b) the quantity, in tons, of waste tires recycled;

(c) originals or copies of log books, receipts, bills of lading, or other similar documents to establish the tonnage of waste tires recycled;

(d) a description of how the waste tires were recycled;

(e) proof, satisfactory to the local health department, that the waste tires were recycled; and

(f) the affidavit of the recycler warranting that the recycled waste tires for which reimbursement is sought [~~were generated in the state~~] meet requirements of Subsection 26-32a-107(4).

(2) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information to the local health department under Subsection (1) shall be ineligible to receive any reimbursement under this chapter and shall return to the Division of Finance any reimbursement previously received for deposit in the trust fund.

Section 8. Section Amended.

Section 26-32a-111, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-111. Limitations on reimbursement.

(1) The costs reimbursed under this chapter may not exceed the monies in the trust fund.

(2) If applications for partial reimbursement during any month exceed the monies in the trust fund, the Division of Finance shall prorate the amount of all claims for partial reimbursement for the month and defer payment of the remainder.

(3) The amount remaining unpaid on a claim for partial reimbursement shall be treated as a new application for partial reimbursement in the next succeeding month until the unpaid amount is $500 or less, at which time the balance of the claim shall be paid in full.

[~~(4) The local health department may charge a recycler a fee to cover the costs of administration incurred in processing an application for partial reimbursement. The fee shall not exceed $1 per ton of tires for which partial reimbursement is applied for by the recycler.~~]

Section 9. Section Enacted.

Section 26-32a-111.5, Utah Code Annotated 1953, is enacted to read:

26-32a-111.5. Administrative fees to state and to local health departments.

(1) The Division of Finance shall pay quarterly to the local health departments from the trust fund $2.50 per ton of tires for which a partial reimbursement is made under this chapter.

(2) (a) The payment under Subsection (1) shall be allocated among the local health departments in accordance with recommendations of the Utah Association of Local Health Officers.

(b) The recommendation shall be based on the efforts expended and the costs incurred by the local health departments in enforcing this chapter and rules made under this chapter.

(3) The Division of Finance shall pay quarterly to the Department of Environmental Quality $2.50 per ton for each ton of tires for which partial reimbursement is paid under this chapter.

Section 10. Section Amended.

Section 26-32a-112, Utah Code Annotated 1953, as enacted by Chapter 185, Laws of Utah 1990, is amended to read:

26-32a-112. Rules.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

[~~(1)~~] (a) the local health department shall make rules to:

[~~(a)~~] (i) govern the types of energy recovery or other appropriate environmentally compatible uses eligible for reimbursement, including pyrolization but excluding retreading;

[~~(b)~~] (ii) develop an application form; and

[~~(c)~~] (iii) establish the procedure to apply for reimbursement; and

[~~(2)~~] (b) the commission shall make rules to implement this chapter.

(2) The local health departments shall take into consideration the removal schedule of tire transporters or recyclers in a geographical area when making rules governing the storage of waste tires at any business that generates waste tires, pending removal of those waste tires for recycling.

Section 11. Section Amended.

Section 63-55-226, Utah Code Annotated 1953, as last amended by Chapter 131, Laws of Utah 1992, is amended to read:

63-55-226. Repeal dates, Title 26.

(1) (a) The following committees created under Section 26-1-7 are repealed on the following dates:

(i) The Medical Examiner Committee is repealed July 1, 2000.

(ii) The Utah Health Data Committee is repealed July 1, 1993.

(b) The Utah Health Advisory Council, created in Section 26-1-7.5, is repealed July 1, 2001.

(2) The Executive Director's Office, created in Section 26-1-8, is repealed July 1, 2001.

(3) The Office of the Medical Examiner, created in Title 26, Chapter 4, is repealed July 1, 2000.

(4) The Division of Family Health Services, created in Title 26, Chapter 10, is repealed July 1, 2000.

(5) Title 26, Chapter 18, the Medical Assistance Act, is repealed July 1, 1994.

(6) The Division of Health Care Financing, created in Section 26-18-2.1, is repealed July 1, 1994.

(7) The following divisions and offices created by the Department of Health under Section 26-1-13 are repealed on the following dates:

(a) The Division of Community Health Services is repealed July 1, 1997.

(b) The State Health Laboratory is repealed July 1, 1995.

(8) The recycling fee imposed under Section 26-32a-104 in the Waste Tire Recycling Act, created in Title 26, Chapter 32a, is repealed July 1, [~~1995~~] 1996.

(9) The Children's Organ Transplant Coordinating Committee created in Title 26, Chapter 18a, is repealed at the end of the 1997 taxable year.

Section 12. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 275
H. B. No. 252
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

SPECIAL DISTRICTS AMENDMENTS

By Rob W. Bishop
Kelly C. Atkinson

AN ACT RELATING TO SPECIAL DISTRICTS; INCREASING THE CONTRACTING AND ASSESSING AUTHORITY OF SPECIAL SERVICE DISTRICTS UNDER CERTAIN CIRCUMSTANCES; MODIFYING SELECTION PROCEDURES FOR SPECIAL DISTRICTS; MODIFYING THE FISCAL YEAR REQUIREMENTS FOR WATER CONSERVANCY DISTRICTS; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
17A-2-417, AS RENUMBERED AND AMENDED BY CHAPTER 186, LAWS OF UTAH 1990
17A-2-1304, AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1991
17A-2-1413, AS RENUMBERED AND AMENDED BY CHAPTER 186 AND LAST AMENDED BY CHAPTER 93, LAWS OF UTAH 1990
20A-1-512, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1993

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

Section 1. Section Amended.

Section 17A-2-417, Utah Code Annotated 1953, as renumbered and amended by Chapter 186, Laws of Utah 1990, is amended to read:

17A-2-417. Annexation of other areas.

Whenever the services of the type being provided within a county service area should be provided in any other unincorporated portion of the county whether contiguous to the existing county service area or not, the county legislative body or the board of [~~county commissioners~~] trustees may annex that territory to the area [~~in the manner provided by~~] by following the procedures established in this part for the formation of a new service area in [~~such~~] that territory with [~~such~~] whatever changes [~~as~~] are necessary to make the proceedings germane to the proposed action without denying any [~~person his~~] persons their substantive rights.

Section 2. Section Amended.

Section 17A-2-1304, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1991, is amended to read:

17A-2-1304. Establishing service districts — Improvement districts within service districts.

(1) (a) A county or a municipality may establish a service district for the purpose of providing within the area of the service district any of the following services or any combination of them:

(i) water;

(ii) sewerage;

(iii) drainage;

(iv) flood control;

(v) garbage;

(vi) health care;

(vii) transportation;

(viii) recreation;

(ix) fire protection; and

(x) street lighting.

(b) Snow removal services may be provided in service districts established under this section to more effectively carry out the purposes of those service districts.

(c) These services may be provided through facilities or systems acquired or constructed for that purpose through construction, purchase, lease, contract, gift, or condemnation or any combination of the above.

(d) Service districts may contract with a franchised, certificated public utility for the construction and operation of an electrical service distribution system within the service district.

(2) (a) The area within any service district may include all or any part of the county or municipality that established it except that:

(i) a service district may not include the area of any other service district established by the same county or municipality that is now providing the same service proposed to be supplied by the new service district;

(ii) a service district established by a county may contain all or a part of any municipality or of an existing improvement district that provides the same service proposed to be provided by the service district, but only with the consent of the governing authority as provided in a resolution or ordinance adopted by the governing authority; and

(iii) a service district may not include any area not directly benefited by the services provided under this section without the consent of the nonbenefited landowner.

(b) All parts of a service district need not be contiguous.

(3) (a) As provided in Section 17A-2-1315, the governing authority of any service district created under this part may create one or more improvement districts within the boundaries of the special service district by following the procedures in, and meeting the requirements of, Part 2 or 3, Chapter 3.

(b) The intent to create an improvement district need not be present at the time a service district is organized.

(c) Any improvement district created within the boundaries of a service district may only be orga-

nized to undertake projects or improvements for which the service district creating that improvement district was organized.

(d) The service district shall meet all procedural requirements for creating an improvement district at the time the improvement district is created, as provided in Section 17A-2-1315 and in Part 2 or 3, Chapter 3.

(e) In determining whether or not a project or improvement undertaken by an improvement district is within the scope of the purposes for which the service district creating that improvement district was organized, any project or improvement reasonably related to the purposes for which the service district creating that improvement district was organized is considered to be within the scope of those purposes.

Section 3. Section Amended.

Section 17A-2-1413, Utah Code Annotated 1953, as renumbered and amended by Chapter 186 and last amended by Chapter 93, Laws of Utah 1990, is amended to read:

17A-2-1413. Powers of board of district.

The board shall have power on behalf of the district:

(1) to have perpetual succession;

(2) to take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water, waterworks, water rights, sources of water supply, and any real and personal property within or without the district necessary or convenient to fully exercise its powers;

(3) to sell, lease, encumber, alienate, or otherwise dispose of water, waterworks, water rights, and sources of water supply for any beneficial use within or without the district, and to fix rates and terms for the sale, lease, or other disposal of water;

(4) to acquire, construct, operate, control, and use any works or facilities within or without the district necessary or convenient to exercise its powers;

(5) to have and to exercise the power of eminent domain, as provided by law, to take any property necessary to exercise powers granted; however, the district shall not exercise the power of eminent domain to acquire title to or beneficial use of vested water rights for transmountain diversion, and the district shall not have the power to carry or transport water in transmountain diversion, the title to which has been acquired by any municipality by virtue of eminent domain proceedings;

(6) to construct, establish, or maintain works or facilities:

(a) across or along any public street or highway;

(b) in, upon, or over any vacant public lands which are now, or may become, the property of this state in accordance with Title 65A; or

(c) across any streams of water or watercourses;

(7) to contract with any agency of the United States, person, or corporation, public or private, for the construction, preservation, operation, or maintenance of tunnels, drains, pipelines, reservoirs, regulating basins, diversion canals and works, dams, power plants, and any necessary incidental works;

(8) to acquire perpetual rights to the use of water from the works referred to in Subsection (7) and to sell perpetual rights to the use of water from those works to persons and corporations, public and private;

(9) to list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all those lands, which allotment of water shall not exceed the maximum amount that the board determines could be beneficially used on the lands;

(10) to levy assessments, as provided for by this part, against lands within the district to which water is allotted on the basis of:

(a) a uniform district-wide value per acre-foot of irrigation water; or

(b) a uniform unit-wide value per acre-foot of irrigation water provided that the board divides the district into units and fixes a different value per acre-foot of water in the respective units;

(11) to fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, although not necessarily equal or uniform, for like classes of service;

(12) to contract for services, employ persons, and elect or appoint officers as shall be necessary and convenient to transact the district's business;

(13) to adopt and modify plans and specifications for the works for which the district was organized;

(14) to investigate and promote water development;

(15) to appropriate and otherwise acquire water and water rights within or without the state;

(16) to develop, store, and transport water;

(17) to acquire stock in canal companies, water companies, and water users' associations;

(18) to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, and any works, facilities, improvements, and property necessary or convenient for those purposes;

(19) to generate, distribute, or sell electric power from hydroelectric power plants owned, operated, licensed, or leased by the district if, as determined by the board, the electric power plant was acquired or constructed as an incidental and not the primary purpose of a project for the conservation, development, storage, transportation, or distribution of water;

(20) to invest any surplus money in the district treasury pursuant to the State Money Management Act [~~of 1974~~];

(21) to refund bonded indebtedness incurred by the district pursuant to rules prescribed by the board;

(22) to borrow money and to issue bonds or other evidence of indebtedness;

(23) to adopt bylaws not in conflict with the Utah Constitution and laws of the state for carrying on the business of the board and district;

(24) to construct works and improvements on land not subject to acquisition by condemnation held by the district for a term of not less than 50 years under lease, easement, or otherwise and to issue bonds to pay the costs for which bonds may be issued as in this part;

(25) to acquire, construct, operate, or maintain works for the irrigation of land;

(26) to sell water and water services to individual customers and to charge sufficient rates for the water and services supplied; however, no sale of water for domestic or culinary use shall be made to a customer located within the limits of any incorporated municipality without the consent of the municipality, except as provided by Subsection 17A-2-1439 (7);

(27) to make and collect fees for customer connections to the works of the district and for permitting and supervising the making of the connections;

(28) to use the proceeds of connection charges for any lawful corporate purpose including the construction or acquisition of facilities, payment of principal of and interest on bonds, and the creation of a reserve for such purposes; [~~and~~]

(29) to own property for its corporate purposes within the boundaries of incorporated municipalities; and

(30) to adopt a fiscal year, which may end June 30 or December 31.

Section 4. Section Amended.

Section 20A-1-512, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1993, is amended to read:

20A-1-512. Midterm vacancies on special district boards.

(1) Whenever a vacancy occurs on any special district board for any reason, a replacement to serve out the unexpired term shall be appointed as provided in this section by:

(a) the special district board, if the person vacating the position was elected; or

(b) the appointing authority, if the person vacating the position was appointed.

(2) If the special district board fails to appoint a person to complete an elected board member's term within [~~30~~] 90 days, the county or municipality that created the special district shall fill the vacancy.

CHAPTER 276
H. B. No. 263
Passed March 3, 1993
Approved March 22, 1993
Effective July 1, 1993

REGISTRATION AND LICENSING OF COMMERCIAL VEHICLES

By Ronald J. Greensides

AN ACT RELATING TO MOTOR VEHICLES; AMENDING METHOD OF REGISTERING AND LICENSING INTERSTATE COMMERCIAL VEHICLES; PROVIDING FOR FEES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-1A-222, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
41-1A-301, AS RENUMBERED AND AMENDED BY CHAPTER 1, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 41-1a-222, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-222. Definition — Application for multiyear registration — Payment of taxes — Penalties.

(1) As used in this section:

(a) "Commercial vehicle" means a motor vehicle, trailer, or semitrailer used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and not subject to registration under Section 41-1a-301.

(b) "Fleet" means two or more commercial vehicles registered under this chapter.

(2) The owner of any commercial vehicle or fleet may apply to the commission for registration in accordance with this section under the following conditions:

(a) (i) The application shall be made on a form prescribed by the commission.

(ii) Upon payment of required fees and meeting other requirements prescribed by the commission, the division shall issue, to each vehicle for which application has been made, a multiyear license plate and registration card.

(b) (i) The license plate decal and the registration card shall bear an expiration date fixed by the division and are valid until ownership of the vehicle to which they are issued is transferred by the applicant or until the expiration date, whichever comes first.

(ii) An annual renewal application must be made by the owner if registration identification has been issued on an annual installment fee basis and the required fees must be paid on an annual basis.

(iii) License plates and registration cards issued pursuant to this section are valid for an eight-year period, commencing with the year of initial application in this state.

(c) When application for registration or renewal is made on an installment payment basis, the applicant shall submit acceptable evidence of a surety bond in a form, and with a surety, approved by the commission and in an amount equal to the total annual fees required for all vehicles registered to the applicant in accordance with this section.

(3) Each vehicle registered as part of a fleet of commercial vehicles must be titled in the name of the fleet and bear commercial license plates.

(4) Each owner who registers vehicles or fleets pursuant to this section shall pay the taxes or in lieu fees otherwise due pursuant to Section 41-1a-206 or Subsection 41-1a-301 [~~(20)~~] (13).

(5) An owner who fails to comply with the provisions of this section is subject to the penalties in Section 41-1a-1301 and, if the commission so determines, will result in the loss of the privileges granted in this section.

Section 2. Section Amended.

Section 41-1a-301, Utah Code Annotated 1953, as renumbered and amended by Chapter 1, Laws of Utah 1992, is amended to read:

41-1a-301. Apportioned registration and licensing of interstate commercial vehicles.

(1) (a) An owner or operator of a fleet of commercial vehicles [~~may proportionally register and license each fleet for operation in this state by meeting the requirements of this part~~] operating in two or more jurisdictions may register commercial vehicles for operation under the International Registration Plan or the Uniform Vehicle Registration Proration and Reciprocity Agreement by filing an application with the division.

[~~(b) This registration is in lieu of the registration fees and procedures required by other parts of this chapter.~~]

[~~(2) (a) The applicant seeking proportional registration and licensing shall file an application with the division.~~]

(b) Each application shall include[:] information necessary to identify the vehicle owner, the vehicle, the miles traveled in each jurisdiction, and other information pertinent to the registration of apportioned vehicles.

[~~(i) the total distance traveled in all jurisdictions for the entire fleet during the preceding reporting period;~~]

[~~(ii) the total in-state distance traveled for the entire fleet during the preceding reporting period;~~]

[~~(iii) a description and identification of each fleet vehicle; and~~]

[~~(iv) any other information required by the division.~~]

(c) [~~A vehicle~~] Vehicles operated exclusively in this state may not be [~~included in an application for proportional registration~~] apportioned.

[~~(3)~~] (2) [~~The~~] Each application [~~of each fleet registration shall be supported by a fee payment computed~~] must be accompanied by the fee for apportioned vehicles determined as follows:

(a) divide the [~~total in-state distance~~] in-jurisdiction miles by the total [~~distance as reported under Subsection (2)~~] miles generated during the preceding year;

(b) [~~determine the~~] total [~~amount necessary to register~~] the fees for each vehicle [~~in the fleet for which registration is requested~~] based on the fees prescribed [~~by~~] in Section 41-1a-1206; and

(c) multiply the sum obtained under Subsection [~~(3)~~] (2)(b) by the quotient obtained under Subsection [~~(3)~~] (2)(a).

[~~(4)~~] (3) (a) If the division determines that records are unsatisfactory, or do not reflect an accurate [~~proportional~~] apportioned basis for registration, [~~it~~] the division may prescribe [~~or permit~~] an [~~alternate~~] alternative method [~~designed to present a more accurate representation of the proportion of the preceding reporting period~~] to be ascribed to the [~~applicant's~~] fleet [~~in substitution for~~] rather than the quotient determined under Subsection [~~(3)~~] (2)(a).

(b) (i) If the division determines that the [~~quotient under Subsection (3)~~] miles submitted for the [~~preceding~~] current registration year [~~varies substantially~~] vary from the [~~quotient submitted for the~~] preceding registration year [~~under application, it~~], the division may [~~recompute~~] recalculate the [~~quotient~~] miles for the preceding registration year on the basis of information contained in the current application[~~, from the applicant's records~~] submitted, or from any [~~other~~] available information [~~and may charge any additional~~] source.

(ii) Additional fees may be charged or [~~grant~~] appropriate credits [~~required by the redetermined quotient~~] may be granted based on the findings.

[~~(5)~~] (4) [~~An applicant for proportional registration of any fleet, the trailers~~] Trailers or semitrailers of [~~which are operated in jurisdictions in addition to those in which the applicant's proportionally registered motor vehicles are operated, may state trailers and semitrailers~~] apportioned fleets may be listed separately [~~in the application and compute and pay~~] as "trailer fleets" with the fees paid according to [~~that separate statement, as to which total distance is~~] the total distance those trailers [~~and semitrailers~~] were towed [~~by any of the applicant's motor vehicles upon highways~~] in all jurisdictions during the preceding year mileage reporting period.

[~~(6)~~] (5) (a) (i) [~~Upon receipt of~~] When the proper fees have been paid, [~~the division shall register each vehicle listed in the application and issue~~] a registration card [~~which shall~~], annual decal, and where necessary, license plate, will be issued for each unit listed on the application.

(ii) An original registration must be carried in [~~the~~] each vehicle at all times.

(b) [~~Registration~~] Original registration cards for trailers or semitrailers may be carried in the power unit.

[~~(c) The division may issue and conform the trucking permits:~~]

[~~(i) to serve the purpose of vehicle special fuel permits required by Section 59-13-303; and~~]

[~~(ii) to serve the purpose of any registration, temporary permit, license, or other document required by any state or federal law, rule, or regulation.~~]

(c) (i) In lieu of a permanent registration card or license plate, the division may issue one temporary permit authorizing operation of new or unlicensed vehicles until the permanent registration is completed.

(ii) Before a temporary registration is issued, application for registration must be made and fees must be paid for the vehicle for which the permit is issued.

(iii) Temporary permits may not be issued for renewals.

(d) (i) The division [~~may~~] shall issue one distinctive license [~~plates, stickers, or decals for external visual identification~~] plate that displays the letters APP for apportioned vehicles.

(ii) The plate must be displayed on the front of the power unit or on the rear of the trailer, as appropriate.

(iii) Distinctive decals displaying the word "apportioned" and the month and year of expiration shall be issued for each apportioned vehicle.

(e) A nonrefundable [~~$3~~] administrative fee [~~for the cost of issuing and administering trucking permits and identification indicia shall be paid~~], determined by the Tax Commission pursuant to Section 63-38-3, shall be charged for each [~~vehicle~~] temporary permit, registration, or both.

[~~(7)~~] (6) (a) [~~Proportionally registered interstate fleet vehicles~~] Vehicles that are apportionally registered are fully [~~licensed and~~] registered for [~~any type of movement or operation, except when a grant of authority is required for intrastate movement or operation~~] intrastate and interstate operation, providing the proper interstate and intrastate authority has been secured.

(b) If [~~a grant of~~] operating authority is required for intrastate movement, a vehicle may not be operated in intrastate commerce [~~in this state~~] unless the [~~owner or operator~~] owner-operator is granted an intrastate authority by the Public Service Commission.

[~~(8)~~] (7) A vehicle may not [~~be proportionally registered~~] have an apportioned registration unless it is or will be [~~proportionally or otherwise properly registered~~] apportioned in at least one other jurisdiction [~~during the period proportional registration is desired in this state~~].

[~~(9)~~] (8) (a) Vehicles [~~acquired after the beginning of the registration year and~~] added to [~~a proportionally registered~~] an apportioned fleet after the beginning of the registration year shall be [~~proportionally~~] registered by applying the [~~mileage percentage used in~~] quotient under Subsection (2)(a) for the original application to the fees [~~otherwise~~] due [~~with respect to the vehicle~~] for the remainder of the registration year [~~under Sections 41-1a-1206 and 41-1a-1207~~].

[~~(b) A vehicle operated by the owner as a lessee of another owner who has, in the license year, proportionally registered the vehicle in this state is not an addition to the lessee's fleet if the lessor has established to the satisfaction of the division:~~]

(b) (i) An owner-operator, who is a lessor, may be the registrant and the vehicle may be registered in the name of the owner-operator.

(ii) The allocation of fees shall be according to the operational records of the owner-operator.

(c) (i) [~~that the~~] The owner [~~maintains~~] shall maintain and [~~will~~] submit complete annual mileage [~~data~~] for each vehicle [~~for all states, including complete annual mileage data by individual states or provinces~~] in individual jurisdictions, showing all miles [~~or kilometers~~] operated [~~in service~~] by the lessor and lessee [~~or lessees; and~~].

(ii) The fiscal mileage reporting period begins July 1 and continues through June 30 of the year immediately preceding the calendar year in which the registration year begins.

[~~(ii) that the vehicle or its replacement will, in the normal course of operations, be included in the lessor's proportional registration application for the succeeding license year.~~]

[~~(10) (a) Application for proportional registration of an interstate fleet operated in this state for the first time shall state the mileage data for the fleet for the preceding reporting period in other jurisdictions and the estimated annual fleet mileage in this state.~~]

[~~(b) If operations were not conducted with the fleet during the preceding year, the application shall contain a statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions.~~]

[~~(c) From the applications submitted, the division shall fix the in-state and total fleet distance to be used to determine the mileage proportion for the fleet.~~]

(d) (i) The lessee may be the registrant of a leased vehicle at the option of the lessor.

(ii) If a lessee is the registrant of a leased vehicle, both the lessor's and lessee's name shall appear on the registration.

(iii) The allocation of fees shall be according to the records of the carrier.

(9) (a) (i) New operations with no mileage history requesting apportioned registration shall estimate mileage.

(ii) If the operation was previously apportioned in another jurisdiction, the miles from the preceding mileage reporting period from that jurisdiction shall be used.

[~~(d)~~] (b) [~~If after an evaluation, the~~] The division [is] may adjust the estimate if not satisfied with [the] its correctness [~~of the estimated annual fleet distance traveled as shown on the application, the division may adjust the application estimate~~].

[~~(11)~~] (10) (a) [~~A person~~] Any registrant whose application [is] for apportioned registration has been accepted shall preserve the records on which the application is based for a period of [four] three years after [acceptance] the close of the registration year.

(b) [~~If requested by the division, the owner shall make~~] The records shall be made available [~~at a designated office of~~] to the division upon request for audit as to [~~verify the~~] accuracy of computations, payments, [~~assessment of~~] and assessments for deficiencies, [and] or allowances for [~~credit~~] credits.

[~~(c) The division may enter into agreements with agencies of other jurisdictions administering vehicle registration laws for joint audits of any owner.~~]

[~~(d)~~] (c) An assessment for deficiency or claim for credit may not be made for any period for which records are no longer required.

[~~(e)~~] (d) [~~Any sums found due after audit shall bear interest at 8% per annum~~] Interest in the amount prescribed by Section 59-1-402 shall be assessed or paid from the date [~~originally~~] due until paid on deficiencies found due after audit.

[~~(f) If the audit discloses a deliberate and willful intent to evade the payment requirements under Subsection (3), a penalty of 100% of sums due shall be assessed.~~]

(e) Registrants with deficiencies are subject to the penalties under Section 59-1-401.

(f) The division may enter into agreements with other IRP jurisdictions for joint audits.

[~~(g)~~] (11) All state fees [and payments] collected shall be deposited in the Transportation Fund.

[~~(12) Fleet vehicles from other jurisdictions may be registered upon a proportional basis without reference to any other statute relating to vehicle registration, except as expressly provided in this part.~~]

[~~(13) This part does not require a vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged under any applicable provision prescribing vehicle registration fees.~~]

[~~(14) (a) A registrant engaged in the interchange of equipment to facilitate the through movement of freight may apply for permission to operate interchanged equipment.~~]

[~~(b) A permit may be granted by the division to interchange equipment if the division determines that the applicant is qualified and that permission will not be used to avoid proper registration.~~]

[~~(15) The division shall supply the Utah Highway Patrol with complete information identifying each applicant who is granted an interchange permit.~~]

[~~(16) For vehicles registered under this part, in addition to other registration information, the division shall require the applicant to state the date of acquisition and original price on each vehicle for which the certificate described in Section 41-1a-206 has not been furnished.~~]

[~~(17)~~] (12) Fees for [~~vehicles not previously registered or otherwise qualified for operation in this state~~] apportioned registration shall be [~~reduced as provided in Section~~] assessed according to Sections 41-1a-1206 and 41-1a-1207 if [~~those vehicles have not been illegally operated on the highways of this state prior to application for proportional registration~~] registered for less than a full year.

(a) (i) If the registrant is replacing a vehicle for one withdrawn from the fleet and the new vehicle is of the same weight category as the replaced vehicle, the registrant must file a supplemental application.

(ii) A registration card that transfers the license plate to the new vehicle shall be issued.

(iii) When a replacement vehicle is of greater weight than the replaced vehicle, additional registration fees are due.

[~~(18) (a) A vehicle in a proportionally registered fleet that is replaced by a substantially similar vehicle may be registered for the remainder of the registration year by payment of the fees required for issuance of registration indicia.~~]

(b) [~~The owner of~~] If a vehicle [~~permanently~~] is withdrawn from [~~a proportionally registered~~] an apportioned fleet during the period for which it is registered, the registrant shall notify the division [~~of withdrawal~~] and [~~return~~] surrender the [~~license plates,~~] registration card[~~, temporary permit, or other indicia of registration as required by the division~~] and license plate of the withdrawn vehicle.

[~~(19) This part does not impose upon the division or its agents any duty to issue any temporary permit to the owner or operator of any vehicle or to apportion the annual fees.~~]

[~~(20)~~] (13) (a) An [~~owner of a proportionally~~] out-of-state carrier with an apportionally registered vehicle who has not presented [~~the~~] a certificate of property tax as required by Section 41-1a-206, [~~or qualified under Section 41-1a-207, and who has been approved by the division for proportional registration~~] shall pay, at the time of [~~proportional~~] registration, a proportional part of an equalized highway use tax computed as follows:

(i) Multiply the number of vehicles or combination vehicles registered in each weight class by the equivalent tax figure from the following table:

Vehicle or Combination Registered Weight	Equivalent Tax
6,000 - 18,000 pounds	$100
18,001 - [~~33,000~~] 34,000 pounds	200
[~~33,001~~] 34,001 - 48,000 pounds	300
48,001 - [~~63,000~~] 64,000 pounds	450
[~~63,001~~] 64,001 pounds and over	600

(ii) Multiply the equivalent tax value for the total fleet determined under Subsection [~~(20)(a)~~](i) by the fraction computed under Subsection [~~(3)~~] (2) for [~~proportional registration of the applicant's~~] the apportioned fleet for the registration year.

(b) Fees [~~for vehicles not previously registered or otherwise qualified for operation in the state~~] shall be [~~reduced~~] assessed as provided in Section 41-1a-1207 [~~as long as the vehicles have not been illegally operated on the highways of this state prior to application for proportional registration~~].

[~~(21)~~] (14) (a) Commercial vehicles meeting the registration requirements of another jurisdiction [~~that are subject to registration but not entitled to exemption from registration or licensing under this chapter,~~] may, as an alternative to [~~either registration~~] full or [~~proportional~~] apportioned registration, secure a temporary registration permit for a period not to exceed 96 hours or until they leave the state, for a fee of $20 for a single [~~units~~] unit and $40 for multiple units.

[~~(b) A fee is not required for any trailer or semitrailer being towed by a power unit of a proportionally registered fleet for which an interchange permit is issued.~~]

[~~(c)~~] (b) A state temporary permit or registration fee is not required from nonresident owners or operators of vehicles or combination of vehicles having:

(i) a gross laden weight of not more than 26,000 pounds for each [~~vehicle operated as a~~] single unit or [~~for each~~] combination [~~of those vehicles~~]; or

(ii) an unladen weight of not more than 7,000 pounds for each vehicle [~~if~~] operated as a single unit or for each combination [~~of those vehicles~~].

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 277
H. B. No. 390
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

HEALTH TEST FOR PRISON INMATES

By Arlo D. James

AN ACT RELATING TO HEALTH; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO TEST OFFENDERS FOR COMMUNICABLE DISEASES; AND PROVIDING A DEFINITION OF COMMUNICABLE DISEASE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
64-13-37, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 64-13-37, Utah Code Annotated 1953, is enacted to read:

64-13-37. Department authorized to test offenders for communicable disease.

(1) As used in this section, "communicable disease" means:

(a) an illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly, as from an infected person or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment; and

(b) a disease designated by the Department of Health by rule as a communicable disease in accordance with Section 26-6-7.

(2) The department may:

(a) test an offender for a communicable disease upon admission or within a reasonable time after admission to a correctional facility; and

(b) periodically retest the offender for a communicable disease during the time the offender is in the custody of the department.

CHAPTER 278
H. B. No. 406
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

UTAH STATEHOOD CENTENNIAL TRUST FUND

By Norm Nielsen

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CREATING A UTAH STATEHOOD CENTENNIAL TRUST; AMENDING COMMISSION POWERS, AND SUNSETTING THE CENTENNIAL COMMISSION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
9-1-501, AS RENUMBERED AND AMENDED BY CHAPTER 241 AND LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992
9-1-502, AS RENUMBERED AND AMENDED BY CHAPTER 241, LAWS OF UTAH 1992

ENACTS:
9-1-504, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 9-1-501, Utah Code Annotated 1953, as renumbered and amended by Chapter 241 and last amended by Chapter 1, Laws of Utah 1992, is amended to read:

9-1-501. Utah Statehood Centennial Commission — Composition — Powers.

(1) There is created a commission to be known as the Utah Statehood Centennial Commission.

(2) (a) The commission shall be composed of 25 bipartisan members appointed by the governor with the consent of the Senate.

(b) The governor shall appoint one of the commission members as chairman.

(c) The members of the commission shall represent the various geographical regions of the state and broadly represent the people of Utah.

(3) (a) A majority of the members of the commission constitute a quorum for the transaction of business.

(b) The governor may remove any member of the commission for failure to perform.

(c) The governor may appoint a replacement to the commission if a vacancy occurs on the commission for any reason.

(4) (a) The [~~Division of State History~~] Department of Community and Economic Development shall provide administrative support to the commission.

(b) [~~The director of the Division of State History shall serve as executive secretary of the commission and is a voting member of the commission~~] The executive director of the Department of Community and Economic Development, or his designee, shall serve as a non-voting member of the commission.

(5) The commission shall:

(a) work with all necessary state agencies to develop, produce, and sell a centennial license plate to fund the commission's activities;

(b) develop plans to implement a statewide centennial celebration, to be held from January 4, 1996 through January 24, 1997, and to conduct other centennial related activities before January 4, 1996;

(c) raise money through license plate sales and through other fundraising activities;

(d) establish committees to assist it in its work;

(e) make grants to county centennial committees, communities, and other groups and individuals to carry out the purposes of this section;

(f) make rules governing the expenditure of centennial funds by county centennial committees and other organizations by complying with the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(g) submit an annual report to the governor and to the Office of Legislative Research and General Counsel for submission to the Legislature by December 1 of each year.

(6) (a) The commission may hire staff to assist the commission in carrying out its duties, and the governor shall appoint an executive director.

(b) The executive director shall:

(i) be the executive secretary to the commission;

(ii) administer the day-to-day affairs of the commission; and

(iii) carry out other duties and assignments as directed by the commission.

(c) The executive director shall be a nonmerit position who serves at the pleasure of the governor.

(d) The executive director may appoint other staff members, provided that the commission has approved a budget for that purpose.

(e) The staff members appointed by the executive director may be nonmerit positions.

[~~(6)~~] (7) (a) The commission shall deposit all funds raised by it in the [~~General Fund as nonlapsing dedicated credits~~] expendable trust fund known as the Utah Statehood Centennial Trust, established in Section 9-1-504.

(b) The commission may spend the monies as authorized by this section.

(c) [~~(i)~~] Any appropriations to the commission shall be nonlapsing until June 30, 1998.

[~~(ii) On July 1, 1998, the director of the Division of Finance shall close out the centennial commission's unexpended monies to the General Fund.~~]

[~~(7)~~] (8) (a) The Utah Statehood Centennial Commission holds all rights to the use of the statehood

centennial slogan, logo, and license plate design and other commission property protected by copyright or trademark.

(b) The commission may license or otherwise authorize the use of that slogan, logo, [or] design or other commission property protected by copyright or trademark for commercial or other purposes as long as the license plate design is not used in a manner inconsistent with Subsection 41-1a-1305 (10).

(c) The commission may set a fee for the licensure or other authorized use of the slogan, logo, [and] design and other commission property protected by trademark or copyright.

(9) The Utah Statehood Centennial Commission shall cease operations on or before June 30, 1998.

Section 2. Section Amended.

Section 9-1-502, Utah Code Annotated 1953, as renumbered and amended by Chapter 241, Laws of Utah 1992, is amended to read:

9-1-502. County centennial committee — Composition — Powers.

(1) (a) Each county governing body may form a county centennial committee composed of no less than [11] five members.

(b) The county governing body shall:

(i) solicit applications for membership on the county centennial committee from county residents and residents of other political subdivisions located within the county;

(ii) appoint the members of the county centennial committee after consulting with mayors, city and town councils, commissions, community councils, and other community and county leaders; and

(iii) ensure that the members of the county centennial committee are nonpartisan, represent the various geographic and population regions of the county, and broadly represent the people of the county.

(c) Members of the county centennial committee shall serve until December 31, 1997, until they resign, or until they are removed for cause.

(d) After consultation with mayors, city and town councils, commissions, community councils, and other community and county leaders, the county governing body may remove any member of the county centennial committee for cause and may appoint a replacement.

(2) County centennial committees may:

(a) raise funds;

(b) administer centennial license plate funds, if authorized to do so by the Utah Statehood Centennial Commission;

(c) apply for special project funds from the Utah Statehood Centennial Commission; and

(d) spend funds for centennial related activities and events according to rules established by the Utah Statehood Centennial Commission.

Section 3. Section Enacted.

Section 9-1-504, Utah Code Annotated 1953, is enacted to read:

9-1-504. Utah Statehood Centennial Trust.

(1) There is established an expendable trust fund known as the Utah Statehood Centennial Trust.

(2) The purpose of the trust is to raise money for the celebration of the centennial of Utah's statehood in 1996 and related events and projects to be conducted or implemented under the direction of the Utah Statehood Centennial Commission in accordance with Sections 9-1-501 through 9-1-503.

(3) The sources of funding for the trust are provided for under Subsections 9-1-501(5) through 9-1-501(7).

(4) Interest on investment funds in the trust shall accrue to the trust.

(5) The trust shall be controlled by the Utah Statehood Centennial Commission.

(6) On July 1, 1993, the director of the Division of Finance shall close out the centennial commission's nonlapsing dedicated credits and account monies to the trust.

(7) The trust created by this section shall terminate on June 30, 1998. On July 1, 1998, the director of the Division of Finance shall close out the trust to the General Fund.

CHAPTER 279
H. B. No. 463
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

REPEAL OF UTILITY LIABILITY PROVISIONS

By Frank R. Pignanelli

AN ACT RELATING TO PUBLIC UTILITIES; REPEALING THE PROVISION THAT A PUBLIC UTILITY IS LIABLE CIVILLY TO A PERSON FOR ANY LOSS, DAMAGE, OR INJURY CAUSED BY THE PUBLIC UTILITY; AND ELIMINATING THE ALLOWANCE OF EXEMPLARY DAMAGES IF THE UTILITY'S ACT OR OMISSION IS WILLFUL.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

REPEALS:
54–7–22, UTAH CODE ANNOTATED 1953

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

Section 1. Repealer.

Section 54–7–22, Delict of utilities — Civil liability, Utah Code Annotated 1953, is repealed.

CHAPTER 280
S. B. No. 4
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

CHARITABLE SOLICITATIONS ACT AMENDMENTS

By Delpha A. Baird
Ronald J. Ockey

AN ACT RELATING TO COMMERCE AND TRADE; AMENDING THE CHARITABLE SOLICITATIONS ACT; AMENDING DEFINITIONS; PROVIDING CERTAIN INVESTIGATIVE AND ENFORCEMENT POWERS TO THE DIVISION OF CONSUMER PROTECTION; PROVIDING FOR EDUCATION REGARDING THE ACT; PROVIDING EXEMPTIONS; AMENDING APPLICATION REQUIREMENTS; AMENDING PROVISIONS REGARDING INFORMATION CARDS; PROVIDING EXPIRATION DATES FOR PERMITS AND REGISTRATIONS; CLARIFYING CERTAIN PROHIBITED CONDUCT; REQUIRING SEPARATE ACCOUNTS; CREATING A SPECIAL REVENUE FUND; PROVIDING FOR COORDINATION AND COOPERATION WITH OTHER REGULATORY ENTITIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
13-22-2, AS LAST AMENDED BY CHAPTER 91, LAWS OF UTAH 1988
13-22-5, AS LAST AMENDED BY CHAPTER 3, LAWS OF UTAH 1992
13-22-6, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987
13-22-7, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987
13-22-9, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987
13-22-10, AS LAST AMENDED BY CHAPTER 14, LAWS OF UTAH 1989
13-22-11, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987

ENACTS:
13-22-15, UTAH CODE ANNOTATED 1953
13-22-16, UTAH CODE ANNOTATED 1953
13-22-17, UTAH CODE ANNOTATED 1953
13-22-18, UTAH CODE ANNOTATED 1953
13-22-19, UTAH CODE ANNOTATED 1953
13-22-20, UTAH CODE ANNOTATED 1953
13-22-21, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
13-22-3, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987
13-22-8, AS LAST AMENDED BY CHAPTER 91, LAWS OF UTAH 1988
13-22-12, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987
13-22-13, AS ENACTED BY CHAPTER 122, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 13-22-2, Utah Code Annotated 1953, as last amended by Chapter 91, Laws of Utah 1988, is amended to read:

13-22-2. Definitions.

As used in this chapter:

(1) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, or other entity, excluding the state and its political subdivisions, that:

(a) is or holds itself out to be established for any charitable purpose; or

(b) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other charitable objective.

(3) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including [~~a telephone~~] any telephonic request;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication;

(c) the sale of, offer or attempt to sell, or request of donations in exchange for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or [~~where~~] the use of the name of any charitable organization or movement [~~is used or referred to~~] as an inducement or reason for making any purchase donation, or [~~where~~], in connection with any sale or donation, [~~any statement is made~~] stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. [~~A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale. The place where a solicitation is considered to be made includes both the place where the solicitation originates and the location of the person solicited at the time of the solicitation.~~]

(4) (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

(i) a gift, subscription, loan, advance, or deposit of money or anything of value;

(ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; and

(iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) "Contribution" does not include:

(i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or

(ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

(5) "Contributor" means any donor, pledgor, purchaser, or other person who makes a contribution.

(6) "Director" means the director of the Division of Consumer Protection.

[~~(5)~~] (7) "Division" means the Division of Consumer Protection of the Department of Commerce.

(8) "Paid solicitor" means any person who, for compensation, acts as an employee or agent for any charitable organization or professional fund raiser to solicit contributions for charitable purposes. Paid solicitor does not include any clerical employee who is not primarily involved with soliciting.

[~~(6)~~] (9) (a) "Professional fund raiser", except as provided in Subsection (b), means any person who [~~is required to obtain a permit under Section 13-22-8~~]:

(i) for compensation or any other consideration plans or manages the solicitation of contributions for or on behalf of any charitable organization or any other person;

(ii) engages in, or who holds himself out to persons in this state as being independently engaged in, the business of soliciting contributions for a charitable organization; or

(iii) manages, supervises, or trains any paid solicitor;

(b) Subsections (a)(i) and (iii) do not include bona fide officers, directors, volunteers, or full-time employees of a charitable organization.

Section 2. Section Repealed and Reenacted.

Section 13-22-3, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is repealed and reenacted to read:

13-22-3. Investigative and enforcement powers — Education.

(1) The division may make any investigation it considers necessary to determine whether any person is violating, has violated, or is about to violate any provision of this chapter or any rule made or order issued under this chapter. As part of the investigation, the division may:

(a) require a person to file a statement in writing;

(b) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and

(c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.

(2) Whenever it appears to the director that substantial evidence exists that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may do any of the following in addition to other specific duties under this chapter:

(a) in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the director may issue an order to cease and desist from engaging in the act or practice or from doing any act in furtherance of the activity; or

(b) the director may bring an action in the appropriate district court of this state to enjoin the acts or practices constituting the violation or to enforce compliance with this chapter or any rule made or order issued under this chapter.

(3) Whenever it appears to the director by a preponderance of the evidence that any person has engaged in or is engaging in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may assess an administrative fine of up to $500 per violation up to $10,000 for any series of violations arising out of the same operative facts.

(4) Upon a proper showing, the court hearing an action brought under Subsection (2)(b) may:

(a) issue an injunction;

(b) enter a declaratory judgment;

(c) appoint a receiver for the defendant or the defendant's assets;

(d) order disgorgement of any money received in violation of this chapter;

(e) order rescission of agreements violating this chapter;

(f) impose a fine of not more than $2,000 for each violation of this chapter; and

(g) impose a civil penalty, or any other relief the court considers just.

(5) (a) In assessing the amount of a fine or penalty under Subsection (3), (4)(f), or (4)(g), the director or court imposing the fine or penalty shall consider the gravity of the violation and the intent of the violator.

(b) If it does not appear by a preponderance of the evidence that the violator acted in bad faith or with intent to harm the public, the director or court shall excuse payment of the fine or penalty.

(6) The division may provide or contract to provide public education and voluntary education for appli-

cants and registrants under this chapter. The education may be in the form of publications, advertisements, seminars, courses, or other appropriate means. The scope of the education may include:

(a) the requirements, prohibitions, and regulated practices under this chapter;

(b) suggestions for effective financial and organizational practices for charitable organizations;

(c) charitable giving and solicitation;

(d) potential problems with solicitations and fraudulent or deceptive practices: and

(e) any other matter relevant to the subject of this chapter.

Section 3. Section Amended.

Section 13-22-5, Utah Code Annotated 1953, as last amended by Chapter 3, Laws of Utah 1992, is amended to read:

13-22-5. Registration required.

(1) [~~(a)~~] It is unlawful for any organization that is not exempt under Section 13-22-8 knowingly to solicit, request, promote, advertise, or sponsor the solicitation of any contribution for a charitable purpose, unless the organization [~~holds a permit issued by~~] is registered with the division.

[~~(b)~~] (2) Subsection [~~(a)~~] (1) does not prohibit an organization from receiving an unsolicited contribution.

[~~(2) If a nonprofessional fund raiser makes the solicitation, Subsection (1)(a) does not apply to a solicitation:~~]

[~~(a) that an organization conducts among its own established and bona fide membership exclusively through the voluntarily donated efforts of other members or officers of the organization;~~]

[~~(b) in the form of a collection or contribution made at a regular assembly or service;~~]

[~~(c) by any licensed radio or television station;~~]

[~~(d) made upon premises owned or occupied by the organization upon whose behalf the solicitation is made;~~]

[~~(e) for the relief of any person specified by name at the time of solicitation, where the entire amount collected without any deduction is turned over to the named person;~~]

[~~(f) on behalf of an established, bona fide youth organization, including a youth sports organization, with a membership in the state exceeding 1,000, if the solicitation is made by members of the organization who are identified as such through the use of uniforms, insignia, or membership cards at the time of the solicitation;~~]

[~~(g) on behalf of an established, bona fide parent or teacher organization with a membership in the state exceeding 100, if the solicitation is made by members of the organization who are reasonably identified as such at the time of the solicitation; or~~]

[~~(h) on behalf of an established, bona fide veterans organization, if the solicitation is made by members of the organization who are identified as such through the use of uniforms, insignia, or membership cards at the time of the solicitation.~~]

[~~(3) Subsection (1)(a) does not apply to any of the following:~~]

[~~(a) a bona fide religious organization;~~]

[~~(b) a political party authorized to transact its affairs within this state, if the content and manner of any solicitation make clear that the solicitation is for the benefit of a political party;~~]

[~~(c) an organization whose gross receipts from solicitations is less than $5,000 for the calendar year in which the solicitation is made, except that this exemption does not apply to an organization that:~~]

[~~(i) has no reasonably documented record of gross receipts from solicitations; or~~]

[~~(ii) has, as one of its substantial purposes, the objective of circumventing compliance with this chapter;~~]

[~~(d) any school accredited by the state or any accredited institution of higher learning; or~~]

[~~(e) a public or higher education foundation established under Title 53A or Title 53B.~~]

Section 4. Section Amended.

Section 13-22-6, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is amended to read:

13-22-6. Application for registration.

[~~To obtain a permit~~] (1) An applicant for registration or renewal of registration as a charitable organization [~~for which contributions may be solicited under this chapter, an applicant~~] shall:

[~~(1)~~] (a) pay an application fee as determined under Subsection 63-38-3 (2); and

[~~(2)~~] (b) submit a written application, verified under oath, on a form approved by the division which shall include:

[~~(a)~~] (i) the organization's name [~~and~~], address, telephone number, facsimile number, if any, and the names and addresses of any organizations or persons controlled by, controlling, or affiliated with the applicant;

[~~(b)~~] (ii) the specific legal nature of the organization, [~~i.e.~~] that is, whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity[~~, and~~];

(iii) the names and residence addresses of the officers and directors of the organization;

(iv) the name and address of the registered agent for service of process and a consent to service of process;

[~~(c)~~] (v) the purpose of the solicitation and use of the contributions to be solicited;

[~~(d)~~] (vi) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

[~~(e)~~] (vii) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items[~~, if any, regardless of from what funds the expenses are payable, but not including expenses paid with funds other than those collected in connection with any charitable solicitation~~];

[~~(f)~~] (viii) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available for application to the charitable purposes declared in the application, including a satisfactory statement of the factual basis for the projected percentage;

[~~(g)~~] (ix) a statement of total contributions collected or received by the organization within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

[~~(h)~~] (x) a [~~list~~] copy of any written agreements with any professional fund raiser involved with the solicitation[~~, except that this requirement does not apply to any agreement with a person who is a paid officer or employee of the organization~~];

[~~(i) a copy of each written agreement to which Subsection (2)(h) applies; and~~] (xi) the information required in Subsection 13-22-9(1)(c) with respect to any officer, director, manager, operator, or principal of the organization;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds for the solicitation or fundraising; and

[~~(j)~~] (xiii) any additional information the division may require by rule.

(2) If any information contained in the application for registration becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

Section 5. Section Amended.

Section 13-22-7, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is amended to read:

13-22-7. Information card.

(1) Each [~~person other than a professional fund raiser~~] paid solicitor who solicits a contribution for a charitable organization [~~holding a permit~~] registered or required to be registered under this chapter shall [~~first~~], before making any solicitation, obtain an information card [~~from that organization. An information card shall be on an official form supplied to the organization~~] issued by the division. [~~The information card shall be signed by the person to whom the card is issued.~~] Information cards may be obtained from the division or, if available, from the charitable organization for whom the solicitation is being made.

(2) A charitable organization [~~holding a permit~~] registered under this chapter may obtain [~~forms for~~] information cards from the division upon payment of a fee determined under [~~Section~~] Subsection 63-38-3(2) for distribution only to paid solicitors it employs.

(3) Each information card shall be signed by the paid solicitor to whom it is issued, regardless of whether the card is issued by the division or distributed by the charitable organization for whom the solicitation is to be made.

(4) Each charitable organization shall keep a current list of the names and addresses of its paid solicitors and shall make that information available to the division upon request.

(5) Each information card expires 180 days from the date of issuance.

(6) A person who solicits contributions as a volunteer and receives no compensation is not required to have an information card, but shall clearly identify the charitable organization on whose behalf he is soliciting.

Section 6. Section Repealed and Reenacted.

Section 13-22-8, Utah Code Annotated 1953, as last amended by Chapter 91, Laws of Utah 1988, is repealed and reenacted to read:

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

(a) a solicitation that an organization conducts among its own established and bona fide membership exclusively through the voluntarily donated efforts of other members or officers of the organization;

(b) an organization that is a lawfully organized, bona fide religious corporation, institution, or society if the solicitation is made for church, missionary, religious, or humanitarian purposes;

(c) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

(d) except as provided in Subsection 13-22-21(2), a solicitation for the relief of any person specified by name at the time of solicitation if the entire amount collected without any deduction is turned over to the named person;

(e) a political party authorized to transact its affairs within this state and any candidate and campaign worker of the party if the content and manner of any solicitation make clear that the solicitation is for the benefit of the political party;

(f) a political action committee or group soliciting funds relating to issues or candidates on the ballot if the committee or group is registered with the lieutenant governor's office under the provisions of Title 20, Chapter 14a, Political Action Disclosure Act, or Title 20, Chapter 14b, Political Issues Disclosure Act;

(g) any school accredited by the state or any accredited institution of higher learning or club or organization within and authorized by the school;

(h) a public or higher education foundation established under Title 53A or 53B;

(i) except as provided in Subsection 13-22-21(1), an organization that has received tax exempt status from the Internal Revenue Service under 26 U.S.C. Sec. 501(c)(3); and

(j) a television station, radio station, or newspaper of general circulation that donates air time or print space for no consideration as part of a cooperative solicitation effort on behalf of a charitable organization, whether or not that organization is required to register under this chapter.

(2) Any organization claiming an exemption under this section bears the burden of proving its eligibility for, or the applicability of, the exemption claimed.

(3) The division may by rule:

(a) require exempt organizations to file a notice of claim of exemption;

(b) prescribe the contents of the notice of claim; and

(c) require a filing fee for the notice, as determined under Subsection 63-38-3(2).

Section 7. Section Amended.

Section 13-22-9, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is amended to read:

13-22-9. Professional fund raiser's permit.

[~~To obtain a permit as a professional fund raiser under this chapter, an applicant shall do~~] It is unlawful for any person or entity to act as a professional fund raiser without first obtaining a permit from the division by complying with all of the following application requirements:

(1) Each applicant shall submit a written application, verified under oath, on a form approved by the division which shall include:

(a) the applicant's name, residence and business addresses, and residence and business telephone numbers;

[~~(b) all other residences of the applicant for the three-year period immediately prior to the application;~~]

[~~(c) a complete set of the applicant's fingerprints and a recent photograph of the applicant;~~]

[~~(d)~~] (b) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

[~~(e) the applicant's history as a professional fund raiser or in any similar business or occupation, including, if applicable, under what circumstances, in previously operating in this or another state under permit or license, he has had his permit or license revoked or suspended, stating the reason therefor, and disclosing his business activity or occupation subsequent to the suspension or revocation;~~]

[~~(f) the applicant's criminal record, if any, other than misdemeanor traffic violations;~~]

(c) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;

[~~(g)~~] (d) the name of the operator or manager of the applicant's operations, and in addition, if the operator or manager is not the applicant, all the information required under this subsection [~~as it regards~~] relating to the operator or manager;

[~~(h)~~] (e) the general plans and method by which the applicant proposes to conduct his business as a professional fund raiser; [~~and~~]

(f) disclosure of and a copy of all agreements regarding compensation of professional fund raisers or paid solicitors;

(g) a copy of any script the applicant proposes to use for solicitation; and

[~~(i)~~] (h) any additional information the division may require by rule.

(2) [~~An~~] Each applicant shall provide [~~sufficient~~] proof [~~to the division~~] that he is bonded in the amount of [~~$10,000~~] at least $25,000. This bond shall be payable to the state for the benefit of parties who may be damaged by any violation of this chapter. The issuer of the bond shall be a surety authorized to transact surety business in this state. The applicant shall maintain the bond for the entire duration of the permit. The division may prescribe rules under which parties may recover on the bond.

(3) [~~An~~] Each applicant shall pay an application fee as determined under Subsection 63-38-3 (2).

Section 8. Section Amended.

Section 13-22-10, Utah Code Annotated 1953, as last amended by Chapter 14, Laws of Utah 1989, is amended to read:

13-22-10. Use and display of permits and information cards.

(1) Each permit and information card issued by the division shall set forth such information as will assist any person solicited to determine the purpose for which the contribution is solicited, including:

(a) the percentage of contributed funds projected to remain available for application to the charitable purpose represented in the solicitation;

(b) if the permit is for a professional fund raiser, the form and amount of compensation the professional fund raiser receives from any contributed funds;

(c) (i) if it is an information card or a professional fund raiser permit, the identity of the person making the solicitation;

(ii) if the permit is for a charitable organization, the identity of the organization;

(iii) if it is an information card, the identity of the organization for which the contribution is solicited;

(d) an official acknowledgment or seal that the permit is issued by the division or, in the case of an information card, that the card is on a form supplied by the division;

(e) the statement required under Subsection 13-22-14 (2);

(f) the expiration date of the permit or information card; and

(g) any other information that the division may prescribe by rule.

(2) In any solicitation in person, each holder of a permit or information card shall maintain in his possession the permit or information card and shall display the permit or information card [~~on request,~~] to [~~any~~] each person solicited. In any telephonic solicitation, the information contained on the permit or information card shall be distinctly and clearly repeated as part of the solicitation [~~on the request of any person solicited~~].

(3) The division may by rule prescribe additional provisions to govern the manner of using, displaying, or communicating the information on the permit or information card in connection with a solicitation.

Section 9. Section Amended.

Section 13-22-11, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is amended to read:

13-22-11. Expiration of registration and permits.

(1) Each [~~permit~~] registration issued under this chapter [~~shall expire one year from~~] expires on the earlier of January 1, April 1, July 1, or October 1 following the completion of 12 months after the date of issuance [~~and~~].

(2) Each professional fund raiser's permit expires when the professional fund raiser ceases affiliation with the charitable organization named in the application for permit.

(3) A registration or permit may be renewed only by complying with the requirements for obtaining the original registration or permit.

[~~(2) Each information card shall expire 180 days from the date that a charitable organization issues it.~~]

Section 10. Section Repealed and Reenacted.

Section 13-22-12, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is repealed and reenacted to read:

13-22-12. Grounds for denial, suspension, or revocation.

(1) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application, registration, permit, or information card, upon a finding that the order is in the public interest and that:

(a) the application for registration or renewal is incomplete or misleading in any material respect; or

(b) the applicant or registrant or any officer, director, agent, or employee of the applicant or registrant has:

(i) violated this chapter or committed any of the prohibited acts and practices described in this chapter;

(ii) been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;

(iii) been convicted of a crime involving moral turpitude;

(iv) obtained or attempted to obtain a registration or a permit by misrepresentation;

(v) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with any solicitation;

(vi) caused or allowed any paid solicitor to violate any rule made or order issued under this chapter by the division;

(vii) failed reasonably to supervise his agents, employees, paid solicitors or, in the case of an organization, its professional fund raisers;

(viii) used, or attempted to use a name that either is deceptively similar to a name used by an existing registered or exempt charitable organization, or appears reasonably likely to cause confusion of names; or

(ix) failed to timely file with the division any report required in this chapter or by rules made under this chapter.

(2) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to revoke or suspend a claim of exemption filed under Subsection 13-22-8(3), upon a finding that the order is in the public interest and that:

(a) the notice of claim of exemption is incomplete or false or misleading in any material respect; or

(b) any provision of this chapter, or any rule made or order issued by the division under this chapter has been violated in connection with a charitable solicitation by any exempt organization.

Section 11. Section Repealed and Reenacted.

Section 13-22-13, Utah Code Annotated 1953, as enacted by Chapter 122, Laws of Utah 1987, is repealed and reenacted to read:

13-22-13. Prohibited practices.

In connection with any solicitation, each of the following acts and practices is prohibited:

(1) any material departure from a solicitation script provided to the division;

(2) stating or implying that registration constitutes endorsement or approval by the division or any governmental entity;

(3) violating any of the requirements of this chapter or any rule made under this chapter;

(4) making any material misrepresentation; and

(5) making or causing to be made any false or misleading statements in any filing with the division.

Section 12. Section Enacted.

Section 13-22-15, Utah Code Annotated 1953, is enacted to read:

13-22-15. Financial reports required.

(1) Each charitable organization registered under this chapter shall, during its first year of registration, provide quarterly financial reports to the division within 30 days after the end of the quarter reported. Each report shall disclose:

(a) the gross amount of contributions received;

(b) the amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;

(c) aggregate amounts paid to any professional fund raiser;

(d) amounts spent for overhead, expenses, commissions, and similar purposes; and

(e) the name and address of any paid solicitor used by the organization.

(2) After the first year of continuous registration, a charitable organization shall file the same information as is required under Subsection (1) on an annual basis within 30 days after the end of the year reported.

(3) Each report required under this section shall be signed under oath by an officer or principal of the organization.

(4) The registration of any organization that fails to file a timely report as required in this section is automatically suspended pending a final order of the division under Section 13-22-12. The division may reinstate the registration after receiving:

(a) a report fulfilling the requirements of this section;

(b) an application for renewed registration; and

(c) a penalty of $50.

Section 13. Section Enacted.

Section 13-22-16, Utah Code Annotated 1953, is enacted to read:

13-22-16. Separate accounts and receipts required.

(1) Each organization required to be registered under this chapter and each professional fund raiser and paid solicitor shall segregate and maintain all contributed funds in an account held separately from its operating account. The account shall be held in Utah at a depository institution regulated by the Department of Financial Institutions.

(2) Each organization required to be registered under this chapter and each professional fund raiser and paid solicitor shall maintain and use duplicate receipts for contributions of money, securities, and cash equivalents so that one receipt is issued to each contributor and one is maintained by the organization.

Section 14. Section Enacted.

Section 13-22-17, Utah Code Annotated 1953, is enacted to read:

13-22-17. Written agreement required.

(1) A professional fund raiser may only engage in activities on behalf of a charitable organization through written agreement with the organization.

(2) A charitable organization registered or required to be registered with the division may only engage the services of a professional fund raiser through written agreement.

Section 15. Section Enacted.

Section 13-22-18, Utah Code Annotated 1953, is enacted to read:

13-22-18. Local ordinance.

This chapter does not prohibit any political subdivision of the state from enacting any ordinance regulating the solicitation of contributions within the subdivision's boundaries so long as the ordinance only coordinates enforcement of this chapter with the division.

Section 16. Section Enacted.

Section 13-22-19, Utah Code Annotated 1953, is enacted to read:

13-22-19. Reciprocal agreements.

(1) The division may convey or exchange information obtained under this chapter with other agencies having regulatory authority over charitable organizations.

(2) The division may accept information that a charitable organization or professional fund raiser files in another state or with any federal agency or other organization in place of substantially similar information that is required to be filed under this chapter.

Section 17. Section Enacted.

Section 13-22-20, Utah Code Annotated 1953, is enacted to read:

13-22-20. Consumer Protection Education and Training Fund.

(1) There is created a special revenue fund known as the Consumer Protection Education and Training Fund.

(2) All money received by the state from civil penalties and administrative fines under this chapter shall be deposited into the fund.

(3) Notwithstanding Title 63, Chapter 38, Budgetary Procedures Act, the division may use the fund

with the approval of the executive director of the Department of Commerce in a manner consistent with the duties of the division under this chapter for:

(a) education and training of Utah citizens under Subsection 13-22-3(6);

(b) publication of this chapter, rules, policy statements, or other material relevant to this chapter and its enforcement; and

(c) investigation and litigation under this chapter.

(4) If the balance in the fund exceeds $100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Section 18. Section Enacted.

Section 13-22-21, Utah Code Annotated 1953, is enacted to read:

13-22-21. Tax exempt organizations — Appeal on behalf of individual.

(1) Each organization that has received tax exempt status from the Internal Revenue Service under 26 U.S.C. Sec. 501(c)(3) shall, if it is not otherwise exempt from registration under Subsection 13-22-8(1)(b), (c), (g), or (h), file proof of its tax exempt status with the division by December 31 of each year. The proof shall consist, in the first instance, of a verified copy of the letter granting tax exempt status. In subsequent years, this proof shall consist of a verified written statement from the organization declaring that the organization's tax exempt status is still in effect.

(2) If a charitable campaign consisting of exempt solicitations for the relief of a named individual, as described in Subsection 13-22-8(1)(d), collects proceeds in excess of $1,000, the organizer of the campaign shall give the division written notice of the following:

(a) the organizer's name and address;

(b) the name and whereabouts of the person for whose relief the contributions are solicited;

(c) the date the charitable campaign commenced; and

(d) the purpose to which the collected contributions are to be applied.

(3) Notice under Subsection (2) is due within ten days after commencing the appeal or collecting in excess of $1,000, whichever is later.

(4) If the organizer fails to file timely notice, the division shall inform the organizer of the notice requirement and give the organizer ten additional days as a grace period within which to file the notice. If the organizer fails to file the notice within the grace period, the division may issue a cease and desist order against the organizer.

(5) If, at any time, the division has reasonable cause to believe that the organizer is perpetrating a fraud against the public, or in any other way intends to profit from harming the public through the charitable campaign, it shall issue a cease and desist order against the organizer.

CHAPTER 281
S. B. No. 5
Passed February 17, 1993
Approved March 22, 1993
Effective May 3, 1993

PARKS AND RECREATION AMENDMENTS

By LeRay McAllister

AN ACT RELATING TO PARKS AND RECREATION; SPECIFYING PROCEDURES AND CRITERIA FOR THE AWARDING OF GRANTS FOR RIVERWAY ENHANCEMENT PROJECTS AND RECREATIONAL TRAILS; PROVIDING FOR A MILEAGE ALLOWANCE FOR MEMBERS OF THE RECREATIONAL TRAILS ADVISORY COUNCIL; AND MAKING TECHNICAL AMENDMENTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-11A-203, AS ENACTED BY CHAPTER 144, LAWS OF UTAH 1991
63-11A-301, AS ENACTED BY CHAPTER 144, LAWS OF UTAH 1991
63-11A-402, AS ENACTED BY CHAPTER 144, LAWS OF UTAH 1991

ENACTS:
63-11-17.8, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
63-11A-501, AS ENACTED BY CHAPTER 144, LAWS OF UTAH 1991

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

Section 1. Section Enacted.

Section 63-11-17.8, Utah Code Annotated 1953, is enacted to read:

63-11-17.8. Riverway enhancement grants — Matching funds requirements — Rules.

(1) (a) The Division of Parks and Recreation may give grants to local governments for riverway enhancement projects with funds appropriated by the Legislature for that purpose.

(b) Each grant recipient must provide matching funds having a value that is equal to or greater than the grant funds received. However, the Board of Parks and Recreation may allow a grant recipient to provide property, material, or labor in lieu of money, provided the grant recipient's contribution has a value that is equal to or greater than the grant funds received.

(2) The Board of Parks and Recreation shall:

(a) make rules setting forth procedures and criteria for the awarding of grants for riverway enhancement projects; and

(b) determine to whom grant funds shall be awarded after considering the recommendations of and after consulting with the Riverway Enhancement Advisory Council and the division.

(3) Rules for the awarding of grants for riverway enhancement projects shall provide that each riverway enhancement project for which grant funds are awarded must be along a river or stream that is impacted by high density populations or prone to flooding.

Section 2. Section Amended.

Section 63-11a-203, Utah Code Annotated 1953, as enacted by Chapter 144, Laws of Utah 1991, is amended to read:

63-11a-203. Public hearings required.

Prior to establishing any recreational trail under the jurisdiction and control of the division, the division shall conduct a public hearing in the area or areas of the state where the trail is proposed to be located. Information to be considered at the hearings shall include the following:

(1) the proposed route of the trail and the recommended modes of travel to be permitted on it;

(2) any plans to utilize areas adjacent to the trail for scenic, historic, natural, cultural, or developmental purposes;

(3) the characteristics that, in the judgment of the division, make the proposed trail suitable as a recreational trail;

(4) the current status of land ownership and the current and potential use of land along the designated route;

(5) the estimated cost of acquisition of lands or any interest in lands;

(6) the plans and estimated costs for developing and maintaining the trail;

(7) any plans for sharing the costs of developing, operating, and maintaining the trail among state, federal, and local governmental entities and private organizations;

(8) any anticipated problems of policing the trail; and

(9) any anticipated hazards to private lands adjacent to the trail.

Section 3. Section Amended.

Section 63-11a-301, Utah Code Annotated 1953, as enacted by Chapter 144, Laws of Utah 1991, is amended to read:

63-11a-301. Cooperative agreements.

The division may enter into cooperative agreements with federal, state, or local governmental entities, private landowners, or private corporations which specify the responsibilities of each entity for the development and operation and maintenance of trails, including law enforcement along trails.

Section 4. Section Amended.

Section 63-11a-402, Utah Code Annotated 1953, as enacted by Chapter 144, Laws of Utah 1991, is amended to read:

63-11a-402. Council membership — Compensation.

(1) The council shall consist of nine members knowledgeable about muscle-powered recreational activities as follows:

(a) five members shall represent the public at large;

(b) one member, nominated by the Utah League of Cities and Towns, shall represent city government;

(c) one member, nominated by the Utah Association of Counties, shall represent county government;

(d) one member shall represent the United States Forest Service; and

(e) one member shall represent the Bureau of Land Management.

(2)(a) Members serving on the council shall be appointed by the director of the division for a term of three years, except as provided in Subsection (2)(b).

(b) Of the members first appointed to the council, four shall be appointed for a term of two years[;] and five shall be appointed for a term of three years.

(3) The council shall elect annually a chairman and a vice chairman from its members.

(4) The council members shall receive [~~no compensation or expenses from the state for their service on the committee~~] a mileage allowance in accordance with rules adopted by the Division of Finance under Section 63-1-15.

Section 5. Section Repealed and Reenacted.

Section 63-11a-501, Utah Code Annotated 1953, as enacted by Chapter 144, Laws of Utah 1991, is repealed and reenacted to read:

63-11a-501. Grants — Matching funds requirements — Rules.

(1)(a) The division may give grants to federal government agencies or local governments for the planning, acquisition, and development of trails within the state's recreational trail system with funds appropriated by the Legislature for that purpose.

(b) Each grant recipient must provide matching funds having a value that is equal to or greater than the grant funds received. However, the Board of Parks and Recreation may allow a grant recipient to provide property, material, or labor in lieu of money, provided the grant recipient's contribution has a value that is equal to or greater than the grant funds received.

(2) The Board of Parks and Recreation shall:

(a) make rules setting forth procedures and criteria for the awarding of grants for recreational trails; and

(b) determine to whom grant funds shall be awarded after considering the recommendations of and after consulting with the Recreational Trails Advisory Council and the division.

(3) Rules for the awarding of grants for recreational trails shall provide that:

(a) each grant applicant must solicit public comment on the proposed recreational trail and submit a summary of that comment to the division; and

(b) each trail project for which grant funds are awarded must conform to the criteria and guidelines specified in Sections 63-11a-102, 63-11a-103, and 63-11a-201.

CHAPTER 282
S. B. No. 11
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

JUDICIAL RULES REVIEW COMMITTEE

By Craig A. Peterson

AN ACT RELATING TO THE LEGISLATURE; DEFINING CERTAIN TERMS; CREATING THE JUDICIAL RULES REVIEW COMMITTEE; PROVIDING FOR ITS MEMBERSHIP, VACANCIES, AND QUORUM; OUTLINING DUTIES OF COMMITTEE; INCLUDING REPORTING REQUIREMENTS; PROVIDING FOR PUBLICATION OF COURT RULES OR PROPOSALS FOR COURT RULES; AND MAKING CONFORMING CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-46A-10, AS LAST AMENDED BY CHAPTER 146, LAWS OF UTAH 1992

ENACTS:
36-20-1, UTAH CODE ANNOTATED 1953
36-20-2, UTAH CODE ANNOTATED 1953
36-20-3, UTAH CODE ANNOTATED 1953
36-20-4, UTAH CODE ANNOTATED 1953
36-20-5, UTAH CODE ANNOTATED 1953
36-20-6, UTAH CODE ANNOTATED 1953
36-20-7, UTAH CODE ANNOTATED 1953
36-20-8, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 36-20-1, Utah Code Annotated 1953, is enacted to read:

36-20-1. Definitions.

As used in this chapter:

(1) "Advisory committee" means the committee which proposes rules or changes in rules to the Supreme Court on civil procedure, criminal procedure, juvenile procedure, appellate procedure, evidence, and professional conduct.

(2) "Committee" means the Judicial Rules Review Committee created in Section 36-20-2.

(3) "Court rules" means any of the following:

(a) rules of procedure, evidence, and practice for use of the courts of this state;

(b) rules governing and managing the appellate process adopted by the Supreme Court;

(c) rules adopted by the Judicial Council for the administration of the courts of the state.

(4) "Judicial Council" means the administrative body of the courts as established in Article VIII, Sec. 12, Utah Constitution and Section 78-3-21.

(5) "Proposal for court rule" means the proposed language in a court rule that is submitted to the Judicial Council, the advisory committee, or the Supreme Court.

(6) "Report" means a copy of the committee's findings and recommendations, any actions taken by the Supreme Court or Judicial Council in response, and any recommendation for legislation for Supreme Court or Judicial Council rulemaking action as provided in Subsection 36-20-6(5).

Section 2. Section Enacted.

Section 36-20-2, Utah Code Annotated 1953, is enacted to read:

36-20-2. Judicial Rules Review Committee.

(1) There is created a six member Judicial Rules Review Committee.

(2) (a) The committee shall be composed of three members of the Senate, at least one from each political party, appointed by the president of the Senate, and three members of the House, at least one from each political party, appointed by the speaker of the House of Representatives.

(b) Members shall serve for two-year terms or until their successors are appointed.

(c) A vacancy exists whenever a committee member ceases to be a member of the Legislature or when a member resigns from the committee. Vacancies shall be filled by the appointing authority, and the replacement shall serve out the unexpired term.

(d) The members may meet as needed to review or recommend:

(i) court rules or proposals for court rules;

(ii) any conflicts between court rules or proposals for court rules and statute or state constitution; and

(iii) proposed legislative action relating to Subsections (i) and (ii).

Section 3. Section Enacted.

Section 36-20-3, Utah Code Annotated 1953, is enacted to read:

36-20-3. Submission of court rules or proposals for court rules.

(1) Each court rule or proposal for court rule and any other information the Supreme Court or Judicial Council considers relevant and helpful shall be submitted to the committee and the governor at each stage when:

(a) the court rule or proposal for court rule is submitted to:

(i) the Judicial Council for consideration or approval for public comment; or

(ii) the Supreme Court from the advisory committee after its consideration or approval; and

(b) the approved court rule or approved proposal for court rule is made available to members of the bar and the public for public comment.

(2) At the time of submission under Subsection (1), the Supreme Court or Judicial Council shall provide the committee with the name and telephone num-

ber of a Supreme Court advisory committee or Judicial Council employee who may be contacted about the submission.

Section 4. Section Enacted.

Section 36-20-4, Utah Code Annotated 1953, is enacted to read:

36-20-4. Review of rules — Criteria.

The committee shall review and evaluate submissions of court rules or proposals for court rules and may review existing court rules, based on the following criteria:

(1) whether or not they are authorized by the state constitution or by statute;

(2) whether or not those authorized by statute comply with legislative intent;

(3) whether or not they are in conflict with existing statute or govern the same policy as articulated in statute;

(4) whether or not they are primarily substantive or procedural in nature;

(5) whether or not they infringe upon the powers of the executive or legislative branch of government;

(6) their impact on affected persons;

(7) their purpose or the reason for the change;

(8) the anticipated cost or savings to:

(a) the state budget;

(b) local governments; and

(c) individuals; and

(9) the compliance cost for affected persons.

Section 5. Section Enacted.

Section 36-20-5, Utah Code Annotated 1953, is enacted to read:

36-20-5. Committee review — Fiscal analyst — Powers of committee.

(1) To carry out its duties, the committee may examine any other issues that it considers necessary.

(2) The committee may request the Office of the Legislative Fiscal Analyst to prepare a fiscal note on any court rule or proposal for court rule.

(3) In order to accomplish its functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

Section 6. Section Enacted.

Section 36-20-6, Utah Code Annotated 1953, is enacted to read:

36-20-6. Findings — Copy to Judiciary Committee and Legislature — Contents of report.

(1) The committee may take action that includes:

(a) an informal recommendation about a court rule or proposal for court rule; or

(b) written findings of its review of each court rule or proposal for court rule and recommendations, if any, for legislative action or any Supreme Court or Judicial Council rulemaking action where significant issues have been identified.

(2) If any findings are made under Subsection (1), the committee shall provide to the Supreme Court or the Judicial Council:

(a) a copy of its findings; and

(b) a request that the court or Judicial Council notify the committee of its response.

(3) The committee may prepare a report that includes:

(a) the findings and recommendations made by the committee based on the criteria in Subsection 36-20-4;

(b) any action taken by the Supreme Court or Judicial Council in response to committee recommendations; and

(c) any recommendations by the committee for legislation or Supreme Court or Judicial Council rulemaking action.

(4) If a report is prepared, the committee shall provide a copy of the report to the presiding officers of both the House and the Senate, the Senate and House chairs of the Judiciary Interim Committee, Judiciary Standing Committees, the governor, the Executive Offices Courts and Corrections Appropriation Subcommittee, the Judicial Council, and the Supreme Court.

Section 7. Section Enacted.

Section 36-20-7, Utah Code Annotated 1953, is enacted to read:

36-20-7. Court rules or proposals for court rules — Publication in bulletin.

When the Supreme Court or Judicial Council submits any court rule or proposal for court rule for public comment, it shall also submit the court rule or proposal for court rule to publication houses which publish court rules, proposals to court rules, case law or other relevant information for persons engaged in the legal profession.

Section 8. Section Enacted.

Section 36-20-8, Utah Code Annotated 1953, is enacted to read:

36-20-8. Duties of staff.

The Office of Legislative Research and General Counsel shall, when practicable, attend meetings of the advisory committees of the Supreme Court.

Section 9. Section Amended.

Section 63-46a-10, Utah Code Annotated 1953, as last amended by Chapter 146, Laws of Utah 1992, is amended to read:

63-46a-10. Division of Administrative Rules — Duties generally.

(1) The Division of Administrative Rules shall:

(a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;

(b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(d) publish all proposed rules, rule analysis forms, notices of effective dates, and continuation notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to a copy on file;

(e) publish court rules and proposals for court rules as defined in Section 36-20-1 when they are made available to members of the bar and the public for public comment;

[~~(e)~~] (f) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

[~~(f)~~] (g) publish a digest, at least monthly, summarizing all rules and notices printed in the most recent bulletin;

[~~(g)~~] (h) publish at least annually an index of all changes to the administrative code and the effective date of each change;

[~~(h)~~] (i) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

[~~(i)~~] (j) distribute without charge copies of the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

[~~(j)~~] (k) distribute without charge copies of the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

[~~(k)~~] (l) distribute, at prices covering all costs, all rulemaking publications to all other requesting persons and agencies;

[~~(l)~~] (m) provide agencies assistance in rulemaking; and

[~~(m)~~] (n) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) All funds appropriated or collected for publishing the division's publications shall be non-lapsing.

CHAPTER 283
S. B. No. 12
Passed March 3, 1993
Approved March 22, 1993
Effective July 1, 1993

USED OIL MANAGEMENT

By LeRay McAllister

AN ACT RELATING TO HEALTH AND ENVIRONMENT; REVISING PROVISIONS REGARDING MANAGEMENT OF USED OIL, INCLUDING COLLECTION OF HOUSEHOLD USED OIL; PLACING THE USED OIL PROGRAM UNDER THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING PERMITTING OR REGISTRATION OF SPECIFIED USED OIL HANDLERS; IMPOSING A FEE ON CERTAIN OIL TO FUND THIS PART; PROVIDING REIMBURSEMENT FOR HOUSEHOLD USED OIL COLLECTORS; PROVIDING A SUNSET DATE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-219, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992

ENACTS:
19-6-701, UTAH CODE ANNOTATED 1953
19-6-702, UTAH CODE ANNOTATED 1953
19-6-703, UTAH CODE ANNOTATED 1953
19-6-704, UTAH CODE ANNOTATED 1953
19-6-705, UTAH CODE ANNOTATED 1953
19-6-706, UTAH CODE ANNOTATED 1953
19-6-707, UTAH CODE ANNOTATED 1953
19-6-708, UTAH CODE ANNOTATED 1953
19-6-709, UTAH CODE ANNOTATED 1953
19-6-710, UTAH CODE ANNOTATED 1953
19-6-711, UTAH CODE ANNOTATED 1953
19-6-712, UTAH CODE ANNOTATED 1953
19-6-713, UTAH CODE ANNOTATED 1953
19-6-714, UTAH CODE ANNOTATED 1953
19-6-715, UTAH CODE ANNOTATED 1953
19-6-716, UTAH CODE ANNOTATED 1953
19-6-717, UTAH CODE ANNOTATED 1953
19-6-718, UTAH CODE ANNOTATED 1953
19-6-719, UTAH CODE ANNOTATED 1953
19-6-720, UTAH CODE ANNOTATED 1953
19-6-721, UTAH CODE ANNOTATED 1953
19-6-722, UTAH CODE ANNOTATED 1953
19-6-723, UTAH CODE ANNOTATED 1953

REPEALS:
40-9-1, AS ENACTED BY CHAPTER 55, LAWS OF UTAH 1977
40-9-2, AS ENACTED BY CHAPTER 176, LAWS OF UTAH 1981
40-9-3, AS LAST AMENDED BY CHAPTER 176, LAWS OF UTAH 1981
40-9-3.5, AS ENACTED BY CHAPTER 176, LAWS OF UTAH 1981
40-9-4, AS LAST AMENDED BY CHAPTER 176, LAWS OF UTAH 1981
40-9-5, AS LAST AMENDED BY CHAPTER 176, LAWS OF UTAH 1981
40-9-6, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987

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

Section 1. Section Enacted.

Section 19-6-701, Utah Code Annotated 1953, is enacted to read:

19-6-701. Short title.

This act is known as the "Used Oil Management Act."

Section 2. Section Enacted.

Section 19-6-702, Utah Code Annotated 1953, is enacted to read:

19-6-702. Legislative findings.

(1) The Legislature finds millions of gallons of used oil are generated each year in Utah, and this oil is:

(a) a valuable petroleum resource that can be recycled; and

(b) in spite of the potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means that pollute the water, land, and air, and endanger the public health, safety, and welfare.

(2) The Legislature finds used oil should be collected, treated, and reused in a manner that conserves energy and does not present a hazard to public health or the environment.

(3) The Legislature finds in light of the harmful consequences that can result from the improper disposal and use of used oil, and its value as a resource, the collection, recycling, and reuse of used oil is in the public interest.

Section 3. Section Enacted.

Section 19-6-703, Utah Code Annotated 1953, is enacted to read:

19-6-703. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Commission" means the State Tax Commission.

(3) "Department" means the Department of Environmental Quality created in Title 19, Chapter 1, General Provisions.

(4) "Division" means the Division of Solid and Hazardous Waste as created in Section 19-1-105.

(5) "DIY" means do it yourself.

(6) "DIYer" means a person who generates used oil through household activities, including maintenance of personal vehicles.

(7) "DIYer used oil" means used oil a person generates through household activities, including maintenance of personal vehicles.

(8) "DIYer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from DIYers.

(9) "Executive secretary" means the executive secretary of the board.

(10) "Hazardous waste" means any substance defined as hazardous waste under Title 19, Chapter 6, Hazardous Substances.

(11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

(12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil in Utah.

(13) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of used oil during its transportation from the point of collection to the point of storage, processing, use, or disposal.

(14) "Off-specification used oil" means used oil that exceeds levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(15) "On-specification used oil" means used oil that does not exceed levels of constitutents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(16) (a) "Processing" means chemical or physical operations under Subsection (b) designed to produce from used oil, or to make used oil more amenable for production of:

(i) gasoline, diesel, and other petroleum derived fuels;

(ii) lubricants; or

(iii) other products derived from used oil.

(b) Processing includes:

(i) blending used oil with virgin petroleum products;

(ii) blending used oils to meet fuel specifications;

(iii) filtration;

(iv) simple distillation;

(v) chemical or physical separation; and

(vi) rerefining.

(17) "Recycled oil" means oil reused for any purpose following its original use, including:

(a) the purpose for which the oil was originally used; and

(b) used oil processed or burned for energy recovery.

(18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition varies with column operation and feedstock.

(19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.

(20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons.

(b) A used oil aggregation point may also accept oil from DIYers.

(21) "Used oil burner" means a person who burns used oil for energy recovery.

(22) "Used oil collection center" means any site or facility registered with the state to manage used oil and that accepts or aggregates and stores used oil collected from used oil generators, other than DIYers, who are regulated under this part and bring used oil to the collection center in shipments of no more than 55 gallons and under the provisions of this part. Used oil collection centers may accept DIYer used oil also.

(23) "Used oil fuel marketer" means any person who:

(a) directs a shipment of off-specification used oil from its facility to a used oil burner; or

(b) first claims the used oil to be burned for energy recovery meets the used oil fuel specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is to be burned in accordance with rules for on-site burning in space heaters in accordance with 40 CFR 279.

(24) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(25) "Used oil handler" means a person generating used oil, collecting used oil, transporting used oil, operating a transfer facility or aggregation point, processing or rerefining used oil, or marketing used oil.

(26) "Used oil processor or rerefiner" means a facility that processes used oil.

(27) "Used oil transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days.

(28) (a) "Used oil transporter" means the following persons unless they are exempted under Subsection (b):

(i) any person who transports used oil;

(ii) any person who collects used oil from more than one generator and transports the collected oil;

(iii) except as exempted under Subsection (b)(i), (ii), or (iii), any person who transports collected DIYer used oil from used oil generators, collection centers, aggregation points, or other facilities required

to be permitted or registered under this part and where household DIYer used oil is collected; and

(iv) owners and operators of used oil transfer facilities.

(b) "Used oil transporter" does not include:

(i) persons who transport oil on site;

(ii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

(iii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as allowed under 40 CFR 279.24, Off-site Shipments;

(iv) persons who transport used oil generated by DIYers from the initial generator to a used oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner, or used oil burner subject to permitting or registration under this part; or

(v) railroads that transport used oil and are regulated under 45 U.S.C. 421 et seq., federal Railroad Safety Act, and 49 U.S.C. 1801 et seq., federal Hazardous Materials Transportation Uniform Safety Act.

Section 4. Section Enacted.

Section 19-6-704, Utah Code Annotated 1953, is enacted to read:

19-6-704. Powers and duties of the board.

(1) The board shall make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil under 40 CFR 279. For these purposes the board shall:

(a) conduct adjudicative hearings as required in this part under Title 63, Chapter 46b, Administrative Procedures Act;

(b) establish by rule conditions and procedures for registration and revocation of registration as a used oil collection center, used oil aggregation point, or DIYer used oil collection center;

(c) provide by rule that used oil aggregation points that do not accept DIYer used oil are required to comply with used oil collection standards under this part, but are not required to be permitted or registered;

(d) establish by rule conditions and fees required to obtain permits and operate as used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel marketers;

(e) establish by rule the amount of liability insurance or other financial responsibility the applicant shall have to qualify for a permit under Subsection (1)(d);

(f) establish by rule the form and amount of reclamation surety required for reclamation of any site or facility required to be permitted under this part;

(g) after public notice and opportunity for a public hearing, hear and act on permit issues appealed under Subsection 19-6-712(2);

(h) establish by rule standards for tracking, analysis, and recordkeeping regarding used oil subject to regulation under this part, including:

(i) manifests for handling and transferring used oil;

(ii) analyses necessary to determine if used oil is on-specification or off-specification;

(iii) records documenting date, quantities, and character of used oil transported, processed, transferred, or sold;

(iv) records documenting persons between whom transactions under this subsection occurred; and

(v) exemption of DIYer used oil collection centers from this subsection except as necessary to verify volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number;

(i) authorize inspections and audits of facilities, centers, and operations subject to regulation under this part;

(j) establish by rule standards for:

(i) used oil generators;

(ii) used oil collection centers;

(iii) DIYer used oil collection centers;

(iv) aggregation points;

(v) curbside used oil collection programs;

(vi) used oil transporters;

(vii) used oil transfer facilities;

(viii) used oil burners;

(ix) used oil processors and rerefiners; and

(x) used oil marketers;

(k) establish by rule standards for determining on-specification and off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable presumptions;

(l) establish by rule standards for closure, remediation, and response to releases involving used oil; and

(m) establish a public education program to promote used oil recycling and use of used oil collection centers.

(2) The board may:

(a) hold hearings relating to any aspect of or matter in the administration of this part and compel the attendance of witnesses and the production of documents and other evidence, administer oaths and take testimony, and receive evidence as necessary;

(b) require retention and submission of records required under this part; and

(c) require audits of records and recordkeeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the commission under Section 19-6-716.

Section 5. Section Enacted.

Section 19-6-705, Utah Code Annotated 1953, is enacted to read:

19-6-705. Powers and duties of the executive secretary.

(1) The executive secretary shall:

(a) administer and enforce the rules and orders of the board;

(b) issue and revoke registration numbers for DIYer used oil collection centers and used oil collection centers;

(c) after public notice and opportunity for a public hearing:

(i) issue or modify a permit under this part;

(ii) deny a permit when the executive secretary finds the application is not complete; and

(iii) revoke a permit issued under this section upon a finding the permit holder has failed to ensure compliance with this part;

(d) (i) coordinate with federal, state, and local government, and other agencies, including entering into memoranda of understanding, to ensure effective regulation of used oil under this part, minimize duplication of regulation, and encourage responsible recycling of used oil; and

(ii) as the department finds appropriate to the implementation of this part, enter into contracts with local health departments to carry out specified functions under this part and be reimbursed by the department in accordance with the contract;

(e) require forms, analyses, documents, maps, and other records as the executive secretary finds necessary to permit and inspect an operation regulated under this part;

(f) provide public information signs as required under Section 19-6-713;

(g) establish a toll-free telephone line to provide information to the public regarding management of used oil and locations of used oil collection centers; and

(h) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part.

(2) The executive secretary may:

(a) authorize any employee of the division to enter any facility regulated under this part at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or sampling of the used oil site or facility, records, operations, or product; and

(b) direct a person whose activities are regulated under this part to take samples for a stated purpose and cause them to be analyzed at that person's expense.

Section 6. Section Enacted.

Section 19-6-706, Utah Code Annotated 1953, is enacted to read:

19-6-706. Disposal of used oil — Prohibitions.

(1) (a) Except as authorized by the board or exempted in this section, a person may not place, discard, or otherwise dispose of used oil:

(i) in any solid waste treatment, storage, or disposal facility operated by a political subdivision or a private entity, except as authorized for the disposal of used oil that is hazardous waste under state law;

(ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water; or

(iii) on the ground.

(b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i) is not guilty of a violation of this section.

(2) (a) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities under Subsection (1)(a)(i) if:

(i) to the extent reasonably possible all oil has been removed from the item or substance; and

(ii) no free flowing oil remains in the item or substance.

(b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with hazardous waste and the oil filter has been gravity hot-drained by one of the following methods:

(A) puncturing the filter antidrain back valve or the filter dome end and gravity hot-draining;

(B) gravity hot-draining and crushing;

(C) dismantling and gravity hot-draining; or

(D) any other equivalent gravity hot-draining method that will remove used oil from the filter at least as effectively as the methods listed in this subsection.

(ii) As used in this subsection, "gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit.

(3) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(a) solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the board under this chapter; or

(b) any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under this part.

(4) (a) This section does not apply to releases to land or water of de minimis quantities of used oil, except:

(i) the release of de minimis quantities of used oil is subject to any regulation or prohibition under the authority of the department; and

(ii) the release of de minimis quantities of used oil is subject to any rule made by the board under this part prohibiting the release of de minimis quantities of used oil to the land or water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

(b) As used in this subsection, "de minimis quantities of used oil":

(i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; and

(ii) does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases.

(5) Used oil may not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil in the environment, except in compliance with Section 19-6-711 and board rule.

(6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply to the executive secretary for an extension of time beyond that date to meet the requirements of this section.

(ii) The executive secretary may grant an extension of time beyond July 1, 1993, upon a finding of need under Subsection (b) or (c).

(iii) The total of all extensions of time granted to one applicant under this subsection may not extend beyond January 1, 1995.

(b) The executive secretary upon receipt of a request for an extension of time may request from the facility any information the executive secretary finds reasonably necessary to evaluate the need for an extension. This information may include:

(i) why the facility is unable to comply with the requirements of this section on or before July 1, 1993;

(ii) the processes or functions which prevent compliance on or before July 1, 1993;

(iii) measures the facility has taken and will take to achieve compliance; and

(iv) a proposed compliance schedule, including a proposed date for being in compliance with this section.

(c) Additional extensions of time may be granted by the executive secretary upon application by the facility and a showing by the facility that:

(i) the additional extension is reasonably necessary; and

(ii) the facility has made a diligent and good faith effort to comply with this section within the time frame of the prior extension.

Section 7. Section Enacted.

Section 19-6-707, Utah Code Annotated 1953, is enacted to read:

19-6-707. Rebuttable presumption regarding used oil mixtures.

(1) (a) Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D.

(b) This presumption may be rebutted by demonstrating the used oil does not contain hazardous waste, such as by using the analytical method from SW-846, Edition III, to show the used oil does not contain significant concentrations of halogenated hazardous constituents as listed by board rule.

(2) (a) The rebuttable presumption under Subsection (1) does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids.

(b) The rebuttable presumption under Subsection (1) does apply to metalworking oils or fluids if the oils or fluids are recycled in any other manner or are disposed.

(3) (a) The rebuttable presumption under Subsection (1) does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units when the CFCs are destined for reclamation.

(b) The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Section 8. Section Enacted.

Section 19-6-708, Utah Code Annotated 1953, is enacted to read:

19-6-708. Registration and permit exemptions.

(1) The following persons are subject to Section 19-6-706, but are not subject to regulation as a registered or permitted site or facility under this part:

(a) generators of DIYer used oil; and

(b) farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm.

(2) The following are subject to rules made by the board as necessary to obtain and maintain primacy of the state used oil program under 40 C.F.R. 279, Standards for the Management of Used Oil, but are not subject to any other provision of this chapter:

(a) mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the

generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed, but prior to mixing, the used oil is subject to this part;

(b) used oil transporters and used oil burners conducting incidental processing operations that occur during the normal course of used oil management prior to transportation or burning;

(c) on-specification or off-specification used oil, after it is delivered, as documented by manifest, to a burner authorized to operate by the board or this part and rules made under this part;

(d) used oil burners authorized by the board to burn on-specification or off-specification used oil;

(e) used oil placed directly into a crude oil or natural gas pipeline, after the used oil is introduced into the pipeline;

(f) used oil generated on vessels due to normal shipboard operations is not subject to this part until it is transported ashore;

(g) rerefining distillation bottoms used as feedstock to manufacture asphalt products;

(h) materials reclaimed from used oil, used beneficially, and not burned for energy recovery or used in a manner constituting disposal;

(i) materials derived from used oil that are disposed of or used in a manner constituting disposal, but are subject to regulation under this chapter if the materials are identified as hazardous waste;

(j) wastewater containing a de minimis amount of used oil, as defined in Subsection (3);

(k) used oil contaminated with polychlorinated biphenyls (PCBs), if it is subject to regulation under 40 CFR 761, Toxic Substances Control Act;

(l) used oils that are a hazardous waste under this chapter and may not be recycled; and

(m) used oils that are not hazardous waste under this chapter and cannot be recycled under this part.

(3) (a) As used in Subsection (2)(j), "de minimis quantities of used oil" means:

(i) small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; or

(ii) small amounts of oil lost to the wastewater treatment system or unit during washing or draining operations.

(b) De minimis quantities of used oil does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

Section 9. Section Enacted.

Section 19-6-709, Utah Code Annotated 1953, is enacted to read:

19-6-709. Reclamation of site or facility.

(1) The owner or operator of any of the following operations shall reclaim the site of the operation to a post-operations land use, as approved by the board in coordination with the department, when the operation ceases or the permit is revoked:

(a) DIYer used oil collection center;

(b) used oil collection center;

(c) used oil aggregation point;

(d) used oil transfer facility; or

(e) used oil processing or rerefining facility.

(2) DIYer used oil collection centers, used oil collection centers, and used oil aggregation points are not required to post a reclamation surety under this part, but are subject to the reclamation requirements of this section.

(3) Facilities and sites required to be permitted under this part shall post a reclamation surety in a form and amount required by board rule prior to issuance of a permit.

Section 10. Section Enacted.

Section 19-6-710, Utah Code Annotated 1953, is enacted to read:

19-6-710. Registration and permitting of used oil handlers.

(1) (a) A person may not operate a DIYer used oil collection center or used oil collection center without holding a registration number issued by the executive secretary.

(b) The application for registration shall include the following information regarding the DIYer used oil collection center or used oil collection center:

(i) the name and address of the operator;

(ii) the location of the center;

(iii) whether the center will accept DIYer used oil;

(iv) the type of containment or storage to be used;

(v) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vi) emergency spill containment plan;

(vii) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting or storing the used oil; and

(viii) any other information the executive secretary finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the center shall notify the executive secretary in writing of any changes in the information submitted to apply for registration within 20 days of the change.

(d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator of the DIYer used oil collection center shall maintain and submit to the executive secretary records of volumes of DIYer used oil picked up by a permitted used oil trans-

porter, the dates of pickup, and the name and federal EPA identification number of the transporter.

(2)(a) A person may not act as a used oil transporter or operate a transfer facility without holding a permit issued by the executive secretary.

(b) The application for a permit shall include the following information regarding acting as a transporter or operating a transfer facility:

(i) the name and address of the operator;

(ii) the location of the transporter's base of operations or the location of the transfer facility;

(iii) maps of all transfer facilities;

(iv) the methods to be used for collecting, storing, and delivering used oil;

(v) the methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(vi) the type of containment or storage to be used;

(vii) the methods of disposing of the waste by-products;

(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local government entities;

(ix) emergency spill containment plan;

(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting, transporting, or storing the used oil;

(xi) proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(xii) any other information the executive secretary finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the executive secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(3)(a) A person may not operate a used oil processing or rerefining facility without holding a permit issued by the executive secretary.

(b) The application for a permit shall include the following information regarding the used oil processing or rerefining facility:

(i) the name and address of the operator;

(ii) the location of the facility,

(iii) a map of the facility;

(iv) methods to be used to determine if used oil is on-specification or off-specification;

(v) the type of containment or storage to be used;

(vi) the grades of oil to be produced;

(vii) the methods of disposing of the waste by-products;

(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(ix) emergency spill containment plan;

(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(xi) proof of form and amount of reclamation surety; and

(xii) any other information the executive secretary finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the executive secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(4)(a) A person may not act as a used oil fuel marketer without holding a registration number issued by the executive secretary.

(b) The application for a registration number shall include the following information regarding acting as a used oil fuel marketer:

(i) the name and address of the marketer;

(ii) the location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits under this part;

(iii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including any registrations or permits required under this part to collect, process, transport, or store used oil; and

(iv) any other information the executive secretary finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the executive secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil for energy recovery without holding a permit issued by the executive secretary or an authorization from the department.

(b) The application for a permit shall include the following information regarding the used oil burning facility:

(i) the name and address of the operator;

(ii) the location of the facility;

(iii) methods to be used to determine if used oil is on-specification or off-specification;

(iv) the type of containment or storage to be used;

(v) the type of burner to be used;

(vi) the methods of disposing of the waste by-products;

(vii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(viii) emergency spill containment plan;

(ix) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(x) proof of form and amount of reclamation surety for any facility receiving and burning used oil; and

(xi) any other information the executive secretary finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the executive secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

Section 11. Section Enacted.

Section 19-6-711, Utah Code Annotated 1953, is enacted to read:

19-6-711. Application of used oil to the land — Limitations.

(1) A person may not apply used oil to the land as a dust or weed suppressant or for other similar applications to the land unless the person has obtained:

(a) written authorization as required under this chapter; and

(b) a permit from the executive secretary.

(2) The applicant for a permit under this section shall demonstrate:

(a) the used oil is not mixed with any hazardous waste;

(b) the used oil does not exhibit any hazardous characteristic other than ignitability; and

(c) how the applicant will minimize the impact on the environment of the use of used oil as a dust or weed suppressant or for other similar applications to the land.

(3) Prior to acting on the application, the executive secretary shall provide public notice of the application and shall provide opportunity for public comment under Section 19-6-712.

Section 12. Section Enacted.

Section 19-6-712, Utah Code Annotated 1953, is enacted to read:

19-6-712. Issuance of permits — Public comments and hearing.

(1) In considering permit applications under this part, the executive secretary shall:

(a) ensure the application is complete prior to acting on it;

(b) publish notice of the permit application and the opportunity for public comment in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county where the operation for which the application is submitted is located;

(c) allow the public to submit written comments to the executive secretary within 15 days after date of publication;

(d) consider timely submitted public comments and the criteria established in this part and by rule in determining whether to grant the permit; and

(e) send a written copy of the decision to the applicant and to persons submitting timely comments under Subsection (1)(c).

(2) The executive secretary's decision under this section may be appealed to the board only within the 30 days after the day the decision is mailed to the applicant.

Section 13. Section Enacted.

Section 19-6-713, Utah Code Annotated 1953, is enacted to read:

19-6-713. Retailers — Duty to inform customers.

(1)(a) The division shall provide signs to all retailers who sell lubricating oil in Utah. The signs shall meet standards set by the board under this part and shall include the following statement in clearly legible type:

> "It is against the law to dispose of used oil on the ground, in a landfill, or in any sewer, surface, or groundwater. To find out where you may properly dispose of used oil for recycling in your area, call 1-800- _____.
>
> Oil mixed with other substances may not be recyclable. Do not mix your used oil with other substances, such as antifreeze, carburetor cleaners, paint thinner, or other solvents."

(b) The telephone number under Subsection (1)(a) shall be the toll-free telephone number maintained by the division under this part.

(2) Retailers selling oil subject to this section shall ensure signs meeting the requirements of Subsection (1) are placed in close proximity to each location within the retail establishment where the oil is offered for sale.

Section 14. Section Enacted.

Section 19-6-714, Utah Code Annotated 1953, is enacted to read:

19-6-714. Recycling fee on sale of oil.

(1) On and after October 1, 1993, a recycling fee of $.04 per quart or $.16 per gallon is imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

(2) A fee under this section shall not be collected on sales of lubricating oil:

(a) shipped outside the state;

(b) purchased in five-gallon or smaller containers and used solely in underground mining operations; or

(c) in bulk containers of 55 gallons or more.

(3) This fee is in addition to all other state, county, or municipal fees and taxes imposed on the sale of lubricating oil.

(4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply to this part.

(5) The commission may make rules to implement and enforce the provisions of this section.

Section 15. Section Enacted.

Section 19-6-715, Utah Code Annotated 1953, is enacted to read:

19-6-715. Recycling fee collection procedures.

(1) The lubricating oil vendor shall pay the fee collected under Section 19-6-714 to the commission on or before the last day of the month following the calendar quarter in which the sale occurs.

(2) The lubricating oil vendor may retain a maximum of 2% of the recycling fee it collects under Section 19-6-714 for the costs of collecting the fee.

(3) The payment of the fee to the commission shall be accompanied by a form provided by the commission.

Section 16. Section Enacted.

Section 19-6-716, Utah Code Annotated 1953, is enacted to read:

19-6-716. Fee collection by commission.

(1) The commission shall administer, collect, and enforce the fee authorized under Section 19-6-714 pursuant to the same procedures used in the administration, collection, and enforcement of the sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.

(2) The commission may retain a maximum of 2-1/2% of the fee collected under Section 19-6-715 for the costs of rendering its services under this part.

Section 17. Section Enacted.

Section 19-6-717, Utah Code Annotated 1953, is enacted to read:

19-6-717. Used oil collection incentive payment.

(1)(a) The division shall pay a recycling incentive to registered DIYer used oil collection centers and curbside collection programs approved by the executive secretary for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor, rerefiner, burner, or to another disposal method authorized by board rule.

(b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

(2) The board shall by rule establish the amount of the payment, which shall be $.16 per gallon unless the board determines the incentive should be:

(a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to reimburse all qualified operations under this section; or

(b) increased to promote collection of used oil under this part and the funds are available in the account created under Section 19-6-719 after meeting the priorities set in Section 19-6-720.

Section 18. Section Enacted.

Section 19-6-718, Utah Code Annotated 1953, is enacted to read:

19-6-718. Limitations on liability of operator of collection center.

(1) Subject to Subsection (2), a person may not recover from the owner, operator, or lessor of a DIYer used oil collection center any costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if the owner, operator, or lessor:

(a) operates the DIYer used oil collection center in compliance with this part and rules made under this part and the executive secretary upon inspection finds the center is in compliance with this part and rules made under this part;

(b) does not mix any used oil collected with any hazardous waste or PCBs or with any material that would render the resulting mixture as a hazardous waste;

(c) does not knowingly accept any used oil containing hazardous waste or PCBs;

(d) ensures the used oil is transported from the center by a permitted used oil transporter; and

(e) complies with Section 114(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(2)(a) This section applies only to that portion of a used oil collection center used for the collection of DIYer used oil under this part.

(b) This section does not apply to willful or grossly negligent activities of the owner, operator, or lessor in operating the DIYer used oil collection center.

(c) This section does not affect or modify in any way the obligations or liability of any person other than the owner, operator, or lessor under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous waste.

(d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil collection center may presume a quantity of not more than five gallons, except under Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a hazardous waste or PCBs if:

(i) the oil is accepted in accordance with the inspection and identification procedures required by board rule; and

(ii) the owner, operator, or lessor operates the DIYer used oil collection center in good faith and in compliance with this part and rules made under this part.

(e) The owner, operator, or lessor of a DIYer used oil collection center may claim the presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than 55 gallons, if the quantity received is:

(i) from a farmer exempted under Subsection 19-6-708(1)(b);

(ii) generated by farming equipment; and

(iii) handled in accordance with all requirements of this section.

(f) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a DIYer used oil collection center regarding that person's services or functions other than accepting DIYer used oil under this part.

Section 19. Section Enacted.

Section 19-6-719, Utah Code Annotated 1953, is enacted to read:

19-6-719. Used oil collection account.

There is created in the General Fund a restricted account known as the Used Oil Collection Administration Account. All money received by the state from the recycling fee placed on lubricating oil under this part, all permit fees, all penalties imposed under this part, and all money received as a grant or donation to be used for the administration of this part shall be placed in this account to be appropriated to the division for the management of DIYer used oil under this part subject to the priorities in Section 19-6-720.

Section 20. Section Enacted.

Section 19-6-720, Utah Code Annotated 1953, is enacted to read:

19-6-720. Grants and donations — Support for programs — Priorities.

(1) The division may solicit or request and receive gifts, grants, donations, and other assistance from any source. Funds or resources received shall be deposited in the account created in Section 19-6-719 and shall be appropriated to the division for the management of DIYer used oil under this part subject to priorities set in Subsection (2).

(2) Appropriations received by the division shall be expended, as available, for the management of DIYer used oil under this part in the following order of priority:

(a) first, division and board costs of implementation;

(b) second, recycling incentive payments under Section 19-6-717;

(c) third, public education programs;

(d) fourth, awarding grants as funds are available for the establishment of the following, with emphasis on providing used oil collection facilities and programs in rural areas:

(i) used oil collection centers; and

(ii) curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of curbside collection programs; and

(e) fifth, provide funding to local health departments for enforcement of the management of DIYer used oil under this part in coordination with the board.

(3) In awarding grants under Subsection (2)(d), the board shall work with governmental entities in areas of the state where used oil collection centers are limited or do not exist, or where public access to the centers is limited, to promote the establishment of DIYer used oil collection centers.

Section 21. Section Enacted.

Section 19-6-721, Utah Code Annotated 1953, is enacted to read:

19-6-721. Violations — Proceedings — Orders.

(1) If the executive secretary has reason to believe a person is in violation of any provision of this part or any rule, permit, or order under this part, the executive secretary may after complying with the procedural requirements of Title 63, Chapter 46b, Administrative Procedures Act, issue an order of compliance or cessation.

(2) (a) If the person does not comply with the executive secretary's order, the executive secretary shall file a notice of agency action for an adjudicative hearing before the board.

(b) If after a formal adjudicatory hearing the board finds there is substantial evidence in the record to support the board's determination that a violation has been committed, it may:

(i) in a civil proceeding find the person subject to a penalty not to exceed $10,000 per day for each day of violation, in addition to any fine otherwise imposed for violation of this part; and

(ii) bring suit in the name of the state to restrain the person from continuing the violation and to require the person to perform necessary remediation.

(c) (i) Suit under Subsection (2)(b)(iii) may be brought in any court in the state having jurisdiction in the county of residence of the person charged or in the county where the violation is alleged to have occurred.

(ii) The court may grant prohibitory and mandatory injunctions, including temporary restraining orders.

(3) When the executive secretary finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the executive secretary may issue an emergency order under Title 63, Chapter 46b, Administrative Procedures Act.

(4) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Section 22. Section Enacted.

Section 19-6-722, Utah Code Annotated 1953, is enacted to read:

19-6-722. Criminal penalties.

(1) A violation of any applicable provision of this part is a class B misdemeanor, except:

(a) any violation involving hazardous waste is governed by provisions of this chapter that address hazardous waste;

(b) any violation of Section 19-6-714 or 19-6-715 regarding the recycling fee is subject to penalties authorized under Section 19-6-716.

(2) Any person who knowingly conducts any activities identified in Subsection 19-6-113(3) regarding hazardous waste in conjunction with any operations under this part is subject to the enforcement actions and penalties identified in Subsection 19-6-113(4).

(3) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Section 23. Section Enacted.

Section 19-6-723, Utah Code Annotated 1953, is enacted to read:

19-6-723. Local ordinances regarding used oil.

Any political subdivision of the state may enact and enforce ordinances regarding the management of used oil that are consistent with this part.

Section 24. Section Amended.

Section 63-55-219, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

63-55-219. Repeal dates, Title 19.

(1) The following boards created under Section 19-1-106 are repealed on the following dates:

(a) The Air Quality Board is repealed July 1, 1999.

(b) The Solid and Hazardous Waste Control Board is repealed July 1, 1999.

(c) The Drinking Water Board is repealed July 1, 1999.

(d) The Water Quality Board is repealed July 1, 1999.

(2) The Petroleum Storage Tank Fund, created in Section 19-6-409, is repealed July 1, 1993.

(3) Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 1999.

Section 25. Repealer.

Section 40-9-1, Short title, Utah Code Annotated 1953, as enacted by Chapter 55, Laws of Utah 1977;

Section 40-9-2, Legislative findings — Purpose, Utah Code Annotated 1953, as enacted by Chapter 176, Laws of Utah 1981;

Section 40-9-3, Definitions, Utah Code Annotated 1953, as last amended by Chapter 176, Laws of Utah 1981;

Section 40-9-3.5, Powers and duties of board and division, Utah Code Annotated 1953, as enacted by Chapter 176, Laws of Utah 1981;

Section 40-9-4, Permits for rerefiners, reclaimers and collectors of used oil — Information required of applicants, Utah Code Annotated 1953, as last amended by Chapter 176, Laws of Utah 1981;

Section 40-9-5, Disposal of used oil, Utah Code Annotated 1953, as last amended by Chapter 176, Laws of Utah 1981; and

Section 40-9-6, Violations — Adjudicative proceedings — Injunctions — Misdemeanors — Limitation of actions, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, are repealed.

Section 26. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 284
S. B. No. 61
Passed February 17, 1993
Approved March 22, 1993
Effective May 3, 1993

GUBERNATORIAL APPOINTMENTS

By Alarik Myrin

AN ACT RELATING TO GUBERNATORIAL POWERS; ESTABLISHING TIME LIMITS FOR SUBMITTING NAMES FOR SENATE CONFIRMATION; AND AUTHORIZING APPOINTMENT OF PERSONS TO EXERCISE THE POWERS AND DUTIES OF A POSITION PENDING CONFIRMATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
67-1-1.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 67-1-1.5, Utah Code Annotated 1953, is enacted to read:

67-1-1.5. Gubernatorial appointment powers.

(1) As used in this section:

(a) "Executive branch management position" includes department executive directors, division directors, and any other administrative position in state government where the person filling the position:

(i) works full-time performing managerial and administrative functions;

(ii) is appointed by the governor; and

(iii) must be confirmed by the Senate.

(b) (i) "Executive branch policy position" means any person other than a person filling an executive branch management position, who:

(A) is appointed by the governor; and

(B) must be confirmed by the Senate.

(ii) "Executive branch policy position" includes each member of any state board and commission appointed by the governor and confirmed by the Senate.

(2) (a) Whenever a vacancy occurs in any executive branch policy position or in any executive branch management position, the governor shall submit the name of a nominee to the Senate for confirmation no later than three months after the date on which the vacancy occurred.

(b) If the Senate fails to confirm that person, the governor shall submit the name of another nominee to the Senate for confirmation no later than one month after the date on which the nomination was rejected by the Senate.

(3) (a) Whenever a vacancy occurs in any executive branch management position, the governor may either:

(i) appoint an interim manager who meets the qualifications of the vacant position to exercise the powers and duties of the vacant position for three months, pending confirmation of a person to permanently fill that position by the Senate; or

(ii) appoint an interim manager who does not meet the qualifications of the vacant position and submit that person's name to the Senate for confirmation as interim manager within one month of the appointment.

(b) If the Senate fails to confirm the interim manager appointed under Subsection (3)(a)(ii), the governor may appoint another interim manager under Subsection (3)(a).

(c) If, after an interim manager has served three months, no one has been appointed and confirmed to permanently fill the position, the governor shall:

(i) appoint a new interim manager who meets the qualifications of the vacant position to exercise the powers and duties of the vacant position for three months; or

(ii) submit the name of the first interim manager to the Senate for confirmation as an interim manager for a three month term.

(4) The governor may not make a temporary appointment to fill a vacant executive branch policy position.

CHAPTER 285
S. B. No. 82
Passed March 1, 1993
Approved March 22, 1993
Effective July 1, 1993

MENTAL HEALTH FUNDING AND CUSTODY AMENDMENTS

By John P. Holmgren

AN ACT RELATING TO MENTAL HEALTH; PROVIDING FOR ALLOCATION OF BEDS AT THE UTAH STATE HOSPITAL TO LOCAL MENTAL HEALTH AUTHORITIES; PROVIDING FOR COMMITMENT OF MENTALLY ILL PERSONS TO LOCAL MENTAL HEALTH AUTHORITIES; AMENDING THE BUDGETARY PROCEDURES ACT; CLARIFYING THE DUTIES OF THE DEPARTMENT WITH REGARD TO DEFENDANTS IN CRIMINAL PROCEDURES; APPROPRIATING FUNDS TO THE DIVISION OF MENTAL HEALTH; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
62A-12-202, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-207, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-214, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988
62A-12-215, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-222, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1989
62A-12-225, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1989
62A-12-228, AS LAST AMENDED BY CHAPTERS 189 AND 231, LAWS OF UTAH 1992
62A-12-229, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-230, AS LAST AMENDED BY CHAPTERS 189 AND 231, LAWS OF UTAH 1992
62A-12-231, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1989
62A-12-232, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-234, AS LAST AMENDED BY CHAPTERS 189 AND 231, LAWS OF UTAH 1992
62A-12-235, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1989
62A-12-237, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-238, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-240, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-241, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-246, AS LAST AMENDED BY CHAPTER 231, LAWS OF UTAH 1992
62A-12-248, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1989
62A-12-280, AS ENACTED BY CHAPTER 189, LAWS OF UTAH 1992
63-38-2, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
77-15-6, AS LAST AMENDED BY CHAPTERS 5, 207, AND 292, LAWS OF UTAH 1991
77-15-7, AS LAST AMENDED BY CHAPTER 292, LAWS OF UTAH 1991
77-16A-304, AS ENACTED BY CHAPTER 171, LAWS OF UTAH 1992
77-16A-305, AS ENACTED BY CHAPTER 171, LAWS OF UTAH 1992

ENACTS:
62A-12-209.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 62A-12-202, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-202. Definitions.

As used in this [~~part~~] chapter:

(1) "Adult" means a person 18 years of age or older.

(2) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

[~~(1)~~] (3) "Designated examiner" means a licensed physician, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-12-234 may be a designated examiner in the same case.

[~~(2)~~] (4) "Designee" means a physician who has responsibility for medical functions including admission and discharge, [~~an employee of the division,~~] an employee of a local mental health authority, or an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17A-3-606.

[~~(3)~~] (5) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

[~~(4)~~] (6) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

[~~(5)~~] (7) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under

contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

[~~(6)~~] (8) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

[~~(7)~~] (9) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

[~~(8)~~] (10) "Mental health officer" means an individual who is designated by [~~the division~~] a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

[~~(9)~~] (11) "Patient" means an individual who has been temporarily placed in the custody of [~~the division~~] a local mental health authority, or who has been committed to [~~the division~~] a local mental health authority either voluntarily or by court order.

[~~(10)~~] (12) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Section 2. Section Amended.

Section 62A-12-207, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-207. Local mental health authority — Supervision and treatment of mentally ill persons.

(1) [~~The division~~] Each local mental health authority has responsibility for supervision and treatment of mentally ill persons [~~in this state~~] who have been committed to [~~it~~] its custody under the provisions of this part, whether residing in the state hospital or elsewhere.

(2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 62A-12-203, shall enforce Sections 62A-12-222 through 62A-12-227 to the extent they pertain to the state hospital.

Section 3. Section Enacted.

Section 62A-12-209.5, Utah Code Annotated 1953, is enacted to read:

62A-12-209.5. Allocation of state hospital beds — Formula.

(1) As used in this section:

(a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.

(b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.

(2) The board shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 62A-12-209(2)(a). On July 1, 1993, two hundred twelve beds shall be allocated to local mental health authorities under this section. That number shall be reviewed and adjusted as necessary every three years according to the state's population. All population figures utilized shall reflect the most recent available population estimates from the governor's Office of Planning and Budget.

(3) The formula established under Subsection (2) becomes effective on July 1, 1993, and shall provide for allocation of beds based on:

(a) the percentage of the state's adult population located within a mental health catchment area; and

(b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.

(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.

(5) The division shall allocate 212 adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under that formula, the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

(6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

Section 4. Section Amended.

Section 62A-12-214, Utah Code Annotated 1953, as enacted by Chapter 1, Laws of Utah 1988, is amended to read:

62A-12-214. Forms.

The division shall furnish the clerks of the district courts with [~~such~~] forms, blanks, warrants, and certificates, [~~etc., as will~~] to enable the district court judges, with regularity and facility, to comply with the provisions of this [~~part~~] chapter.

Section 5. Section Amended.

Section 62A-12-215, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-215. Persons entering state mentally ill.

(1) Persons who enter this state while mentally ill may be returned by [~~the division~~] a local mental

health authority to the home of relatives or friends of that mentally ill person, if known, or to a hospital in the state where that mentally ill person is domiciled, in accordance with Title 62A, Chapter 12, Part 3, Interstate Compact on Mental Health.

(2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Section 6. Section Amended.

Section 62A-12-222, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1989, is amended to read:

62A-12-222. Attempt to commit person contrary to requirements — Penalty.

Any person who attempts to place another person in the custody of [~~the division~~] a local mental health authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to liability in an action for damages, or subject to other criminal charges.

Section 7. Section Amended.

Section 62A-12-225, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1989, is amended to read:

62A-12-225. Abduction of patient — Penalty.

Any person who abducts [~~any~~] a patient [~~while~~] who is in the custody of [~~the division~~] a local mental health authority, or induces any patient to elope or escape from [~~the~~] that custody [~~of the division~~], or attempts to do so, or aids or assists therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other criminal charges.

Section 8. Section Amended.

Section 62A-12-228, Utah Code Annotated 1953, as last amended by Chapters 189 and 231, Laws of Utah 1992, is amended to read:

62A-12-228. Voluntary admission of adults.

(1) [~~The director or his designee~~] A local mental health authority or its designee may admit [~~to the division~~] to that authority, for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.

(2)(a) No [~~person~~] adult may be committed or continue to be committed to a local mental health authority against his will except as provided in this chapter.

(b) No person under 18 years of age may be committed to a local mental health authority, but may be committed to the division in accordance with the provisions of Part 2A.

(3) [~~A person~~] An adult may be voluntarily admitted to [~~the division~~] a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Subsection 77-18-1 (12) have been met.

Section 9. Section Amended.

Section 62A-12-229, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-229. Release from commitment.

(1) [~~The director or his designee~~] A local mental health authority or its designee shall release from commitment any person who, in [his] the opinion [~~or in the opinion of the clinical director of the state hospital~~] of the local mental health authority or its designee, has recovered or no longer meets the criteria specified in Section 62A-12-234.

(2) [~~The director or his~~] A local mental health authority or its designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 78-3a-40, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.

(3) When [the] a patient has been committed to [~~the division under judicial proceedings~~] a local mental health authority by judicial process, the [division] local mental health authority shall [use] follow the procedures described in Sections 62A-12-240 and 62A-12-241.

Section 10. Section Amended.

Section 62A-12-230, Utah Code Annotated 1953, as last amended by Chapters 189 and 231, Laws of Utah 1992, is amended to read:

62A-12-230. Release of voluntary patient — Exceptions.

A voluntary patient who requests release, or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

(1) if the patient was voluntarily admitted on his own application, and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient; and

(2) if [~~the director~~] a local mental health authority, or [~~his~~] its designee is of the opinion that release of a patient would be unsafe for that patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the [~~director~~] local mental health authority, or [~~his~~] its designee, shall cause to be instituted involuntary commitment proceedings with the district court within the specified time period, unless cause no longer exists for instituting those proceedings. Written notice of that postponement with the reasons, shall be given to the patient without undue delay. No judicial proceedings may be commenced with respect to a voluntary patient unless he has requested release.

Section 11. Section Amended.

Section 62A-12-231, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1989, is amended to read:

62A-12-231. Involuntary commitment — Procedures.

(1) [~~No person~~] An adult may not be involuntarily committed to the custody of [~~the division by reason of mental illness~~] a local mental health authority except under the following provisions:

[~~(1)~~] (a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 62A-12-232 (1);

[~~(2)~~] (b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 62A-12-232 (2); or

[~~(3)~~] (c) commitment on court order, as provided in Section 62A-12-234.

(2) A person under 18 years of age may not be committed to a local mental health authority, but may be committed to the division in accordance with the provisions of Part 2A.

Section 12. Section Amended.

Section 62A-12-232, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-232. Temporary commitment — Requirements and procedures.

(1) (a) An [~~individual~~] adult may be temporarily, involuntarily committed to [~~the division~~] a local mental health authority upon:

(i) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to himself or others if not immediately restrained, and stating the personal knowledge of the individual's condition or circumstances which lead to that belief; and

(ii) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period immediately preceding that certification, and that he is of the opinion that the individual is mentally ill and, because of his mental illness, is likely to injure himself or others if not immediately restrained.

(b) [~~The application~~] Application and [~~certificate~~] certification as described in Subsection (a) authorizes any peace officer to take the individual into the custody of [~~the division~~] a local mental health authority.

(2) If a duly authorized peace officer observes a person involved in conduct that [~~leads~~] gives the officer [~~to have~~] probable cause to believe that the person is mentally ill, as defined in Section 62A-12-202, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into protective custody. A peace officer may place a patient in the custody of the [~~division~~] appropriate local mental health authority pursuant to this section, either on the basis of his own observation or on the basis of a mental health officer's observation that has been reported to him by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of the [~~division~~] local mental health authority and make application for [~~the person's~~] commitment of that person to the [~~division~~] local mental health authority. The application shall be on a prescribed form and shall include the following:

(a) a statement by the officer that he believes, on the basis of personal observation or on the basis of a mental health officer's observation reported to him by the mental health officer, that the person is, as a result of a mental illness, a substantial and immediate danger to himself or others;

(b) the specific nature of the danger;

(c) a summary of the observations upon which the statement of danger is based; and

(d) a statement of facts which called the person to the attention of the officer.

(3) A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-12-234. If that application has been made, an order of detention may be entered under Subsection 62A-12-234 (3). If no order of detention is issued, the patient shall be released unless he has made voluntary application for admission.

Section 13. Section Amended.

Section 62A-12-234, Utah Code Annotated 1953, as last amended by Chapters 189 and 231, Laws of Utah 1992, is amended to read:

62A-12-234. Involuntary commitment under court order — Examination — Hearing — Power of court — Findings required — Costs.

(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual is mentally ill and should be involuntarily committed. That application shall be accompanied by:

(a) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that he is of the opinion that the individual is mentally ill and should be involuntarily committed; or

(b) a written statement by the applicant that the individual has been requested to but has refused to submit to an examination of mental condition by a licensed physician or designated examiner. That application shall be sworn to under oath and shall state the facts upon which the application is based.

(2) Prior to issuing a judicial order, the court may require the applicant to consult with the [division] appropriate local mental health authority, or may direct a mental health professional from [the division or a] that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient's mental condition and immediate danger to himself, others, or property requires involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of [the division] a local mental health authority or in a temporary emergency facility as provided in [Subsection] Section 62A-12-237 [(2)] to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, [the director] a local mental health authority or [his] its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-12-228, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, he shall immediately send the report in writing to the clerk of the court.

(4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient prior to, or upon, placement in the custody of [the division] a local mental health authority or, with respect to any individual presently in the custody of [the division] a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.

(5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of Part 2A.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(8)(a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment [to the division] of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) A time shall be set for a hearing to be held within ten court days of the appointment of the designated examiners, unless those examiners or [the director or his] a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that he has agreed to become a voluntary patient under Section 62A-12-228, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

(9) (a) Prior to the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow him sufficient time to consult with the patient prior to the hearing. In the case of an indigent patient, the payment of reasonable attorneys' fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found.

(b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(e) The court shall receive all relevant and material evidence which is offered, subject to the rules of evidence.

(f) [~~The director or his~~] A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

(i) the detention order;

(ii) [the] admission notes;

(iii) the diagnosis;

(iv) any doctors' orders;

(v) [the] progress notes;

(vi) [the] nursing notes; and

(vii) [the] medication records pertaining to the current commitment.

That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(10) The court shall order commitment of an individual who is 18 years of age or older to [~~the division~~] a local mental health authority if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(b) because of the proposed patient's mental illness he poses an immediate danger of physical injury to others or himself, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

(c) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment;

(d) there is no appropriate less-restrictive alternative to a court order of commitment; and

(e) the [~~division~~] local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the [~~director or his~~] appropriate local mental health authority or its designee. The [~~director or his~~] local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the [~~director or his~~] local mental health authority or its designee [~~determine~~] determines that the conditions justifying that commitment no longer exist, [~~the director~~] it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(c) The [~~director or his~~] local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the [~~director or his~~] local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, [~~the director~~] that local mental health authority or its designee shall discharge the patient from [~~the~~] its custody [~~of the division~~] and immediately report the discharge to the court. If the [~~director or his~~] local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the [~~director or his~~] local mental health authority or its designee shall send a written report of those findings to the court. The patient and his counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

(13) Any person committed as a result of an original hearing or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 14. Section Amended.

Section 62A-12-235, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1989, is amended to read:

62A-12-235. Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

(1) After a person has been involuntarily committed to the custody of [~~the division~~] a local mental health authority under Subsection 62A-12-234 (10), the conditions justifying commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection 62A-12-234 (11) or conditional release under Section 62A-12-241, if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment he will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his ability to function in the least restrictive environment, thereby making him a substantial danger to himself or others.

(2) A patient whose treatment is continued or who is conditionally released under the terms of this section, shall be maintained in the least restrictive environment available which can provide him with the treatment that is adequate and appropriate.

Section 15. Section Amended.

Section 62A-12-237, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-237. Detention pending placement in custody.

Pending commitment to [~~the division~~] a local mental health authority, a patient taken into custody or ordered to be committed pursuant to this part may be detained in the patient's home, a licensed foster home, or any other suitable facility under reasonable conditions prescribed by the [~~division~~] local mental health authority. Except in an extreme emergency, the patient may not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of criminal offenses. The [~~division~~] local mental health authority shall take reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

Section 16. Section Amended.

Section 62A-12-238, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-238. Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to [~~the division~~] a local mental health authority pursuant to Section 62A-12-232 on the application of any person other than his legal guardian, spouse, or next of kin, the [~~director or his~~] local mental health authority or its designee shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Section 17. Section Amended.

Section 62A-12-240, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-240. Periodic review — Discharge.

[~~The director or his~~] Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to [~~the division~~] it. Whenever the [~~director or his~~] local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, [he] it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

Section 18. Section Amended.

Section 62A-12-241, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-241. Release of patient to receive other treatment — Placement in more restrictive environment — Procedures.

(1) [~~The director or his~~] A local mental health authority or its designee may release an improved patient to less restrictive treatment [~~as may be specified by the director or his designee,~~] as it may specify, and when agreed to in writing by the patient. Whenever [~~the director or his~~] a local mental health authority or its designee determines that the conditions justifying commitment no longer exist, the patient shall be discharged. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

(2) (a) [~~The director or his~~] A local mental health authority or its designee is authorized to issue an order for the immediate placement of a patient not previously released from an order of commitment into a more restrictive environment, if the [~~director or his~~] local mental health authority or its designee has reason to believe that the less restrictive environment in which the patient has been placed is aggravating the patient's mental illness as defined in Subsection 62A-12-234 (10), or that the patient has failed to comply with the specified treatment plan to which [~~the patient~~] he had agreed in writing.

(b) That order shall include the reasons therefor and shall authorize any peace officer to take the patient into physical custody and transport [~~the patient~~] him to a facility designated by the division. Prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued release from inpatient care, copies of the order shall be personally delivered to the patient and sent to the person in whose care the patient is placed. The order shall also be sent to the patient's counsel of record and to the court that entered the original order of commitment. The order shall inform the patient

of the right to a hearing, as prescribed in this section, the right to appointed counsel, and the other procedures prescribed in Subsection 62A-12-234 (9).

(c) If the patient has been in the less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or his representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-12-234, with the exception of Subsection 62A-12-234 (10), unless, by the time set for the hearing, the patient has again been placed in the less restrictive environment, or the patient has in writing withdrawn his request for a hearing.

(3) The court shall find that either:

(a) the less restrictive environment in which the patient has been placed is aggravating the patient's dangerousness or mental illness as defined in Subsection 62A-12-234 (10), or the patient has failed to comply with a specified treatment plan to which he had agreed in writing; or

(b) the less restrictive environment in which the patient has been placed is not aggravating the patient's mental illness or dangerousness, and the patient has not failed to comply with any specified treatment plan to which he had agreed in writing, in which event the order shall designate that the individual shall be placed and treated in a less restrictive environment appropriate for his needs.

(4) The order shall also designate the period for which the individual shall be treated, in no event to extend beyond expiration of the original order of commitment.

(5) Nothing contained in this section prevents [~~the director or his~~] a local mental health authority or its designee, pursuant to Section 62A-12-240, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Section 19. Section Amended.

Section 62A-12-245, Utah Code Annotated 1953, as last amended by Chapter 231, Laws of Utah 1992, is amended to read:

62A-12-245. Restrictions and limitations — Civil rights and privileges.

(1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;

(b) receive visitors; and

(c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.

(2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division or to the appropriate local mental health authority.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the division, his attorney, and the court, if any, that ordered his commitment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.

(4) [~~The director or his designee~~] Local mental health authorities shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this [~~part~~] chapter, and for assisting them in making and presenting requests for release.

(5) Mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

(6) Notwithstanding Section 53B-17-303, any person committed under this [~~part~~] chapter has the right to determine the final disposition of his body after death.

Section 20. Section Amended.

Section 62A-12-248, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1989, is amended to read:

62A-12-248. Additional powers of director — Reports and records of division.

(1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates provided for under this part, and the information required to be contained therein, and to adopt rules that are not inconsistent with the provisions of this part that he finds to be reasonably necessary for the proper and efficient commitment of mentally ill persons.

(2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.

(3) [~~The division~~] A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this [~~part~~] chapter.

Section 21. Section Amended.

Section 62A-12-280, Utah Code Annotated 1953, as enacted by Chapter 189, Laws of Utah 1992, is amended to read:

Part 2A. Commitment of Persons Under Age 18 to Division of Mental Health

62A-12-280. Commitment to division.

(1) An individual under the age of 18 years may be committed to the division only in accordance with the provisions of this part. An individual under the age of 18 years may not be committed to a local mental health authority.

(2) The division is responsible for supervision and treatment of mentally ill persons under 18 years of age who are committed to it under this part.

(3) [~~Any~~] Each commitment of an individual under the age of 18 to the division [~~of an individual under the age of 18 years~~] is governed by the procedures and requirements of Part 2, except that:

(a) the juvenile court has sole jurisdiction over the proceedings; and

(b) the criteria described in Section 62A-12-282 shall apply, instead of the criteria applicable to adults contained in Subsection 62A-12-234(10).

Section 22. Section Amended.

Section 63-38-2, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

63-38-2. Governor to submit budget to Legislature — Contents — Preparation — Appropriations based on current tax laws and not to exceed estimated revenues.

(1) The governor shall, within three days after the convening of the Legislature in annual general session, submit a budget for the ensuing fiscal year. The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year. He shall submit the budget by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(2) At least 30 days prior to the governor's submission of any such budget, he shall deliver to the Office of the Legislative Fiscal Analyst on a confidential basis a draft copy of his proposed budget recommendations.

(3) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing year based on the current fiscal year state tax laws and rates. It may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the fiscal year next preceding;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies; and

(e) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue.

(5) The budget shall embrace an itemized estimate of the appropriations for the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House:

(a) for the Executive Department;

(b) for the Judicial Department as certified to the governor by the state court administrator;

(c) for payment and discharge of the principal and interest of the indebtedness of the state of Utah;

(d) for the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the ensuing year;

(e) for other purposes that are set forth in the Utah Constitution or under law; and

(f) for all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) For the purpose of preparing the budget the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures and other information under guidelines and at times as the governor may direct. The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor. The estimate for the Judicial Department as certified by the state court administrator shall also be included in the budget without revision, but the governor may make separate recommendations on it. The governor may require the attendance at such meetings of representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations. The governor may revise all estimates, except those relating to the Legislative Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year. If any item of the budget as enacted is held invalid upon any

ground, the invalidity does not affect the budget itself or any other item in it.

(9) (a) In submitting the budget for the [~~Department of~~] Departments of Health and Human Services, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section 17A-3-606;

(ii) local substance abuse authorities under Section 62A-8-110.5;

(iii) area agencies on aging under Section 62A-3-104.2; [~~and~~]

(iv) programs administered directly by and for operation of the Divisions of Mental Health, Substance Abuse, and Aging and Adult Services[~~.~~]; and

(v) local health departments under Title 26A, Chapter 1.

(b) In his budget recommendations under Subsections (i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, and area agencies on aging the same percentage increase for [~~cost of living~~] wages and benefits that he includes in his budget for persons employed by the state.

(c) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (b), he shall include a message to the Legislature regarding his reason for not including that amount.

Section 23. Section Amended.

Section 77-15-6, Utah Code Annotated 1953, as last amended by Chapters 5, 207, and 292, Laws of Utah 1991, is amended to read:

77-15-6. Commitment on finding of incompetency — Subsequent hearings — Notice to prosecuting attorneys.

(1) Except as provided in Subsection (2), if after hearing, the person is found to be incompetent, the court shall order him committed to the Utah State Hospital or to another mental health facility until the court that committed him or the district court of the county where he is confined, after notice and hearing, finds that he is competent to proceed.

(2) If, after hearing, the defendant is found to be incompetent as a result of mental retardation and there is a substantial probability that he will remain incompetent to proceed indefinitely, the court shall proceed as follows:

(a) If that mentally retarded defendant presents a substantial danger to himself or others and the executive director of the Department of Human Services, or his designee, has been given the opportunity to evaluate the defendant regarding placement in the custody of the department to determine if the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs, the court shall, if it determines that it is appropriate, commit him to the custody of the Department of Human Services. In no event shall the period of that commitment exceed the period for which he could be incarcerated had he been convicted and received the maximum sentence for the crime of which he was accused. Any involuntary retention after that time shall be by the civil commitment process.

(b) If the mentally retarded defendant is not committed under this section but the court finds that he presents a substantial danger to himself or others, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 5, Part 3.

(c) If that mentally retarded defendant has not been charged with a violent offense and does not present a substantial danger to himself or others, the court may commit him to the custody of the Department of Human Services, for appropriate treatment, services, and habilitation in the least restrictive environment, consistent with the purpose of the commitment. In no event shall the period of that commitment exceed the period for which the defendant could be incarcerated had he been convicted and received the maximum sentence for the crime of which he was accused. Any involuntary retention after that time shall be by the civil commitment process.

(3) Notice of a hearing on competency to proceed shall be given to the prosecuting attorney for the county from which the defendant was committed. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Section 24. Section Amended.

Section 77-15-7, Utah Code Annotated 1953, as last amended by Chapter 292, Laws of Utah 1991, is amended to read:

77-15-7. Hearing on condition of person committed — Frequency.

(1) A person committed pursuant to Section 77-15-6 may apply, no sooner than six months from the date of the order of commitment, to the district court for the county in which he is confined or for the county from which he was committed, to be returned for trial or confinement on the grounds that he is now competent to proceed. At any time that the defendant has recovered from his mental illness or, if the defendant has mental retardation, becomes competent to proceed, the superintendent of the hospital or other facility, [~~or~~] the executive director of the Department of Human Services, or their designees, shall certify that fact to the court. The court shall conduct a hearing within ten working days of the receipt of the superintendent's or executive director's report. If the finding of the court is adverse to the defendant, he shall not be permitted another hearing more often than once each year, unless the court otherwise orders. In such hearings the burden of proving that he is competent to proceed is on the applicant.

(2) The court, on its own motion, or upon recommendations of the superintendent of the hospital or

other facility, [or] the executive director of the Department of Human Services, or their designees, may order a hearing or rehearing at any time.

Section 25. Section Amended.

Section 77-16a-304, Utah Code Annotated 1953, as enacted by Chapter 171, Laws of Utah 1992, is amended to read:

77-16a-304. Not guilty by reason of insanity — Review after commitment.

(1) The executive director, or his designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months. That team shall include at least one psychiatrist and, if the defendant is mentally retarded, at least one staff member who is a designated mental retardation professional, as defined in Section [~~62A-5-302~~] 62A-5-301.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from his mental illness, or, that the defendant is still mentally ill but does not present a substantial danger to himself or others, the executive director, or his designee, shall notify the court that committed the defendant that the defendant is a candidate for discharge and shall provide the court with a report stating the facts that form the basis for the recommendation.

(3) The court shall conduct a hearing within ten business days after receipt of the executive director's, or his designee's, notification. The court clerk shall notify the prosecuting attorney, the defendant's attorney, and any victim of the crime for which the defendant was found not guilty by reason of insanity, of the date and time of hearing.

(4)(a) If the court finds that the person is no longer mentally ill, or if mentally ill, no longer presents a substantial danger to himself or others, it shall order the defendant to be discharged from commitment.

(b) If the court finds that the person is still mentally ill and is a substantial danger to himself or others, but can be controlled adequately if conditionally released with treatment as a condition of release, it shall order the person conditionally released in accordance with Section 77-16a-305.

(c) If the court finds that the defendant has not recovered from his mental illness and is a substantial danger to himself or others and cannot adequately be controlled if conditionally released on supervision, the court shall order that the commitment be continued.

(d) The court may not discharge an individual whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making him a substantial danger to himself or others. That person may, however, be a candidate for conditional release, in accordance with Section 77-16a-305.

Section 26. Section Amended.

Section 77-16a-305, Utah Code Annotated 1953, as enacted by Chapter 171, Laws of Utah 1992, is amended to read:

77-16a-305. Not guilty by reason of insanity — Conditional release.

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.

(2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.

(3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.

(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.

(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Section 27. Appropriation — Legislative intent.

(1) There is appropriated for fiscal year 1992-93 $850,000 from the General Fund to the Division of Mental Health within the Department of Human Services for the purpose of reimbursing local mental health authorities for costs incurred from patients waiting to be admitted to the Utah State Hospital.

(2) There is appropriated for fiscal year 1993-94 $850,000 from the General Fund to the Division of Mental Health within the Department of Human Services to be allocated by the Board of Mental Health in accordance with Section 62A-12-105.

Section 7. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 286
S. B. No. 98
Passed March 1, 1993
Approved March 22, 1993
Effective July 1, 1993

OUTDOOR ADVERTISING SIGNAGE

By Ronald J. Ockey

AN ACT RELATING TO CITIES AND TOWNS AND COUNTIES; SPECIFYING CERTAIN ACTS OF EMINENT DOMAIN; DELETING STANDARDS FOR REMOVING NONCONFORMING USES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-9-408, AS LAST AMENDED BY CHAPTER 23, LAWS OF UTAH 1992
17-27-407, AS LAST AMENDED BY CHAPTER 23, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 10-9-408, Utah Code Annotated 1953, as last amended by Chapter 23, Laws of Utah 1992, is amended to read:

10-9-408. Nonconforming uses and structures.

(1)(a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this subsection [~~(1)~~], the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by [~~either: (i)~~] acquiring the billboard and associated property rights [by] through:

(i) gift[~~,~~];

(ii) purchase[~~,~~];

(iii) agreement[~~,~~];

(iv) exchange[~~,~~]; or

(v) eminent domain[~~, provided that if the legislative body acquires the billboard by eminent domain, it pays the owner just compensation; or~~].

[~~(ii) establishing a reasonable time period for expiration of the nonconforming use that:~~]

[~~(A) balances the harm to the owner against the public good, without imposing an undue burden upon the owner; and~~]

[~~(B) allows the owner to recover or amortize the fair market value, in an amount that is equal to the amount by condemnation, and takes into consideration the reasonable cost of operation to the owner over the amortization period.~~]

(3) If a municipality prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the municipality's actions constitute initiation of acquisition by eminent domain under Subsection (2)(c)(v).

[~~(3)~~] (4) Notwithstanding [~~Subsection (2)~~] Subsections (2) and (3), a legislative body may remove a billboard without providing compensation [~~or amortization~~] if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the legislative body finds that:

(a) the applicant for a permit intentionally made a false or misleading statement in his application;

(b) the billboard is unsafe; [~~or~~]

(c) the billboard is in an unreasonable state of repair; or

(d) the billboard has been abandoned for at least 12 months.

[~~(4)~~] (5) A municipality may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.

Section 2. Section Amended.

Section 17-27-407, Utah Code Annotated 1953, as last amended by Chapter 23, Laws of Utah 1992, is amended to read:

17-27-407. Nonconforming uses and structures.

(1)(a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this subsection [~~(1)~~], the addition of a solar energy device to a building is not a structural alteration.

(d) If any county acquires title to any property because of tax delinquency and the properties are not redeemed as provided by law, the future use of the property shall conform with the existing provisions of the county ordinances equally applicable to other like properties within the district in which the property acquired by the county is located.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by [~~either: (i)~~] acquiring the billboard and associated property rights [~~by~~] through:

(i) gift[~~,~~];

(ii) purchase[~~,~~];

(iii) agreement[~~,~~];

(iv) exchange[~~,~~]; or

(v) eminent domain[~~, provided that if the legislative body acquires the billboard by eminent domain, it pays the owner just compensation; or~~].

[~~(ii) establishing a reasonable time period for expiration of the n~~ nconforming use that:]

[~~(A) balances the harm to the owner against the public good, without imposing an undue burden upon the owner; and~~]

[~~(B) allows the owner to recover or amortize the fair market value, in an amount that is equal to the amount by condemnation, and takes into consideration the reasonable cost of operation to the owner over the amortization period.~~]

(3) If a county prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the county's actions constitute initiation of acquisition by eminent domain under Subsection (2)(c)(v).

[~~(3)~~] (4) Notwithstanding [~~Subsection (2)~~] Subsections (2) and (3), a legislative body may remove a billboard without providing compensation [~~or amortization~~] if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the legislative body finds that:

(a) the applicant for a permit made a false or misleading statement in his application;

(b) the billboard is unsafe; [~~or~~]

(c) the billboard is in an unreasonable state of repair; or

(d) the billboard has been abandoned for at least 12 months.

[~~(4)~~] (5) A county may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.

Section 3. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 287
S. B. No. 103
Passed February 18, 1993
Approved March 22, 1993
Effective May 3, 1993

OCCUPATIONAL SAFETY AND HEALTH JUDGMENT LIEN

By Lyle W. Hillyard

AN ACT RELATING TO OCCUPATIONAL SAFETY AND HEALTH; PROVIDING A JUDGMENT LIEN FOR CERTAIN VIOLATIONS; ELIMINATING INCONSISTENT PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
35-9-15, AS ENACTED BY CHAPTER 69, LAWS OF UTAH 1973
35-9-21, AS LAST AMENDED BY CHAPTER 150, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 35-9-15, Utah Code Annotated 1953, as enacted by Chapter 69, Laws of Utah 1973, is amended to read:

35-9-15. State agencies and political subdivisions to establish programs.

[~~It shall be the responsibility of the~~] The head of each state agency and each political subdivision of the state [~~to~~] shall establish and maintain an occupational safety and health program [~~the same as~~] equivalent to the program for other employments in the state[~~; provided, that~~]. The commission may not assess monetary penalties against any state agency or political subdivision under Section 35-9-21 [~~(1) shall not be assessed~~].

Section 2. Section Amended.

Section 35-9-21, Utah Code Annotated 1953, as last amended by Chapter 150, Laws of Utah 1991, is amended to read:

35-9-21. Civil and criminal penalties.

(1) [~~Civil assessments under this chapter are~~] The commission may assess civil penalties against any employer who has received a citation under Section 35-9-9 as follows:

(a) [~~Any employer who has received a citation for a violation of the requirements of Section 35-9-5, of any standard, code, rule, or order issued under Section 35-9-6, or of rules made under this chapter may be charged a civil assessment not to exceed~~] Except as provided in Subsections (b) through (d), the commission may assess up to $7,000 for each cited violation [~~if the violation is not determined to be serious~~].

(b) [~~(i) Any employer who has received a citation for a serious violation of the requirements of Section 35-9-5, of any standard, code, rule, or order issued under Section 35-9-6, or of any rules made under this chapter~~] The commission may [~~be charged a civil assessment~~] not assess less than $250 [~~and not to exceed~~] nor more than $7,000 for each cited serious violation. [~~(ii)~~] A [~~serious~~] violation [~~exists in any workplace~~] is serious only if [~~there is a substantial possibility that death or serious physical harm could result~~]:

(i) it arises from a condition [~~in the workplace or from one or more practices, means, methods, operations, or processes which have been adopted or which are in use~~], practice, method, operation, or process in the workplace[~~, unless~~] of which the employer [~~did not, and could not with~~] knows or should know through the exercise of reasonable diligence[~~; know of the violation.~~]; and

(ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.

[~~(c) Any employer who fails to correct a violation for which a citation has been issued under Section 35-9-9, within the time period permitted may be assessed a civil assessment not to exceed $7,000 for each day during which the failure or violation continues.~~]

[~~(d) Any employer who violates any posting requirement, as prescribed under this chapter, may be assessed a civil assessment not to exceed $7,000 for each violation.~~]

[~~(e)(i)~~] (c) [~~Any employer who willfully violates the requirements of Section 35-9-5, any standard, code, rule, or order issued under Section 35-9-6, or rules made under this chapter~~] The commission may [~~be charged a minimum civil assessment of~~] not assess less than $5,000[~~, but not to exceed~~] nor more than $70,000 for each cited willful violation.

[~~(ii)~~] (d) [~~Any employer who repeatedly violates the requirements of Section 35-9-5, any standard, code, rule, or order issued under Section 35-9-6, or rules made under this chapter~~] The commission may [~~be charged a civil assessment not to exceed~~] assess up to $70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.

(e) After the expiration of the time permitted to an employer to correct a cited violation, the commission may assess up to $7,000 for each day the violation continues uncorrected.

(2) The commission may assess a civil penalty of up to $7,000 for each violation of any posting requirement under this chapter.

(3) In deciding the amount to assess for a civil penalty, the commission shall consider all relevant factors, including the size of the employer's business, the nature of the violation, the employer's good faith or lack of good faith, and the employer's previous record of compliance or noncompliance with this chapter.

(4) Any civil penalty collected under this chapter shall be paid into the General Fund.

[~~(2)~~] (5) Criminal penalties under this chapter are as follows:

(a) Any employer who willfully violates any standard, code, rule, or order issued under Section 35-9-6, or any rule made under this chapter is guilty of a class A misdemeanor if the violation caused the death of an employee. [~~The fine imposed may not exceed $10,000 for the first violation which caused the death of an employee. The fine imposed may not exceed $20,000 for the second violation which caused the death of an employee~~] If the violation causes the death of more than one employee, each death is considered a separate offense.

(b) Any person who gives advance notice of any inspection conducted under this chapter without authority from the administrator or his representatives is guilty of a class A misdemeanor. [~~Any imprisonment imposed for a violation of this subsection may not exceed six months in a county jail.~~]

(c) [~~Whoever~~] Any person who knowingly makes [~~any~~] a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class A misdemeanor. [~~Any fine imposed for a violation of this subsection may not exceed $70,000, and any imprisonment may not exceed six months in a county jail.~~]

[~~(d) Any person who assaults a division representative is guilty of a felony. A fine imposed for a violation of this subsection may not exceed $35,000.~~]

[~~(e) Any person who assaults a division representative with a deadly weapon shall be punished by a fine not to exceed $70,000, or by imprisonment in the state prison not to exceed five years.~~]

[~~(f) Any person who kills a person on account of the performance of investigative inspection, or law enforcement provisions of this chapter, shall be punished by imprisonment in state prison.~~]

[~~(3) The commission has authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer charged, the gravity of the violation, the good faith of the employer, and the history of any previous violations by the employer.~~]

[~~(4) Civil penalties collected under this chapter shall be deposited into the General Fund.~~]

(6) After a citation issued under this chapter and an opportunity for a hearing under Title 63, Chapter 46b, Administrative Procedures Act, the commission may file an abstract for any uncollected citation penalty in the district court. The filed abstract shall have the effect of a judgment of that court. The abstract shall state the amount of the uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

CHAPTER 288
S. B. No. 257
Passed March 2, 1993
Approved March 22, 1993
Effective May 3, 1993

POSTED BIG GAME HUNTING UNITS

By John P. Holmgren

AN ACT RELATING TO POSTED HUNTING UNITS; PROVIDING FOR THE ESTABLISHMENT OF POSTED HUNTING UNITS ORGANIZED FOR THE HUNTING OF BIG GAME AND GIVING THE BOARD OF BIG GAME CONTROL AUTHORITY TO REGULATE THOSE POSTED HUNTING UNITS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
23-23-1, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-2, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
23-23-3, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-4, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-5, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-6, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-7, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-9, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988
23-23-10, AS ENACTED BY CHAPTER 158, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 23-23-1, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-1. Purposes.

Posted hunting units are established to:

(1) provide income to landowners;

(2) create satisfying hunting opportunities;

(3) increase wildlife resources; [~~and~~]

(4) provide adequate protection to landowners who open their lands for hunting; and

(5) provide access to private lands for hunting big game.

Section 2. Section Amended.

Section 23-23-2, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991, is amended to read:

23-23-2. Definitions.

As used in this chapter:

(1) "Division" means the Division of Wildlife Resources.

(2) "Landowner association" means a landowner or an organization of owners of private lands or its designated agent [~~which~~] that operates a posted hunting unit.

(3) "Posted hunting unit" or "unit" means a generally contiguous area of private land [~~owned by persons who issue or sell permits~~] open for hunting small game, [~~including~~] waterfowl, [~~on that land and~~] or big game by permit which is registered in accordance with this chapter and rules of the Wildlife Board or Board of Big Game Control.

(4) "Posted hunting unit agent" means a person appointed by a landowner or landowner association to perform the functions described in Section 23-23-9. For purposes of this chapter, a posted hunting unit agent may not:

(a) [~~is not~~] be appointed by the division or the state;

(b) [~~is not~~] be an employee or agent of the division or the state;

(c) [~~receives no~~] receive compensation from the division or the state; [~~and~~] or

(d) [~~in no way has authority or responsibility to~~] act as a peace officer or perform any duties of a peace officer without qualifying as a peace officer under Title 77, Chapter 1a.

(5) "Posted hunting unit permit" means a card, label, ticket, or other identifying document authorizing the possessor to hunt in a posted hunting unit.

(6) "General public" includes all persons except:

(a) a landowner association member and a spouse or dependent child of a landowner association member; and

(b) any person who pays a fee, in addition to a permit fee, to hunt on a posted hunting unit.

Section 3. Section Amended.

Section 23-23-3, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-3. Rulemaking authority of boards.

(1) The Wildlife Board is authorized to make and enforce rules applicable to posted hunting units organized for the hunting of small game or waterfowl that in its judgment are necessary to administer and enforce the provisions of this chapter.

(2) The Board of Big Game Control is authorized to make and enforce rules applicable to posted hunting units organized for the hunting of big game that in its judgment are necessary to administer and enforce the provisions of this chapter.

Section 4. Section Amended.

Section 23-23-4, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-4. Operation by landowner association.

A landowner association shall operate a posted hunting unit as prescribed by this chapter and rules of the Wildlife Board or Board of Big Game Control.

Section 5. Section Amended.

Section 23-23-5, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-5. Certificate of registration — Renewal.

(1) A landowner association [~~shall~~] may not establish or operate a posted hunting unit without first obtaining a posted hunting unit certificate of registration from the Wildlife Board or Board of Big Game Control.

(2) The Wildlife Board or Board of Big Game Control may annually renew certificates of registration if the landowner association has previously complied with this chapter and rules of the Wildlife Board or Board of Big Game Control.

Section 6. Section Amended.

Section 23-23-6, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-6. Variances from permit fees and season lengths.

A landowner association may petition the Wildlife Board or Board of Big Game Control for variances from general statewide [~~permit fees and~~] season [~~lengths~~] dates.

Section 7. Section Amended.

Section 23-23-7, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-7. Permits — Posting of boundaries.

(1) The division shall provide posted hunting unit permits for hunting small game or waterfowl to the posted hunting unit, free of charge.

(2) At least 50% of the permits for hunting small game or waterfowl provided to a posted hunting unit shall be offered for sale to the general public at the times and places designated on the application for a certificate of registration.

(3) At least 75% of the acreage within the boundaries of each posted hunting unit organized for the hunting of small game or waterfowl shall be open to hunting by holders of valid permits.

(4) The division may issue posted hunting unit permits for hunting big game to permittees:

(a) qualifying through a public drawing; or

(b) named by the posted hunting unit operator.

[~~(4)~~] (5) Each landowner association shall:

(a) clearly post all boundaries of the unit and all corners, roads, trails, gates, and rights-of-way entering the unit with signs provided by the division; and

(b) provide a written copy of its guidelines to each permittee.

Section 8. Section Amended.

Section 23-23-9, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-9. Agents — Appointment — Identification — Refusal of entry by agent.

(1) A landowner association may appoint posted hunting unit agents to protect private property of the posted hunting unit.

(2) Each posted hunting unit agent shall wear or have in his possession a form of identification prescribed by the Wildlife Board or Board of Big Game Control which indicates he is a posted hunting unit agent.

(3) A posted hunting unit agent may refuse entry into a posted hunting unit to any person, except owners of land within the unit and their employees, who:

(a) does not have in his possession a posted hunting unit permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a posted hunting unit; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) In performing the functions described in this section, a posted hunting unit agent shall comply with the relevant laws of this state.

Section 9. Section Amended.

Section 23-23-10, Utah Code Annotated 1953, as enacted by Chapter 158, Laws of Utah 1988, is amended to read:

23-23-10. Possession of permits and licenses by hunter — Restrictions.

(1) A person may not hunt in a posted hunting unit without having in his possession:

(a) a valid posted hunting unit permit; and

(b) the necessary hunting licenses, tags, and stamps.

(2) A posted hunting unit permit:

(a) entitles the holder to hunt only in the unit specified on the permit pursuant to rules of the Wildlife Board or Board of Big Game Control and [~~shall~~] does not entitle the holder to hunt on any other private land; and

(b) constitutes written permission for trespass as required under Section 23-20-14.

CHAPTER 289
H. B. No. 13
Passed March 3, 1993
Approved March 23, 1993
Effective May 3, 1993

MAIN STREET PROGRAM ACT

By Kim R. Burningham
Darrell L. Jorgensen

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CREATING THE UTAH MAIN STREET PROGRAM TO HELP MUNICIPALITIES REVITALIZE BUSINESS DISTRICTS; CREATING AN ADVISORY BOARD; AND PROVIDING CRITERIA.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
9-8-901, UTAH CODE ANNOTATED 1953
9-8-902, UTAH CODE ANNOTATED 1953
9-8-903, UTAH CODE ANNOTATED 1953
9-8-904, UTAH CODE ANNOTATED 1953
9-8-905, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-8-901, Utah Code Annotated 1953, is enacted to read:

Part 9. Utah Main Street Program Act

9-8-901. Short title.

This part shall be known as the "Utah Main Street Program Act."

Section 2. Section Enacted.

Section 9-8-902, Utah Code Annotated 1953, is enacted to read:

9-8-902. Definitions.

As used in this part:

(1) "Advisory board" means the Utah Main Street Program Advisory Board created in Section 9-8-903 within the department.

(2) "Business district" means an existing central business and commercial area having compact, well-defined boundaries and having historic significance.

(3) "Municipality" means a city or town.

(4) "Revitalization" means the process of engaging in activities to increase economic activity while preserving and building upon a location's historically significant characteristics.

Section 3. Section Enacted.

Section 9-8-903, Utah Code Annotated 1953, is enacted to read:

9-8-903. Advisory board.

(1) There is created within the department the Utah Main Street Advisory Board. The Permanent Community Impact Fund Board created in Section 9-4-304 shall act as the advisory board.

(2) The advisory board shall have the powers and duties described in Section 9-8-904 and shall operate the Utah Main Street Program in accordance with Section 9-8-905.

(3) The executive director shall designate an employee of the department to serve as a nonvoting secretary for the advisory board.

Section 4. Section Enacted.

Section 9-8-904, Utah Code Annotated 1953, is enacted to read:

9-8-904. Advisory board duties — Pilot program.

(1) The advisory board shall:

(a) establish and administer a Utah Main Street Program to coordinate state and local participation in programs offered by the National Main Street Center, created by the National Trust for Historic Preservation, to assist municipalities in planning, managing, and implementing programs for the revitalization of business districts;

(b) select, upon application by the municipality, municipalities to participate in the Utah Main Street Program;

(c) enter into contracts to obtain business district revitalization services provided by the National Main Street Center;

(d) with help from interested municipalities, individuals, and organizations, develop a plan describing the objectives of the Utah Main Street Program and the methods by which the advisory board shall:

(i) coordinate the activities of that program with private and public sector revitalization of business districts;

(ii) solicit and use private sector funding to revitalize business districts; and

(iii) help municipalities revitalize business districts; and

(e) coordinate and consult with other state and local or public and private entities that provide services to municipalities undertaking projects to revitalize business districts.

(2) The advisory board shall commence a pilot program of up to four of the municipalities selected under Subsection (1)(b). The pilot program for each municipality shall conclude after three years.

(3) The advisory board shall provide training, technical assistance, and information on the revitalization of business districts to municipalities that do not participate in the pilot program.

Section 5. Section Enacted.

Section 9-8-905, Utah Code Annotated 1953, is enacted to read:

9-8-905. Criteria for participation — Report.

(1) The advisory board shall develop objective criteria including the following:

(a) a three year commitment by the applicant to provide a project manager with a travel and operating budget;

(b) evidence that both the business community and the local government support the Main Street Program approach philosophically and financially;

(c) the existence of a downtown association or willingness to form one;

(d) sufficient historic or architecturally significant buildings in the downtown to establish a marketable image;

(e) capacity for economic change as a result of being a participant in the program;

(f) geographic location, population, and economic base diversity;

(g) evidence of past revitalization efforts;

(h) a compact, well-defined central business district; and

(i) a population of less than 50,000.

(2) The advisory board shall provide to the governor and to the presiding officer of each house of the Legislature:

(a) an annual report on the effects of the Utah Main Street Program; and

(b) no later than January 1, 1996, a comprehensive evaluation of the Utah Main Street Program.

CHAPTER 290
H. B. No. 34
Passed March 3, 1993
Approved March 23, 1993
Effective July 1, 1993

APPROPRIATION FOR GANG PREVENTION AND INTERVENTION PROGRAM IN THE SCHOOLS

By Ray Short
David M. Jones
Phil H. Uipi
Brent H. Goodfellow
Ronald J. Greensides
Irby N. Arrington
R. Lee Ellertson
Christine R. Fox
Melvin R. Brown
Steve Barth
Martin R. Stephens
Allan C. Rushton
Paul Shepherd
Pete Suazo

AN ACT RELATING TO PUBLIC EDUCATION; AUTHORIZING A GANG PREVENTION AND INTERVENTION PROGRAM DESIGNED TO HELP AT-RISK STUDENTS STAY IN SCHOOL; APPROPRIATING $100,000; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-15-601, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-15-601, Utah Code Annotated 1953, is enacted to read:

53A-15-601. Appropriation for program — Program requirements — Distribution of funds to school districts.

(1) There is appropriated from the Uniform School Fund to the State Board of Education for fiscal year 1993-94 $100,000 to be used for a gang prevention and intervention program designed to help at-risk students stay in school and enhance their self-esteem and intellectual and life skills.

(2) The program shall:

(a) provide independent gang intervention both inside and outside of school grounds when necessary, including:

(i) meetings with gang members whose activities impact students in the program;

(ii) intervening in situations involving gangs that impact students in the program;

(iii) in-home visits with families of students in the program designed to encourage parents to become involved in their child's education; and

(iv) notifying law enforcement personnel when a particular problem cannot be defused or when required by law; and

(b) manage case files and maintain profiles on at-risk and high-risk students, including:

(i) attendance records;

(ii) academic records; and

(iii) extra-curricular activities.

(3) The program coordinator at each school must:

(a) be on the school grounds during school hours;

(b) have received training on gang prevention and intervention in the schools;

(c) have an understanding of the cultural backgrounds of gang members and be aware of the potential for gang involvement in all situations; and

(d) have a minimum of one year's experience or on-site training in gang related issues inside the schools.

(4) Individual schools within each school district interested in providing a gang prevention and intervention program shall apply to the school board for funds.

(5) Individual schools shall be required to provide 25% of the funding necessary for the program in their school, at least one-half of which must be provided through in-kind services. In-kind services may not include office space and support.

(6) Individual schools receiving funds may provide the program to their students by contracting with a private entity whose program meets the requirements set out in Subsections (2) and (3).

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 291
H. B. No. 35
Passed March 3, 1993
Approved March 23, 1993
Effective July 1, 1993

APPROPRIATION FOR GANG SUPPRESSION PROGRAMS

By Ray Short
David M. Jones
Phil H. Uipi
Brent H. Goodfellow
Ronald J. Greensides
Irby N. Arrington
R. Lee Ellertson
Christine R. Fox
Melvin R. Brown
Steve Barth
Martin R. Stephens
Allan C. Rushton
Paul H. Shepherd
Pete Suazo

AN ACT RELATING TO APPROPRIATIONS; APPROPRIATING $50,000 FOR GANG SUPPRESSION PROGRAMS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS NEW MATERIAL.

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

Section 1. Appropriation.

(1) There is appropriated $50,000 from the General Fund to the Commission on Criminal and Juvenile Justice for fiscal year 1993-94 for statewide training seminars on gang suppression and to fund local gang suppression efforts.

(2) These funds shall be nonlapsing.

(3) Agencies, governmental entities, or community groups interested in holding training seminars or programs on gangs shall request funds from the Commission on Criminal and Juvenile Justice. Each request shall include:

(a) a description of the agency, entity, or group, including a statement of its purpose and goals;

(b) a description of the seminar or program to be funded, including a schedule of speakers, workshops, or panel discussions to be held;

(c) a statement indicating to whom the seminar will be offered; and

(d) the total amount requested.

(4) Within 30 days of the completion of the seminar or program, a complete accounting of the funds shall be sent to the Commission on Criminal and Juvenile Justice.

(5) No more than $30,000 shall be used to fund training seminars or programs.

(6) The remaining funds shall be used to fund local gang suppression efforts. These efforts may include:

(a) contracting with a person or group to provide expertise in the area of gang identification, intervention, or suppression;

(b) contracting with a person or group to organize or mobilize a community in the area of gang identification, intervention, or suppression; and

(c) contracting with a person or group to explore alternative approaches to dealing with gangs.

Section 2. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 292
H. B. No. 105
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

DFCM AND BUILDING BOARD AMENDMENTS

By Byron L. Harward

AN ACT RELATING TO ADMINISTRATIVE SERVICES; DIRECTING THE STATE BUILDING BOARD TO PROVIDE FOR FACILITY UPKEEP AND REQUIRING LEGISLATIVE APPROPRIATION FOR SUCH; SEPARATING THE BUILDING RESERVES HELD BY DFCM; DESIGNATING THEIR USE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-1-35, AS LAST AMENDED BY CHAPTER 255, LAWS OF UTAH 1992
63-1-38.4, AS LAST AMENDED BY CHAPTERS 170 AND 258, LAWS OF UTAH 1985
63-1-44.9, AS ENACTED BY CHAPTER 265, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 63-1-35, Utah Code Annotated 1953, as last amended by Chapter 255, Laws of Utah 1992, is amended to read:

63-1-35. Board — Powers.

(1) The board shall:

(a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;

(b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);

(c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;

(d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;

(e) make rules necessary to discharge its duties and the duties of the Division of Facilities Construction and Management by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for the use of state agencies and institutions in the planning for new state buildings and facilities including life-cycle costing, cost-effectiveness studies, and other methods and procedures that demonstrate:

(i) the need for the building or facility;

(ii) the effectiveness of its design;

(iii) the efficiency of energy use; and

(iv) the usefulness of the building or facility over its lifetime;

(g) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year; and

(h) assure the efficient use of all building space.

(2) (a) The building board shall ensure that the five-year building plan required by Subsection (1)[~~(b)~~](c) includes:

(i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's, department's, commission's, and institution's present and future needs;

(ii) all buildings that will be constructed wholly or in part with state funds;

(iii) all buildings that will use state funds for maintenance and operations;

(iv) maps, information, and space use data for all state-owned and leased facilities;

(v) substantiating data to support the adequacy of any projected plans;

(vi) detailed estimates of the cost of each project; and

(vii) a summary of all statewide contingency [fund] reserve and project reserve balances as of the end of the most recent fiscal year.

(b) The building board may make rules prescribing the format for submitting the information required by this subsection.

(3) (a) As used in this Subsection (3), "capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of $1,000,000 or more;

(ii) addition of new space that will cost more than $100,000; or

(iii) land acquisition where an appropriation is requested.

(b) The building board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

(4) (a) As used in this [Subsection ~~(4)~~] section, "capital improvements" means any:

(i) remodeling, alteration, repair project with a total cost of less than $1,000,000; or

(ii) site and utility improvement with a total cost of less than $1,000,000.

(b) (i) The building board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) Unless otherwise directed by the Legislature, the building board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(5) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the building board may, notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

(i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

(ii) the Legislature at its next annual general session.

(6) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

(7) The Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the following funding requirement (including supplemental funding) for capital improvements has been met:

(a) for fiscal year 1995, .5% of the replacement cost of existing state buildings;

(b) for fiscal year 1996, .75% of the replacement cost of existing state buildings; and

(c) for fiscal year 1997 and thereafter, .9% of the replacement cost of existing state buildings.

(8) As used in this section, "replacement cost of existing state buildings" means the replacement cost, as determined by the Division of Risk Management, of state buildings, excluding auxiliary buildings as defined by the State Building Board.

(9) The board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding. Such a rule should:

(a) reserve funds at Division of Facilities Construction and Management for emergency projects; and

(b) allow the delegation of projects to some institutions and agencies with the requirement that a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.

(10) It is the intent of the Legislature that in funding capital improvement requirements under this section, that the General Fund be considered as a funding source for at least half of those costs.

Section 2. Section Amended.

Section 63-1-38.4, Utah Code Annotated 1953, as last amended by Chapters 170 and 258, Laws of Utah 1985, is amended to read:

63-1-38.4. Building appropriations supervised by director — Disposition of surplus.

(1) The director shall supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made and shall specifically allocate money appropriated when more than one project is included in any single appropriation without legislative directive. The director shall expend the amount necessary from appropriations for planning, engineering, and architectural work. Amounts from appropriations necessary to cover expenditures previously made from the planning fund in the preparation of plans, engineering, and specifications shall be returned to the fund.

(2) The director shall hold in a statewide contingency reserve [~~a reasonable percentage not to exceed 2-1/2% of the total amount appropriated~~] the amount budgeted for contingencies in appropriations for the construction or remodeling of [~~buildings~~] facilities, for contingencies which may be over and above all amounts obligated by contract for planning, engineering, and architectural work, sites, and construction contracts. [~~The reserve~~]

(a) The amount budgeted for contingencies shall be based on a sliding scale percentage of the construction cost. The sliding scale shall range from 4-1/2% to 6-1/2% for new construction, and from 6% to 9-1/2% for remodeling projects.

(b) The statewide contingency funds shall be held by the director to cover [~~unforeseen contingencies, and shall be used only if:~~] costs such as change orders and other unforeseen, necessary costs beyond those specifically budgeted for the project.

[~~(a) the board or head of the sponsoring agency for which the Legislature made an appropriation for a building project makes an official request to the director;~~]

[~~(b) the director investigates the nature of the expenditure and concurs in the necessity of the proposed expenditure; and~~]

[~~(c) the director authorizes the expenditure.~~]

(c) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve. It may reappropriate to other building needs any amount from the statewide contingency reserve which is determined to be in excess of the reserve required to meet future contingency needs.

(3) The director shall hold in a separate reserve those state appropriated funds accrued through bid savings and project residual as a project reserve.

(a) The director may authorize the use of project reserve funds only for the award of contracts in excess of the construction budget if this is required to meet the intent of the project.

(b) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs.

[~~(2)~~] (4) In the event any part of the appropriation for a building project, other than the part set aside for the Percent-for-Art Program under Title [64] 9, Chapter [2a] 6, remains unencumbered after the award of construction and professional service contracts, and establishing a reserve for fixed and moveable equipment, the balance of the appropriation shall be dedicated to the contingency fund described in this section and shall not revert to the General Fund.

[~~(3)~~] (5) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside in an appropriation administered by the Division of Fine Arts under Title [64] 9, Chapter [2a] 6. Funds from appropriations for any state building or facility of which any part is derived from the issuance of bonds, to the extent it would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds, shall not be set aside.

Section 3. Section Amended.

Section 63-1-44.9, Utah Code Annotated 1953, as enacted by Chapter 265, Laws of Utah 1992, is amended to read:

63-1-44.9. Statewide contingency fund transfer.

[~~The~~] With the approval of and through an appropriation by the Legislature, the division shall transfer at least $100,000 annually from the [~~statewide Contingency Fund~~] project reserve monies to the General Fund to pay for personal service expenses associated with the management of construction projects.

CHAPTER 293
H. B. No. 119
Passed March 3, 1993
Approved March 22, 1993
Effective May 3, 1993

FEES OF COUNTY RECORDER

By J. Brent Haymond

AN ACT RELATING TO COUNTY RECORDER FEES; ADJUSTING CERTAIN FEES; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
21-2-3, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 21-2-3, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1987, is amended to read:

21-2-3. Fees of county recorder.

(1) The county recorder shall receive the following fees:

(a) for receiving, entering, and filing any instrument, paper, or notice, not otherwise provided for, other than bonds of public officers, [~~$7~~] $10;

(b) for recording any instrument, paper, or notice, including those provided for under Title 70A, the Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, [~~$7~~] $10 for the first page, if the page is not larger than 8 1/2 inches x 14 inches in size, and [~~$1~~] $2 for each additional page, and if any instrument, paper, or notice contains more than one description, [~~50 cents~~] $1 for each additional description;

(c) in any instrument in which a right-of-way is described, which is connected with or is appurtenant to any tract of land described in the instrument, [~~50 cents~~] $1, but if the instrument contains a description of more than one right-of-way, [~~50 cents~~] $1 for each additional right-of-way, and if any instrument contains more than two names for either first or second party, or plaintiffs or defendants, for each additional name, [~~50 cents~~] $1;

(d) for recording, indexing, and abstracting mining location notices, and recording, indexing, and abstracting affidavits of labor affecting mining claims, [~~$7~~] $10 for the first page if that page is not larger than 8 1/2 inches by 14 inches in size, and [~~$1~~] $2 for each additional page; and

(e) for a location notice, affidavit, or proof of labor which contains names of more than two signers, [~~50 cents~~] $1 for each additional name, and for an affidavit or proof of labor which contains more than one mining claim, [~~50 cents~~] $1 for each additional mining claim.

(2)(a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) for copies of any record or paper, a reasonable fee determined and set by the board of county commissioners;

(b) for each certificate under seal, $2;

(c) for recording any plat of a subdivision into lots and blocks, [~~50 cents~~] $1 for each lot, and [~~$20~~] $30 for each sheet;

(d) for recording any other plat or map, [~~$20~~] $30 for each sheet and [~~50 cents~~] $1 for each lot or unit designation;

(e) for taking and certifying acknowledgments, including seal, $5 for one name and $2 for each additional name;

(f) for recording any license issued by the Division of Occupational and Professional Licensing, [~~$7~~] $10;

(g) for filing of federal tax lien, [~~$7~~] $10, and for the discharge of the lien, [~~$7~~] $10;

(h) for copies of microfilm, a charge per lineal foot as fixed by the county governing body, not to exceed the cost of reproduction of the film plus 10%; and

(i) for all services not enumerated in this section, a reasonable compensation.

CHAPTER 294
H. B. No. 260
Passed March 3, 1993
Approved March 23, 1993
Effective May 3, 1993

CHANGE OF LEGAL NAME

By Christine R. Fox

AN ACT RELATING TO MOTOR VEHICLES; REQUIRING NAME CHANGES ON DRIVER LICENSE UNDER CERTAIN CIRCUMSTANCES; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
41-2-122, AS RENUMBERED AND AMENDED BY CHAPTER 137, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 41-2-122, Utah Code Annotated 1953, as renumbered and amended by Chapter 137, Laws of Utah 1987, is amended to read:

41-2-122. Change of address — Duty of licensee to notify division within ten days — Change of name — Proof necessary — Method of giving notice by division.

(1) [~~When~~] If a person, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to him, the person shall within ten days of moving, notify the division in writing of his new address and [~~of~~] the number of any license certificate held by him.

(2) If a person requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

(a) an original or certified copy of the applicant's marriage certificate;

(b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;

(c) an original or certified copy of a birth certificate issued by a government agency;

(d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or

(e) a certified copy of a divorce decree that does not specify the name change requested together with:

(i) an original or certified copy of the applicant's birth certificate;

(ii) the applicant's marriage license;

(iii) a driver license record showing use of a maiden name; or

(iv) other documentation the division finds acceptable.

[~~(2)~~] (3) (a) [~~When~~] If the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, [~~unless a different method of giving notice is otherwise prescribed,~~] the notice shall, unless otherwise prescribed, be given either by:

(i) personal delivery to the person to be notified; or [~~by~~]

(ii) deposit in the United States mail [~~of the notice in an envelope~~] with postage prepaid, addressed to the person at his address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

[~~(b)~~] (c) Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the division or affidavit of any person older than 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of [~~the~~] giving [~~of it~~] the notice.

CHAPTER 295
H. B. No. 336
Passed March 3, 1993
Approved March 23, 1993
Effective July 1, 1993

APPROPRIATIONS ACT

By John L. Valentine

AN ACT RELATING TO APPROPRIATIONS; PROVIDING APPROPRIATIONS FOR THE SUPPORT OF STATE GOVERNMENT FOR THE FISCAL YEAR BEGINNING JULY 1, 1993 AND ENDING JUNE 30, 1994; PROVIDING INTENT LANGUAGE GOVERNING EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of the government of the State of Utah for the fiscal year indicated.

LEGISLATURE

ITEM 1
To Legislature - Senate
From General Fund ..... $ 872,900
Schedule of Programs:
Administration 872,900

ITEM 2
To Legislature - Senate
From General Fund 12,500
Schedule of Programs:
Interim Committee on General Government and Capital Facilities ... 12,500
It is the intent of the Legislature that if the Legislative Management Committee does not authorize an interim committee for General Government and Capital Facilities by April 30, 1993, this item shall not take effect.

ITEM 3
To Legislature - House of Representatives
From General Fund 1,469,000
From Beginning Non-Lapsing 53,400
Schedule of Programs:
Administration 1,522,400

ITEM 4
To Legislature - House of Representatives
From General Fund 37,500
Schedule of Programs:
Interim Committee on General Government and Capital Facilities 37,500
It is the intent of the Legislature that if the Legislative Management Committee does not authorize an interim Committee for General Government and Capital Facilities by April 30, 1993, this item shall not take effect.

ITEM 5
To Legislature - Printing
From General Fund 353,400
From Dedicated Credits 240,000
From Non-lapsing Balances 74,500
Schedule of Programs:
Administration 667,900

ITEM 6
To Office of Legislative Research and General Counsel
From General Fund 2,959,200
Schedule of Programs:
Administration 2,959,200

ITEM 7
To Office of Legislative Research and General Counsel - Tax Review
From General Fund 50,000
Schedule of Programs:
Tax Review Commission 50,000

ITEM 8
To Office of the Legislative Fiscal Analyst
From General Fund 1,266,300
From Non-lapsing Balance 31,000
Schedule of Programs:
Administration and Research 1,294,300
Executive and Judicial Compensation Commission 3,000

ITEM 9
To Office of Legislative Auditor General
From General Fund 1,302,100
Schedule of Programs:
Administration 1,302,100

ITEM 10
To Legislature - Dues to National Conference of State Legislatures
From General Fund 70,800

ITEM 11
To Legislature - Dues to Council of State Governments
From General Fund 55,500
From Non-Lapsing Balances 3,400

ITEM 12
To Constitution Revision Commission
From General Fund 55,000

ITEM 13
To Commission on Judicial Conduct
From General Fund 27,000

EXECUTIVE OFFICES, COURTS, AND CORRECTIONS

ITEM 14
To Office of the Governor
From General Fund $1,900,900
From Dedicated Credits 10,500
Schedule of Programs:
Administration 1,509,500
Residence 241,300
Washington Office 101,900
Commission on the Status of Women and Families 58,700

ITEM 15
To Office of the Governor - Emergency Fund
From Non-lapsing balance 100,000
Schedule of Programs:
Emergency Fund 100,000
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 16
To Office of the Governor - Office of Planning and Budget
From General Fund 2,228,000
From Federal Funds 30,000
From Dedicated Credits 50,200
From Revenue Transfers 116,200
Schedule of Programs:
Science and Technology 96,800
Administrative Support 533,900
Planning and Budget Analysis 523,300
Economic and Demographic Analysis . 487,300
Intergovernmental Relations 373,000
Information/Technology 360,100
Utah Tomorrow 50,000

ITEM 17
To Office of the Governor - Office of Planning and Budget - Occupational Information
From Dedicated Credits 22,500
From Federal Funds 111,600
Schedule of Programs:
Occupational Information 134,100

ITEM 18
To Office of the Governor - Commission on Criminal and Juvenile Justice
From General Fund 753,300
From Dedicated Credits 37,000
From Federal Funds 5,181,900
From Crime Victims Reparation Trust Fund 553,000
Schedule of Programs:
The Commission 5,112,200
Crime Victims Reparations 1,124,000
Extraditions 289,000

It is the intent of the Legislature that the Commission on Criminal and Juvenile Justice conduct a study of the State juvenile detention system.

It is the intent of the Legislature that the Commission on Criminal and Juvenile Justice, in conjunction with the State debt coordination committee, shall study and make recommendations to improve the collection of victim restitution and court ordered debts to the State. A report shall be made to the Interim Judiciary Committee at or prior to its November 1993 meeting.

ITEM 19
To State Auditor
From General Fund 2,010,700
From Dedicated Credits 402,200
Schedule of Programs:
Administration 163,200
Auditing 1,966,100
Local Government 283,600

ITEM 20
To State Treasurer
From General Fund 620,500
From Dedicated Credits 202,400
From Unclaimed Property Trust Fund .. 950,400
Schedule of Programs:
Treasury and Investment 695,200
Unclaimed Property 950,400
Financial Assistance Analysis 59,200
Money Management Council 68,500

It is the intent of the Legislature that the State Treasurer be allowed to assess a $5.00 bad check fee and that the proceeds of this fee be credited to the Treasurer's Office as Dedicated Credits to fund the upgrading of a position to a bond analyst.

ITEM 21
To Office of the Attorney General - Administration
From General Fund 8,697,400
From Dedicated Credits 4,213,500
From Commerce Service Fund 299,600
Schedule of Programs:
Administration 2,423,600
State Counsel 7,090,900
Public Advocacy 2,990,300
Appeals and Opinions 705,700

It is the intent of the Legislature that the Attorney General will continue to guarantee that the State's interest in the Cold Fusion patents will be protected.

ITEM 22
To Office of the Attorney General - Child Abuse
From General Fund 80,700
From Non-Lapsing Balances 116,500
From Revenue Transfers 217,300
Schedule of Programs:
Child Abuse Unit 414,500

It is the intent of the Legislature that the funds in the Attorney General's Child Abuse program be non-lapsing.

ITEM 23
To Office of the Attorney General - Contract Attorneys
From General Fund 100,000
From Dedicated Credits 700,000
Schedule of Programs:
Contract Attorneys 800,000

ITEM 24
To Attorney General - Prosecution Council
From General Fund Restricted - Public Safety Support Fund 208,600
Schedule of Programs:
Prosecution Council 208,600

ITEM 25
To Office of the Attorney General - Economic Crime
From Dedicated Credits 5,000
From Beginning Non-lapsing 9,100
Schedule of Programs:
Economic Crime 14,100

ITEM 26
To Office of the Attorney General - Domestic Violence
From General Fund Restricted - Domestic Violence 15,000
Schedule of Programs:
Domestic Violence 15,000

ITEM 27
To Office of the Attorney General - Lien and Judgement Execution
From Beginning Non-lapsing 40,500
Schedule of Programs:
Lien and Judgement Execution 40,500

ITEM 28
To Office of the Attorney General -
Drug Enforcement
From General Fund 68,000
From Non-Lapsing Balances 500
From Transfers 192,700
Schedule of Programs:
Drug Enforcement 261,200
It is the intent of the Legislature that the State funding in this item be non-lapsing.

ITEM 29
To Judicial Council\State Court Administrator
From General Fund 52,931,700
From General Fund Restricted -
Child Custody 25,000
From General Fund Restricted -
Children's Defense 747,500
From General Fund Restricted -
Court Trust Interest 156,100
From General Fund Restricted -
Substance Abuse Prevention Account . 161,100
From General Fund Restricted -
National Justice System (Nonjudicial) 120,000
From Dedicated Credits 254,600
From Federal Funds 215,700
Schedule of Programs:
Supreme Court 1,586,900
Law Library 473,100
Court of Appeals 1,912,200
Trial Courts 25,051,300
Juvenile Courts 11,656,500
Justice Courts 17,200
Administration 2,687,000
Judicial Education 468,200
Data Processing 3,207,800
Leases 7,257,300
Federal Grants 294,200
Under provisions of Section 67-8-2, the following annual salaries are approved for judicial officials for July 1, 1993 to June 30, 1994, District Court Judge $80,000.
Other judicial salaries will be calculated in accordance with the statutory formula and rounded to the nearest $50.
It is the intent of the Legislature that the appropriations for the Courts for FY 1994 be non-lapsing.

ITEM 30
To Judicial Council/State Court
Administrator - Jury and Witness Fees
From General Fund 960,000
Schedule of Programs:
Jury and Witness 960,000
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 31
To Judicial Council/State Court Administrator -
Grand Jury
From General Fund 1,000
Schedule of Programs:
Grand Jury 1,000

ITEM 32
To Judicial Council/State Court Administrator -
Grand Jury Prosecution
From Beginning Non-lapsing 50,000
Schedule of Programs:
Grand Jury Prosecution 50,000

ITEM 33
To Department of Human Services - Division
of Youth Corrections
From General Fund 21,389,000
From General Fund Restricted - Youth
Corrections Victim Restitution Account 185,000
From Federal Funds 10,000
From Dedicated Credits 639,500
Transfers 711,900
Schedule of Programs:
State Office 1,544,000
Regional Offices/Case Management . 1,887,700
Observation and Assessment 1,930,800
Community Alternatives 5,479,600
Detention Facilities 7,332,900
Secure Facilities 4,530,500
Innovative Alternatives to Secure 229,900
It is the intent of the Legislature that the appropriation for the Division of Youth Corrections for FY 1994 be non-lapsing.

ITEM 34
To Department of Corrections
From General Fund 78,772,100
From Federal Funds 46,000
From Dedicated Credits 2,668,700
From Transfers 831,600
Schedule of Programs:
Executive Director 1,718,600
Administrative Services 4,239,400
Training 615,100
Subtotal 6,573,100
Field Operations Administration ... 1,342,200
Adult Probation and Parole 15,360,200
Community Correction Centers 6,294,400
Intermediate Sanctions 395,900
Subtotal 23,392,700
Institutions/Draper 34,534,400
Commissary 2,291,200
Gunnison 11,973,400
Iron County 1,234,800
Outcount 2,088,800
Subtotal 52,122,600
Project Exodus 40,000
Forensics 190,000
It is the intent of the Legislature that the appropriations for the Department of Corrections for FY 1994 be non-lapsing.

ITEM 35
To Department of Corrections - Data Processing -
Internal Service Fund
From Dedicated
Credits/Intragovernmental Revenue . 350,100
Four FTEs, Capital Outlay $136,300
Billing rate $210 per device per month

ITEM 36
To Department of Corrections - Draper
Medical Services
From General Fund 10,238,600
Schedule of Programs:
Medical Services/Draper 10,238,600

ITEM 37
To Department of Corrections -

Utah Correctional Industries
From Utah Correctional
Industries Fund 7,193,200
Schedule of Programs:
Operations 7,193,200

ITEM 38
To Board of Pardons
From General Fund 1,511,100
Schedule of Programs:
Board of Pardons 1,511,100

BUSINESS, LABOR, AGRICULTURE, AND ENVIRONMENTAL QUALITY

ITEM 39
To Department of Agriculture
From General Fund $4,146,500
From General Fund Restricted –
Agricultural and Wildlife
Damage Control Account 1,600
From General Fund Restricted –
Tuberculosis and Bangs Account 10,000
From Federal Funds 1,003,500
From Dedicated Credits 343,200
From Beef Promotion Trust Fund 4,300
Schedule of Programs:
Administration 710,800
Meat Inspection 1,235,400
Chemistry Laboratory 537,500
Animal Health 240,000
Agriculture Inspection 1,171,100
Food and Dairy Compliance 995,900
Weights and Measures 618,400
The following license, regulation, and certification fees are approved for the Department of Agriculture.
General Administration
Produce Dealers
Produce Dealer 25.00
Dealer's Agent 10.00
Broker/Agent 25.00
Produce Broker 25.00
Livestock Dealer 25.00
Livestock Dealer/Agent 10.00
Livestock Auctions
Livestock Auction Market 50.00
Auction Weighperson 10.00
Meat Inspection
Meat Packing
Meat Packing Plant 50.00
Custom Exempt 50.00
Chemistry Laboratory
Feed and Meat
Moisture, 1 sample 15.00
Moisture, 2–5 samples, per sample 10.00
Moisture, over 6 samples, per sample 5.00
Fat, 1 sample 30.00
Fat, 2–5 samples, per sample 25.00
Fat, over 6 samples, per sample 20.00
Fiber, 1 sample 45.00
Fiber, 2–5 samples, per sample 40.00
Fiber, over 6 samples, per sample 35.00
Protein, 1 sample 25.00
Protein, 2–5 samples, per sample 20.00
Protein, over 6 samples, per sample 15.00
NPN, 1 sample 20.00
NPN, 2–5 samples, per sample 15.00
NPN, over 6 samples, per sample 10.00
Ash, 1 sample 15.00
Ash, 2–5 samples, per sample 10.00
Ash, over 6 samples, per sample 5.00
Fertilizer
Nitrogen, 1 sample 25.00
Nitrogen, 2–5 samples, per sample 20.00
Nitrogen, over 6 samples, per sample ... 15.00
P2O5, 1 sample 30.00
P2O5, 2–5 samples, per sample 25.00
P2O5, over 6 samples, per sample 20.00
K2O, 1 sample 25.00
K2O, 2–5 samples, per sample 20.00
K2O, over 6 samples, per sample 15.00
Trace Elements (Atomic Absorption)
Iron 20.00
Copper 20.00
Zinc 20.00
Mn 20.00
Mo 40.00
Trace Elements (In Water)
Iron 10.00
Copper 10.00
Zinc 10.00
Mn 10.00
Mo 10.00
Vitamins
Vitamin A, 1 sample 60.00
Vitamin A, 2–5 samples, per sample 55.00
Vitamin A, over 6 samples, per sample .. 50.00
Vitamin B, 1 sample 60.00
Vitamin B, 2–5 samples, per sample 55.00
Vitamin B, over 6 samples, per sample .. 50.00
Vitamin B2, 1 sample 60.00
Vitamin B2, 2–5 samples, per sample 55.00
Vitamin B2, over 6 samples, per sample . 50.00
Vitamin C, 1 sample 60.00
Vitamin C, 2–5 samples, per sample 55.00
Vitamin C, over 6 samples, per sample .. 50.00
Minerals
Calcium, 1 sample 25.00
Calcium, 2–5 samples, per sample 20.00
Calcium, over 6 samples, per sample 15.00
NaCl, 1 sample 25.00
NaCl, 2–5 samples, per sample 20.00
NaCl, over 6 samples, per sample 15.00
Iodine, 1 sample 25.00
Iodine, 2–5 samples, per sample 20.00
Iodine, over 6 samples, per sample 15.00
Drugs and Antibiotics
Sulfamethazine Screen, 1 sample 25.00
Sulfamethazine Screen, 2–5 samples,
per sample 20.00
Sulfamethazine Screen, over 6 samples,
per sample 15.00
Aflatoxin–Elisamethod, 1 sample 25.00
Aflatoxin–Elisamethod, 2–5 samples,
per sample 20.00
Aflatoxin–Elisamethod, over 6 samples,
per sample 15.00
Pesticides/Herbicides
Chlorinated Hydrocarbon Screen,
1 sample 70.00
Chlorinated Hydrocarbon Screen,
2–5 samples, per sample 65.00
Chlorinated Hydrocarbon Screen,
over 6 samples, per sample 60.00

Organo Phosphate Screen, 1 sample .. 70.00
Organo Phosphate Screen, 2–5 samples, per sample 65.00
Organo Phosphate Screen, over 6 samples,
Chlorophenoxy Herbicide Screen per sample 60.00
Reports for the following components:
2–4–D, 1 sample 150.00
2–4–D, 2–5 samples, per sample ... 140.00
2–4–D, over 6 samples, per sample 130.00
2,4,5–T Screen, 1 sample 150.00
2,4,5–T, 2–5 samples, per sample .. 140.00
2,4,5–T, over 6 samples, per sample 130.00
Silvex, 1 sample 150.00
Silvex, 2–5 samples, per sample ... 140.00
Silvex, over 6 samples, per sample . 130.00
Individual components from screens:
1 sample 75.00
2–5 samples, per sample 70.00
over 6 samples, per sample 65.00
Certification Fee – Milk Laboratory .....
Evaluation Program
Basic Lab Fee 50.00
Number of Certified Analyst (3 x $10.00) 30.00
Number of Approved Test (3 x $10.00) ... 10.00
Total Yearly Assessed Fee 90.00
Standard Plate count 5.00
Coliform Count 5.00
Test for Inhibitory Substances (antibiotics) 5.00
Phosphatase Test 15.00
WMT Screening Test 5.00
DMSCC (Confirmation) 10.00
DSCC (Foss Instrumentation) 5.00
Coliform Confirmation 5.00
Container Rinse Test 10.00
H2O Coli Total Count (MF Filtration) 5.00
H2O Coli Confirmation Test 5.00
Butterfat % (Babcock Method) 10.00
Added H2O in Raw Milk (Cryoscope Instr) 5.00
Reactivated Phosphatase Confirmation . 15.00
Antibiotic Confirmation Tests 10.00
All Other Services, per hour 30.00

Animal Health

Feed Garbage to Swine 25.00
Hatchery
Hatchery Operation (Poultry) 25.00
Health Certificate Book 8.00
Coggins testing 4.00
Service fee
(Dog food and Brine shrimp, misc.), per day 200.00
Service fee
(Dog food and Brine shrimp, misc.), per mile 0.27

Agriculture Inspection

Shipping Point
Fruit
Less than 12 lb. packages, per package . 0.02
12 to 19 lb. package, per package 0.02
20 to 29 lb. package, per package 0.025
over 29 lb. package, per package 0.03
Bulk load, per cwt. 0.045
Vegetables
Potatoes, per cwt. 0.055
Onions, per cwt. 0.06
Other vegetables
Less than 60 lb. package, per package 0.035
over 60 lb. package, per package 0.045
Phytosanitary Inspection, per inspection . 25.00
Minimum charge per certificate for one commodity 18.00
Minimum charge per commodity for mixed loads, (not to exceed $45.00 per mixed load) .. 18.00
Hourly charge for inspection of raw products at processing plants 18.00
Hourly charge for inspection during irregular working hours, plus regular fee 27.00
All inspections shall include mileage which will be charged according to the current mileage rate of the State of Utah.
Nursery
Nursery 50.00
Nursery Agent 10.00
Nursery Outlet 50.00
Feed
Commercial Feed 25.00
Custom Formula Permit 50.00
Pesticide
Commercial Applicator 15.00
Product Registration 50.00
Pesticide Dealer 15.00
Fertilizer
Blenders License 50.00
Annual Assessment, per ton 0.15
Fertilizer Registration 25.00
Beekeepers
License 10.00
Survey and Detection for Varroa Mites Beekeepers, per colony 4.00
Inspection fee, per hour 30.00
Travel, per mile 0.24
Salvage Wax Registration fee 10.00
Control Atmosphere 10.00
Seed Purity
Flowers 10.00
Grains 6.00
Grasses 15.00
Legumes 6.00
Trees and Shrubs 10.00
Vegetables 6.00
Seed Germination
Flowers 10.00
Grains 6.00
Grasses 10.00
Legumes 6.00
Trees and Shrubs 10.00
Vegetables 6.00
Seed Tetrazolium Test
Flowers 20.00
Grains 12.00
Grasses 20.00
Legumes 15.00
Trees and Shrubs 20.00
Vegetables 12.00
Embryo Analysis (Loose Smut Test) 1.00
Cutting Test 8.00
Mill Check ..... Hourly Charge
Examination of Extra Quality for Other Crop or Weed Seed ..... Hourly Charge
Examination for Noxious Weeds Only ... Hourly Charge
Identification ..... No Charge

Hourly Charges 11.00
Additional Copies of Analysis Reports 1.00
Hourly charge for any other inspection service performed on an hourly basis (one hour minimum) 18.00

Mixtures will be charged based on the sum for each individual kind in excess of 5 percent.

Samples which require excessive time, screenings, or are lowgrade, dirty, or unusually difficult will be charged at the hourly rate.

Charges for tests or kinds of seeds not listed will be determined by the Seed Laboratory.

Hourly charges may be made on seed treated with "Highly Toxic Substances" if special handling is necessary for the Analyst's safety.

Discount germination service intended for carry over seed. This is a non-priority service ideal for checking inventories from May through August. The discount service is available during the rest of the year, but delays in testing may result due to high test volume of priority samples. Ten (10) or more samples receive 50 percent discount off normal germination fees.

Food and Dairy Compliance

Bedding/Upholstered Furniture
- Manufacturers of bedding and/or upholstered furniture 55.00
- Wholesale Dealer 55.00
- Supply Dealer 55.00
- Manufacturers of Quilted Clothing 55.00
- Upholsterer with employees 40.00
- Upholsterer without employees 25.00

Dairy
- Test milk for payment 25.00
- Operate milk manufacturing plant 50.00
- Make butter 25.00
- Haul farm bulk milk 25.00
- Make cheese 25.00
- Operate a pasteurizer 25.00
- Operate a milk processing plant 50.00

Special Inspection Fees
- Food and Dairy Inspection fee, per hour . 26.50
- Food and Dairy Inspection fee, overtime rate 34.40
- Certificate of Inspection 10.00

Weights and Measures

Weighing and measuring devices/ individual servicemen 10.00
Weighing and measuring devices/ agency 50.00
Special Scale Inspections
- Large Capacity Truck
  - Per man hour 20.00
  - Per mile 1.50
  - Per hour equipment use 25.00
- Pickup truck
  - Per man hour 20.00
  - Per mile 0.75
  - Per hour equipment use 15.00

Overnight Trip ..... Per Diem and ..... cost of Motel
Petroleum Refinery Fee
- Gasoline
  - Octane Rating 120.00
  - Benzene Level in Gasoline 80.00
  - Pensky-Martens Flash Point 20.00

Overtime charges, per hour 30.00
Metrology services, per hour 22.00
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 40

To Department of Agriculture - Agriculture Marketing and Development
From General Fund 897,300
From General Fund Restricted - Rural Rehabilitation Account 11,500
From General Fund Restricted - Agriculture Resource Development Loan Fund 147,000
From Federal Funds 8,000
From Beginning Non-Lapsing 3,700
Schedule of Programs:
- Administration 127,400
- Resource Conservation and Development 70,900
- Marketing and Promotion 176,200
- Market News 60,800
- Public Affairs 104,700
- USDA Statistical 8,000
- Research 171,000
- Loan Fund 190,000
- Agriculture Loan Program 158,500

It is the intent of the Legislature that funding approved for Soil Conservation District elections be considered non-lapsing and be spent only during even-numbered years when the elections take place.

It is the intent of the Legislature that $15,000 of the Research funding be utilized for cooperative research with Utah State University for work in combating the Dyer's Woad noxious weed.

It is the intent of the Legislature that all money made available to agriculture resource development from any source including interest earned be deposited into that account, in accordance to 4-18-6, Utah Code Annotated.

It is the intent of the Legislature that all income including interest earned from the Rural Rehabilitation Account be deposited into that account (reference 4-19-14, Utah Code Annotated.)

The following license, regulation, and certification fees are approved for the Department of Agriculture.

Utah Horse Commission

Owner/Trainer, not to exceed 100.00
Owner, not to exceed 75.00
Organization, not to exceed 75.00
Trainer, not to exceed 75.00
Assistant Trainer, not to exceed 75.00
Jockey, not to exceed 75.00
Jockey Agent, not to exceed 75.00
Veterinarian, not to exceed 75.00
Racing Official, not to exceed 75.00
Racing Organization Manager or Official, not to exceed 75.00

Authorized Agent, not to exceed 75.00
Farrier, not to exceed 75.00
Assistant to the Racing Manager or Official, not to exceed 75.00
Video Operator, not to exceed 75.00
Photo Finish Operator, not to exceed 75.00
Valet, not to exceed 50.00
Jockey Room Attendant or Custodian, not to exceed 50.00
Colors Attendant, not to exceed 50.00
Paddock Attendant, not to exceed 50.00
Pony Rider, not to exceed 50.00
Groom, not to exceed 50.00
Security Guard, not to exceed 50.00
Stable Gate Man, not to exceed 50.00
Security Investigator, not to exceed 50.00
Concessionaire, not to exceed 50.00
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 41
To Department of Agriculture – Brand Inspection
From General Fund 341,200
From General Fund Restricted – Utah Livestock Brand and Anti-theft Fund 439,500
Schedule of Programs:
Brand Inspection 780,700
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Brand Inspection
Farm Custom Slaughter 50.00
Estray Animals ..... varies
Beef Promotion (Cattle only), per head 1.00
Citation, per violation 50.00
Citation, per head 2.00
Brand Inspection (cattle), per head, maximum 0.50
Brand Inspection (horse), per head 0.65
Brand Inspection (sheep), per head 0.05
Brand Book 25.00
Show and Seasonal Permits
Horse 5.00
Cattle 5.00
Lifetime Horse Permit 15.00
Duplicate Lifetime Horse Permit 10.00
Lifetime Transfer Horse Permit 10.00
Brand Recording 50.00
Certified copy of Recording (new Brand Card) 5.00
Minimum charge per certificate (Cattle, Sheep, Hogs, and Horses) 3.00
Brand Transfer 30.00
Brand Renewal (Five Year cycle) 30.00
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 42
To Department of Agriculture – Predatory Animal Control
From General Fund 348,400
From General Fund Restricted – Agricultural and Wildlife Damage Control Account 377,200
From Dedicated Credits 69,200
Schedule of Programs:
Predatory Animal Control 794,800
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 43
To Department of Agriculture – Auction Market Veterinarians
From Dedicated Credits 43,800
Schedule of Programs:
Auction Market Veterinarians 43,800
It is the intent of the Legislature that this item of appropriation be considered non-lapsing.
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 44
To Department of Agriculture – Agriculture Marketing and Development
From General Fund Restricted – Agricultural and Wildlife Damage Control Account 50,000
Schedule of Programs:
Sheep Promotion 50,000
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 45
To Department of Agriculture – Marketing and Development
From General Fund 10,300
Schedule of Programs:
Soil Conservation District ..... Commission 10,300
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 46
To Department of Agriculture – Plant Industry
From Dedicated Credits 342,600

Schedule of Programs:
Grain Inspection 342,600
It is the intent of the Legislature this item of appropriation be considered non-lapsing.
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Grain Inspection
Regular hourly rate 18.00
Overtime hourly rate 27.00
Mileage
Outside Salt Lake City, and Ogden, per mile 0.23
Official Inspection Services
Hopper car, per car or part car 15.00
Boxcar car, per car or part car 11.00
Truck or trailer, per carrier or part carrier 8.00
Submitted sample, per sample 5.75
Reinspection, basis file sample 5.75
Protein test, original or retest 3.75
Protein retest plus sampler hourly fee ... 3.75
Stowage examination services, per certificate 2.00
Additional fee for applicant request analysis3.00
Extra copies of certificates, per copy 1.00
Mailing sample handling charge 1.00
Non-official Services
Class II weighing, per carrier 3.75
Additional fee for determination of DHV percentage in HRW 3.00
Other requests ..... Hourly Rate
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 47
To Department of Agriculture - Agriculture Marketing and Development
From General Fund 109,700
From Federal Funds 39,200
From Dedicated Credits 500,000
Schedule of Programs:
Environmental Quality 648,900
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 48
To Department of Agriculture - Insect Infestation
From General Fund 163,100
Schedule of Programs:
Insect Infestation 163,100
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 49
To Department of Agriculture - Resource Conservation
From General Fund 241,100
From General Fund Restricted - Agriculture Resource Development Loan Fund 80,000
Schedule of Programs:
Resource Conservation 321,100
It is the intent of the Legislature that these funds be used for the expenses, travel reimbursement, and pay of Soil Conservation members and Soil Conservation supervisors as required by statute.
It is the intent of the Legislature that the Soil Conservation Districts submit quarterly reports documenting supervisory expenses to the Legislative Fiscal Analyst, the Office of Planning and Budget, and the Soil Conservation Commission. It is also the intent of the Legislature that these documents are reviewed and reported to the Governor and the 1994 Legislature, together with recommendations for compliance with 17A-3-804.
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 50
To Department of Agriculture
From General Fund 180,000
Schedule of Programs:
Building Operation and Maintenance 180,000

ITEM 51
To Department of Agriculture
From Dedicated Credits/ Intragovernmental Revenue 182,300
From Retained Earnings 43,500
Schedule of Programs:
Data Processing 225,800
Approved FTE Positions - 3
Approved Capital Outlay $31,600
The following license, regulation, and certification fees are approved for the Department of Agriculture.
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy 0.07
Late Fee 5.00

ITEM 52
To Department of Alcoholic Beverage Control
From Liquor Control Fund 9,901,400
Schedule of Programs:
Executive Services 611,200
Administration 627,600
Operations 807,000
Distribution 605,900
Retail Sales 7,249,700

ITEM 53
To Citizens' Council on Alcoholic Beverage Control
From Liquor Control Fund 6,000
Schedule of Programs:
Citizens' Council on Alcoholic Beverage Control 6,000

ITEM 54
To Department of Commerce - General Regulation
From Commerce Service Fund 6,380,900
Schedule of Programs:
Administration 731,000
Occupational and Professional Licensing 2,809,400
Securities 869,700
Consumer Protection 430,200
Corporations 1,008,000
Real Estate 532,600
The following license, regulation, and certification fees are approved for the Department of Commerce.

Occupational and Professional Licensing
Accountant
Individual CPA Application Filing 70.00
Individual License/Certificate Renewal .. 40.00
CPA Firm Application for Registration .. 50.00
CPA Firm Registration Renewal 35.00
Examination Record Fee 30.00
Acupuncture
New Application 100.00
Renewal 75.00
Aesthetician
Individual Application Filing 60.00
Individual License Renewal 30.00
Association Application Filing 50.00
Association License Renewal 35.00
Alternative Dispute Resolution Providers
Application Filing 75.00
License Renewal 50.00
Architect
Application Filing 100.00
License Renewal 35.00
Examination Record Fee 30.00
Athletic Commission
Promoters - Application Filing 100.00
Promoters - License Renewal 100.00
Professional Contestant - Application Filing 25.00
Professional Contestant - License Renewal 25.00
Judges and Referee - Application Filing . 25.00
Judges and Referee - License Renewal .. 25.00
Manager and Second - Application Filing 25.00
Manager and Second - License Renewal . 25.00
Contest Registration Fee 50.00
Promotions ..... 5% of total
Barber/Cosmetologist
Teacher Certificate 40.00
Application Filing 40.00
License Renewal 25.00
School Application Filing 100.00
School License Renewal 25.00
Apprentice Application Filing 25.00
Building Inspector
Initial License - Application Filing 50.00
Initial License - License Renewal 25.00
Cemetery Authority
Application Filing 150.00
License Renewal 100.00
Certified Nurse Midwife
Application Filing 75.00
License Renewal 35.00
Certified Shorthand Reporter
Application Filing 35.00
License Renewal 25.00
Chiropractor
Application Filing 100.00
License Renewal 75.00
Contractor
Primary Application Filing 200.00
Primary License Renewal 100.00
Supplemental Application Filing 100.00
Supplemental License Renewal 75.00
Change Qualifier fees 40.00
Controlled Substance
Application Filing 90.00
License Renewal 50.00
Controlled Substance Precursor
Distributor Application Filing 200.00
Distributor License Renewal 100.00
Purchaser Application Filing 100.00
Purchaser License Renewal 50.00
Dentist
Application Filing 100.00
License Renewal 60.00
Dental Hygienist
Application Filing 40.00
License Renewal 30.00
Dietician
Application Filing 50.00
License Renewal 30.00
Electrician
Application Filing 100.00
License Renewal 75.00
Electrologist
Application Filing 40.00
License Renewal 25.00
Engineer
Professional Engineer - Application Filing 100.00
Professional Engineer - License Renewal 30.00
Structural Engineer - Application Filing 100.00
Structural Engineer - License Renewal .. 30.00
Fundamentals of Engineering Record Fee 30.00
Funeral Services
Director Application Filing 150.00
Director License Renewal 60.00
Apprentice Application Filing 25.00
Apprentice Application Renewal 25.00
Establishment Application Filing 60.00
Establishment License Renewal 60.00
Health Facility Administrator
Application Filing 60.00
License Renewal 30.00
Hearing Aid Specialist
Application Filing 90.00
License Renewal 60.00
Landscape Architects
Application Filing 75.00
License Renewal 50.00
Land Surveyor
Application Filing 100.00
License Renewal 30.00
Fundamentals of Land Surveying Examination

Record Fee 30.00
Marriage and Family Therapist
Application Filing 75.00
License Renewal 55.00
Massage
Technician – Application Filing 75.00
Technician – License Renewal 50.00
Apprentice – Application Filing 50.00
Manufactured Housing
Dealer – Application Filing 15.00
Dealer – License Renewal 15.00
Salesman – Application Filing 15.00
Salesman – License Renewal 15.00
Naturopath
License Renewal 50.00
Nursing
Licensed Practical Nurse (L.P.N.) –
Application Filing 50.00
Licensed Practical Nurse (L.P.N.) –
License Renewal 35.00
Registered Nurse (R.N.) –
Application Filing 50.00
Registered Nurse (R.N.) –
License Renewal 35.00
Advanced Practice R. N. –
Application Filing 50.00
Advanced Practice R.N. – License Renewal 35.00
Prescriptive Authority –
Application Filing 50.00
Prescriptive Authority –
License Renewal 35.00
Occupational Therapist
Occupational Therapist –
Application Filing 60.00
Occupational Therapist –
License Renewal 30.00
Occupational Therapist Assistant –
Application Filing 60.00
Occupational Therapist Assistant –
License Renewal 30.00
Optometrist
Application Filing 100.00
License Renewal 50.00
Osteopath
Application Filing 150.00
License Renewal 100.00
Pharmacy
Pharmacist – New Application 90.00
Pharmacist – License Renewal 60.00
Pharmacy Intern – Application Filing ... 20.00
Pharmacy Intern – License Renewal 15.00
Pharmacy – Application Filing 100.00
Pharmacy – License Renewal 40.00
Pharmaceutical Manufacturer –
Application Filing 100.00
Pharmaceutical Manufacturer –
License Renewal 40.00
Pharmaceutical Wholesaler/Distributor –
Application Filing 100.00
Pharmaceutical Wholesaler/Distributor –
License Renewal 40.00
Veterinary Pharmaceutical Outlet –
Application Filing 100.00
Veterinary Pharmaceutical Outlet –
License Renewal 40.00
Pharmaceutical Researcher –
Application Filing 100.00
Pharmaceutical Researcher –
License Renewal 40.00
Pharmaceutical Dog Trainer –
Application Filing 100.00
Pharmaceutical Dog Trainer –
License Renewal 40.00
Pharmaceutical Teaching Organization –
Application Filing 100.00
Pharmaceutical Teaching Organization –
License Renewal 40.00
Euthanasia Agency – Application Filing 100.00
Euthanasia Agency – License Renewal .. 40.00
Analytical Laboratory –
Application Filing 100.00
Analytical Laboratory – License Renewal 40.00
Physical Therapist
Application Filing 60.00
License Renewal 30.00
Physician/Surgeon
Application Filing 130.00
License Renewal 105.00
Physician Assistant
Application Filing 100.00
License Renewal 50.00
Plumber
Application Filing 100.00
License Renewal 75.00
Podiatrist
Application Filing 70.00
License Renewal 55.00
Private Probation Provider
Application Filing 75.00
License Renewal 50.00
Psychologist
Psychologist – Application Filing 140.00
Psychologist – License Renewal 80.00
Psychologist Assistant –
Application Filing 70.00
Psychologist Assistant –
License Renewal 40.00
Pre–Need Funeral Arrangement
Provider – Application Filing 40.00
Provider – License Renewal 25.00
Sales Agent – Application Filing 30.00
Sales Agent – License Renewal 25.00
Radiology Technologist/Practical Technician
Application Filing 60.00
License Renewal 30.00
Recreational Vehicle Dealer
Application Filing 15.00
License Renewal 15.00
Recreational Therapist
Master/Therapeutic Recreation Specialist –
Application Filing 60.00
Master/Therapeutic Recreation Specialist –
License Renewal 30.00
Therapeutic Technician Specialist –
Application Filing 30.00
Therapeutic Technician Specialist –
License Renewal 25.00
Respiratory Care Practitioner
Application Filing 60.00
License Renewal 30.00
Registered Sanitarian
Application Filing 50.00
License Renewal 30.00
Social Work

Clinical Social Worker –
Application Filing 60.00
Clinical Social Worker –
License Renewal 30.00
Certified Social Worker –
Application Filing 60.00
Certified Social Worker – License Renewal 30.00
Social Service Worker – Application Filing 60.00
Social Service Worker – License Renewal 30.00
Social Service Aide – Application Filing . 30.00
Social Service Aide – License Renewal .. 15.00
Speech Pathologist/Audiologist
Speech Pathologist – New Application .. 60.00
Speech Pathologist – License Renewal .. 30.00
Audiologist – Application Filing 60.00
Audiologist – License Renewal 30.00
Speech Pathologist/Audiologist –
New Application 60.00
Speech Pathologist/Audiologist –
License Renewal 30.00
Veterinarian
Application Filing 90.00
License Renewal 50.00

Securities Division

Securities Registration
Qualification Registration 300.00
Coordinated Registration 500.00
Notification Registration 300.00
Securities Exemption
Notice of Intent to Sell
(Blue Chip Mutual Funds) 500.00
Other Securities Exemptions 60.00
Transactional Exemptions
All Transactional Exemptions 60.00
No-action and Interpretative Opinions .. 120.00
Licensing
Agent 20.00
Broker/Dealer 75.00
Investment Advisor 75.00
Investment Advisor Representative 20.00
Certified Dealer
New and Renewal 500.00

Consumer Protection Division

Charitable Solicitation
Charity, less than $25,000 ..... 100.00
Charity, over $25,000 ..... 100.00
Professional Fund Raiser 150.00
Information Cards 5.00
Telephone Solicitation
Solicitor Registration 50.00

Corporations and Commercial Code

Articles of Incorporation
Profit 50.00
Nonprofit 20.00
Foreign 50.00
Corporate Sole 20.00
Requalification/Reinstatement .....
Profit 35.00
Nonprofit 20.00
Changes of Corporate Status
Amend/Restate/Merge – Profit 35.00
Amend/Restate/Merge – Nonprofit 20.00
Amendment – Foreign 35.00
Annual Report
Profit 15.00
Nonprofit 10.00
Limited Liability Company 15.00
Limited Partnership 15.00
Late Fee 10.00
Nonprofit Tax Return 10.00
Certificate
Corporate Standing – In House 10.00
Corporate Standing – Datashare 5.00
Corporate Standing – Long Form 20.00
Corporation Search
In House 10.00
Limited Partnership
Certificate 50.00
Amend/Restate/Merge 35.00
Reinstate/Requalify 50.00
DBA
Registration 20.00
Trademark
Registration 20.00
Assignments 5.00
Limited Liability Company
Articles of Organization 50.00
Reinstate/Requalify 50.00
Amend/Merge 35.00
Employee Leasing Company
Registration 75.00
Miscellaneous Transactions
Summons 10.00
Collection Agency Bond 30.00
Foreign Name Registration 20.00
Statements 10.00
Corporation Name Reservation 20.00
Telecopier Transmittal 5.00
Telecopier Transmittal (per page) 1.00
Commercial Code Lien Filings
Initial – Per Name without I.D. Number . 10.00
Initial – Per Name with I.D. Number 5.00
Attachment pages, per page 1.00
Assignment/Amendment –
Per Name without I.D. Number 10.00
Assignment/Amendment –
Per Name with I.D. Number 5.00
CFS – 1 ..... 10.00
CFS – 3 ..... 10.00
CFS – 2 ..... 5.00
Lien Search
File Found 10.00
Negative 10.00
DataShare – Individual 2.00
DataShare – UCC Information 5.00
Notary
Bond and Certificate 15.00
Bond Rider 5.00
Certificate 5.00
Same Day Service 25.00
DataShare
Base fee (per month) 10.00
Usage fee (per minute) 0.10

Real Estate Division

Broker/Sales Agent
New Application 100.00
Renewals 75.00
Appraisers
Application 200.00
Renewal 200.00
Temporary Permit 100.00
Miscellaneous
Activation 15.00
New Company 25.00

Branch Office 25.00
Service Fees
Duplicate License 10.00
Certifications/Histories 10.00
All Commerce Divisions
Photocopies (per copy) 0.30
Booklets ..... cost or 5.00
List of Licensees ..... cost or 25.00
Verification (per copy) 0.30
Returned Check Charge 15.00
Temporary Permits
3 months 20.00
6 months 20.00
Late Renewal Fee 10.00
License/Registration Reinstatement 50.00
Duplicate License 10.00
License/Registration Certificate 10.00
Priority Processing Fee 75.00

(This fee, as well as the License/Registration Reinstatement fee, is in addition to the regular filing fee.)

No fee charged and collected by the Department will be refunded for failure to qualify or voluntary or involuntary withdrawal of application or request for service.

Overpayments in excess of $10.00 will be automatically refunded. Smaller overpayments refunded only upon written request. All applicants seeking a license by reciprocity shall pay the same application fee.

ITEM 55
To Department of Commerce – Real Estate Education
From Real Estate Education, Research and Recovery Fund 106,400
Schedule of Programs:
Real Estate Education 106,400

The following license, regulation, and certification fees are approved for the Department of Commerce.

Photocopies (per copy) 0.30
Booklets ..... cost or 5.00
List of Licensees ..... cost or 25.00
Verification (per copy) 0.30
Returned Check Charge 15.00
Temporary Permits
3 months 20.00
6 months 20.00
Late Renewal Fee 10.00
License/Registration Reinstatement 50.00
Duplicate License 10.00
License/Registration Certificate 10.00
Priority Application Processing Fee 75.00

(This fee, as well as the License/Registration Reinstatement fee, is in addition to the regular filing fee.)

No fee charged and collected by the Department will be refunded for failure to qualify or voluntary or involuntary withdrawal of application or request for service.

Overpayments in excess of $10.00 will be automatically refunded. Smaller overpayments refunded only upon written request. All applicants seeking a license by reciprocity shall pay the same application fee.

ITEM 56
To Department of Commerce –
From Commerce Service Fund 141,400
From Real Estate Education, Research and Recovery Fund 2,000
Schedule of Programs:
Building Operations and Maintenance 143,400

ITEM 57
To Department of Employment Security
From Employment Security Trust Fund 31,872,600
Schedule of Programs:
Unemployment Insurance .....
Compensation 14,519,000
Employment Service 16,340,100
Labor Market Information 1,013,500

ITEM 58
To Department of Environmental Quality
From General Fund 6,830,600
From Federal Funds 21,757,500
From Dedicated Credits 4,888,600
From Petroleum Storage Tank Fund .. 1,782,000
From Water Security Development Account – Water Pollution 60,300
From Water Security Development Account – Drinking Water 30,400
From Underground Storage Tank Account 40,000
Schedule of Programs:
Director's Office 2,319,100
Air Quality 5,629,500
Environmental Response/Remediation 13,351,800
Radiation Control 1,053,600
Water Quality 9,687,000
Drinking Water 1,788,600
Solid Waste 540,200
Office Maintenance/Lease 1,019,600

It is the intent of the Legislature that if hazardous waste fees in excess of $1,688,000 are received during FY 1993, up to $120,000 of supplemental money allocated to the Department of Environmental Quality to cover costs of operating the hazardous waste program will be carried over to FY 1994 to cover the cost for up to 20 Department of Environ– mental Quality employees to vacate the Cannon Health Building to facilitate space needs for the increase in employees in the Department of Health. The following license, regulation, and certification fees are approved for the Department of Environmental Quality.

All Divisions
Request for copies over 10 pages, per page 0.25
Copies made by the requestor, per page 0.05
Division of Air Quality
Utah Air Conservation Rules 7.00
Utah State Implementation Plan 15.00
Salt Lake City Appendix Only 8.00
Utah County Appendix Only 4.00
Utah Air Conservation Act 5.00
Notice of Intent Instru.–A Methodology, per copy 5.00
Air Emissions Fees, per ton 12.50
Major and Minor Source Compliance

Inspection ..... Actual + 7%
Visible Emissions Evaluation Course
Full Course 50.00
Recertification 25.00
Certification for Vapor Tightness
Tester 300.00
Asbestos Regulations Packet, per copy 5.00
Specialized Computer Generated
Information, per hour 50.00
Asbestos Certification and Asbestos Reviews
Employee Testing and Certification
Initial Year 50.00
Following Years 50.00
Contractor Testing and Certification
Initial Year 150.00
Following Years 75.00
Notification Review 100.00
Sample Certification 50.00
Permit Category
New major source or major modification–
non–attainment area ..... 22,500.00 +
added cost, per hour 50.00
New major source or major modification–
attainment area ..... 15,000.00 +
added cost, per hour 50.00
New minor source or minor modification–
non–attainment area ..... 1,500.00 +
added cost, per hour 50.00
New minor source or minor modification–
attainment area ..... 750.00 +
added cost, per hour 50.00
Division of Environmental Response and Remediation
CERCLIS List 15.00
UST Facility List 25.00
with postage 28.00
LUST Facility List 25.00
with postage 28.00
Toxics Inventory Annual Report
Hard copy 30.00
Computer disk 30.00
Community Right to Know Data Reports,
per hour 50.00
Technical Review of Site Investigation,
per hour 50.00
Review/Oversight of Remedial Action
Investigations, per hour 50.00
Review/Oversight of Feasibility Studies of
Remedial Action, per hour 50.00
Review of Remedial Activities Submitted for
approval, per hour 50.00
Annual Underground Storage Tank (UST) Fee
Tanks with Certificate of Compliance ... 60.00
Tanks without Certificate of Compliance 135.00
Oversight for tanks failing to pay UST fee,
per hour 50.00
PST Quarterly Processing Fee, per facility 10.00
UST Compliance Follow–up Inspection,
per hour 50.00
PST Reapplication Fee for lapsed or revoked
Certificates of Compliance 150.00
Apportionment of Liability requested by
responsible parties, per hour 50.00
Certification or Certification renewal for
UST Installers, Removers and Groundwater
and Soil Samplers and non–government UST
Inspectors and Testers 150.00
Specialized computer generated information,
per hour 50.00
Log in and processing time to access
UST database, per minute 5.00
Digital information in diskette format,
per diskette 300.00
Division of Radiation Control
Utah Radiation Control Rules, complete set 12.00
Utah Radiation Control Rules, partial set
Machine Generated Radiation 8.00
Utah Radiation Control Rules, partial set
Radioactive Materials 8.00
Machine Generated Radiation
Hospital/Clinic
Annual Registration Fee, per control unit
and first tube, plus annual fee for
each additional tube connected to
the control unit 10.00
Report Processing for non–Division
inspection data, per tube 15.00
Division Conducted Inspection,
per tube 115.00
Medical/Chiropractic/
Industrial/Educational/Other
Annual Registration Fee, per control unit
and first tube, plus annual fee for
each additional tube connected to
the control unit 10.00
Division Conducted Inspection,
per tube 105.00
Podiatry/Veterinary
Annual Registration Fee, per control unit
and first tube, plus annual fee for
each additional tube connected to
the control unit 10.00
Division Conducted Inspection,
per tube 75.00
Dental
Annual Registration Fee, per control unit
and first tube, plus annual fee for
each additional tube connected to
the control unit 10.00
Division Conducted Inspection, per tube
First tube on a single machine 45.00
Additional tubes 12.50
Healing Arts Screening, Mammography
Application 150.00
Comprehensive Evaluation of Machine,
per machine 200.00
Radioactive Material
Special Nuclear Material
Possession and use of special nuclear
material in sealed sources contained
in devices used in industrial measuring
systems, and neutron generators
Application/New license 220.00
Annual fee 185.00
Possession and use of less than 15 g
special nuclear material for research
and development
Application/New license 365.00
Annual fee 185.00
All other special nuclear material licenses
Application/New license 575.00
Annual fee 400.00
Special nuclear material to be used as
calibration and reference sources

Application/New license 90.00
Annual fee 60.00
Source Material
Licenses for concentrations of uranium from other areas (i.e. copper, phosphates, etc.) for the production of uranium yellow cake (moist, solid)
Application/New license 2,755.00
Annual fee 1,055.00
All other source material licenses
Application/New license 255.00
Annual fee 205.00
Radioactive Material other than Source Material and Special Nuclear Material
Licenses for possession and use of or manufacturing of items containing radioactive material for commercial distribution
Application/New license 835.00
Annual fee 510.00
Licenses authorizing the processing or manufacture and distribution of radiopharmaceuticals
Application/New license 350.00
Annual fee 265.00
Licenses for industrial radiography operations performed in shielded radiography installations or permanently designed areas at the address(es) listed in the license
Application/New license 350.00
Annual fee 280.00
Licenses for industrial radiography operations performed in shielded radiography installations and at multiple temporary locations at the address(es) shown in the license or at temporary job sites of the licensee in the field
Application/New license 835.00
Annual fee 640.00
Licenses for possession and use of sealed sources for irradiation of materials where the source is not removed from its shield (shelf-shielded units)
Application/New license 350.00
Annual fee 235.00
Licenses for possession and use of sealed sources for irradiation of materials where the source is exposed for irradiation purposes
Application/New license 835.00
Annual fee 435.00
Licenses to distribute items containing radioactive material or quantities of radioactive material to generally licensed persons
Application/New license 350.00
Annual fee 145.00
Licenses to distribute items containing radioactive material to persons exempt from the licensing requirements of URC-21
Application/New license 350.00
Annual fee 145.00
Licenses issued pursuant to URC-22 to distribute quantities of radioactive material to persons exempt from the licensing requirements of URC-21
Application/New license 350.00
Annual fee 145.00
Licenses to distribute time-pieces and parts containing hydrogen-3 or promethium-147 to persons exempt from the licensing requirements of URC-21
Application/New license 350.00
Annual fee 145.00
Licenses for possession and use of radioactive material for research and development, except those licenses authorizing medical research
Application/New license 350.00
Annual fee 235.00
All other specific radioactive material licenses
Application/New license 220.00
Annual fee 130.00
Licenses of a broad scope: Academic, medical, industrial research and development, and Nuclear Pharmacy
Application/New license 1,160.00
Annual fee 740.00
Licenses for installation, removals, relocations, repairs, and packaging of gauging devices, leak testing of sealed sources, calibration of radiation survey instruments, performance of radiation surveys
Application/New license 160.00
Annual fee 105.00
License for leak test only
Application/New license 75.00
Annual fee 40.00
Radioactive Waste Disposal
License specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee
Application 72,500.00
New/Renewal License ..... Actual cost + ... 7% up to 362,500.00
Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material
Application/New license 1,595.00
Annual fee 690.00
Licenses specifically authorizing the receipt of prepackaged waste radioactive material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material
Application/New license 350.00
Annual fee 275.00
Licenses authorizing packing of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material
Application/New license 220.00
Annual fee 130.00
Well Logging, Well Surveys, and Tracer Studies
Licenses for possession and use of radio-

active material for well logging, well surveys, and tracer studies
Application/New license 835.00
Annual fee 525.00
Nuclear Laundries
Licenses for commercial collection and laundry of items contaminated with radioactive material
Application/New license 835.00
Annual fee 595.00
Human Use of Radioactive Material
Licenses for human use of radioactive material in sealed sources contained in teletherapy devices
Application/New license 545.00
Annual fee 320.00
Licenses issued to medical institutions, or two or more physicians on a single license, for human use of radioactive material
Application/New license 350.00
Annual fee 275.00
Licenses issued to an individual physician for human use of radioactive material
Application/New license 350.00
Annual fee 275.00
Licenses issued to medical institutions for the implantation of heart pacemakers
Application/New license 220.00
Annual fee 110.00
Licenses issued to private practice physician(s) for use of Strontium 90 eye applications in an office
Application/New license 220.00
Annual fee 110.00
Civil Defense
Licenses for possession and use of radioactive material for civil defense activities
Application/New license 350.00
Annual fee 95.00
Device, Product or Sealed Source Safety Evaluations
Safety evaluations of devices or products containing radioactive material except devices or products distributed to general licensees or persons exempt from the requirements for a license
Application/Evaluation 1,015.00
Safety evaluations of sealed sources containing radioactive material except sealed sources distributed to general licensees or persons exempt from the requirements for a license
Application/Evaluation 365.00
Power Source
Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power.
Application/New license 2,755.00
Annual fee 630.00
General License
Measuring, gauging and control devices per certificate of registration 50.00
In Vivo Testing per certificate of registration 50.00
In Vitro Testing per certificate of registration 50.00
Depleted Uranium per certificate of registration 50.00
Charge for late payment of fees, for all fees, per 30 days late 25.00
Specialized computer generated information, per hour 50.00
Reciprocity fee ..... Full Annual for ..... Specific Category of ..... User Listed Above

Division of Water Quality

Water Quality Regulations
Complete set, loose leaf binder 35.00
Water Quality Regulations
R317-1, 2, 5, 6, 7; R317-4, 10 and 100 .... 2.00
Water Quality Regulations, R317-3 ..... 10.00
Water Quality Regulations, R317-8 ..... 7.00
305(b) Water Quality Report 10.00
319 Nonpoint Source Assessment Report ... 5.00
Operator Certification
Certification of Examination 20.00
Renewal of Certificate 10.00
Renewal of Lapsed Certificate 20.00
Certification by reciprocity with another state 10.00
Water Quality Data Requests
Computer Access Fee 25.00
Computer Operator Fee, per hour (minimum charge $25.00) 50.00
Individual Site/Each Year 1.00
UPDES Permits
Cement Manufacturing
Major 3,600.00
Minor 900.00
Coal Mining and Preparation
General Permit 1,800.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Major 5,400.00
Individual Minor 3,600.00
Concentrated Animal Feeding Operations
General Permit 450.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Permit 1,800.00
Construction Dewatering/Hydrostatic Testing
General Permit ..... 270.00 or ..... 50.00 min.
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Permit, per hour 50.00
Dairy Products
Major 3,600.00
Minor 1,800.00
Electric
Major 4,500.00
Minor 1,800.00
Fish Hatcheries
General Permit 270.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Permit 1,800.00

Food and Kindred Products
Major 4,500.00
Minor 1,800.00
Hazardous Waste Clean-up Sites ... 10,800.00
Geothermal
Major 3,600.00
Minor 1,800.00
Inorganic Chemicals
Major 5,400.00
Minor 2,700.00
Iron and Steel Manufacturing
Major 10,800.00
Minor 2,700.00
LUST Cleanup
General Permit 1,800.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Permit 3,600.00
Meat Products
Major 5,400.00
Minor 1,800.00
Metal Finishing and Products
Major 5,400.00
Minor 2,700.00
Mineral Mining and Processing
Sand and Gravel 450.00
Salt Extraction 450.00
Other Majors 3,600.00
Other Minors 1,800.00
Manufacturing
Major 7,200.00
Minor 2,700.00
Oil and Gas Extraction
flow rate < = 0.5MGD 1,800.00
flow rate > 0.5 MGD 2,700.00
Ore Mining
Major 5,400.00
Minor 2,700.00
Major w/ Conc, Process 10,800.00
Organic Chemicals Manufacturing
Major 9,000.00
Minor 2,700.00
Petroleum Refining
Major 7,200.00
Minor 2,700.00
Pharmaceutical Preparations
Major 7,200.00
Minor 2,700.00
Rubber and Plastic Products
Major 4,500.00
Minor 2,700.00
Space Propulsion
Major 9,000.00
Minor 2,700.00
Steam and/or Power Electric Plants
Major 3,600.00
Minor 1,800.00
Water Treatment Plants
(Except Political Subdivisions)
General Permit 270.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual Permit 900.00
Non-contact Cooling Water
Flow rate <= 10,000 gpd 270.00
10,000 gpd < Flow rate
<= 100,000 gpd 270.00-900.00
100,000 gpd < Flow
rate <= 1.0 MGD 900.00-1800.00
Flow rate > 1.0 MGD 2,000.00
Note: Fee amount will be prorated based on flow rate.
Stormwater (Except Political
Subdivisions) 3,600.00
General Permit 270.00
Fees for general permits will be prorated based on remaining life of the 5-year permit.
Individual, per hour 50.00
Industrial users 2,700.00
Total Containment (Except Political
Subdivisions) 270.00
Permit Modification
(Except Political Subdivisions), per hour 50.00
Complex Facilities where the anticipated permit issuance costs will exceed the above categorical fees by 25 percent, per hour. (Permittee to be notified upon receipt of application). 50.00
Groundwater Discharge
Large Underground Sewage Disposal Systems
(Except Political Subdivisions) 1,800.00
Domestic Wastewater Impoundments
(Except Political Subdivisions) 3,600.00
Solid Waste Disposal Facilities, including Radioactive Wastes
(Except Political Subdivisions) 7,200.00
Mines
Surface Impoundments 3,600.00
Tailings Piles or Ponds 7,200.00
Leaching Operations 9,000.00
Discharge to Intermittent Streams . 3,600.00
Industrial Wastewater Discharges
Surface Impoundments 7,200.00
Discharge to Intermittent Streams
in conjunction with UPDES permit . 3,600.00
Land application, per hour 50.00
Underground Injection Wells
Class I Wells (Non-hazardous) ... 10,800.00
Class I Wells (Hazardous) 15,800.00
Class III Wells 7,200.00
Class V Wells 3,600.00
Other Discharging Facilities, per hour ... 50.00
Permit Modifications
(Except Political Subdivisions),
per hour 50.00
Complex Facilities where the anticipated permit issuance costs will exceed the above categorical fees by 25 percent, per hour. (Permittee to be notified upon receipt of application). 50.00
Construction Permits
Filing Fee to be applied against Permit Fee
(Except Political Subdivisions) 100.00
Review and Processing Fee, per hour
(Except Political Subdivisions) 50.00
Oversight of Construction Activities,
per hour 50.00
Water Quality Cleanup Activities
Corrective Action, Site Investigation/
Remediation, per hour 50.00
Analytical oversight ..... Actual
Administration of Consent Orders and
Agreements, per hour 50.00
Loan Administration Fees, per hour 50.00

In lieu of fees for UPDES through Loan Administration (see preceding pages), the applicant or responsible party may voluntarily make advance payment for more than the established fee to facilitate oversight activities or permit issuance.
Division of Drinking Water
Safe Drinking Water Regulations
Bound 7.00
Loose Leaf 15.00
Part I 3.00
Part II 4.00
Cross Connection Surveys ..... Actual ..... Cost + 7%
Special Surveys ..... Actual ..... Cost + 7%
File Searches ..... Actual ..... Cost + 7%
Particle Counter Rental, including set up and instruction ..... Actual ..... Cost + 7%
Fluorometer Dye Studies ..... Actual ..... Cost + 7%
Specialized Computer Runs, per hour ... 50.00
Plan Review Filing Charge (for new systems, subdivisions, and public utilities) 150.00
Well Sealing Inspection ..... Actual ..... Cost + 7%
Special Consulting/Technical Assistance, per hour 50.00
Operator Certification Program Fees
Record application fee (one time only) ... 20.00
Examination fee (any level) 50.00
Renewal of certification (every 3 years if applied for during designated period) .. 50.00
Reinstatement of lapsed certificate 75.00
Certificate of reciprocity with another state 50.00
Conversion Fee (Specialist to Operator–Operator to Specialist) 20.00
Cross Connection Control Program
Record application fee (one time only) ... 10.00
Examination fee 25.00
Certification fee 75.00
Renewal fee
Class I 75.00
Class II 100.00
Class III 100.00
All fees will be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.
Financial Assistance Program fees
Application processing ..... Actual ..... Cost + 7%
Construction Inspection ..... Actual ..... Cost + 7%
Division of Solid and Hazardous Waste
Utah Hazardous Waste Management Regulations 30.00
RCRA Facility List 7.50
Specialized computer runs, per hour 50.00
Solid and Hazardous Waste Program Administration
Site Investigation and Site Remediation, per hour 50.00
Review of Plans and Plan Modifications, per hour 50.00
Review and Oversight of:
Consent Orders and Agreements and their related compliance activities, per hour 50.00
Construction Activities, per hour 50.00
Solid Waste Permit Filing Fees
Commercial Facility 1,000.00
Private (On-Site) Facility 750.00
Incinerators
Commercial 5,000.00
Industrial or Private 1,000.00
Plan Renewals and Plan Modifications . 100.00
Daily Cover Variances 500.00

ITEM 59
To Department of Environmental Quality
From General Fund 875,000
From Federal Funds 716,800
From Dedicated Credits 2,431,100
Schedule of Programs:
Hazardous Waste 4,022,900
The following license, regulation, and certification fees are approved for the Department of Environmental Quality.
Request for copies over 10 pages, per page 0.25
Copies made by the requestor, per page 0.05
Utah Hazardous Waste Management Regulations 30.00
RCRA Facility List 7.50
Specialized computer runs, per hour 50.00
Solid and Hazardous Waste Program Administration
Site Investigation and Site Remediation, per hour 50.00
Review of Plans and Plan Modifications, per hour 50.00
Review and Oversight of:
Consent Orders and Agreements and their related compliance activities, per hour 50.00
Construction Activities, per hour 50.00
Solid Waste Permit Filing Fees
Commercial Facility 1,000.00
Private (On-Site) Facility 750.00
Incinerators
Commercial 5,000.00
Industrial or Private 1,000.00
Plan Renewals and Plan Modifications . 100.00
Daily Cover Variances 500.00

ITEM 60
To Department of Financial Institutions
From General Fund Restricted – Financial Institutions Account 1,880,200
Schedule of Programs:
Administration 1,880,200

ITEM 61
To Department of Financial Institutions
From General Fund Restricted – Financial Institutions Account 70,000
Schedule of Programs:
Office Lease 70,000

ITEM 62
To Industrial Commission

From General Fund 2,812,700
From Federal Funds 1,385,700
From Dedicated Credits 91,100
From Employers' Reinsurance Fund 138,400
From Uninsured Employers' Trust Fund 211,200
Schedule of Programs:
Administration 860,000
Industrial Accidents 767,400
Adjudication 365,500
Safety 527,200
Labor 180,300
Anti-Discrimination 361,800
Utah Occupational Safety and Health 1,576,900
The following license, regulation, and certification fees are approved for the Industrial Commission.
Industrial Accidents
Certificate to Self-Insure for Workers' Compensation 900.00
Certificate to Self-Insure for Workers' Compensation Renewal 500.00
Safety
Boiler and Pressure Vessel Inspection
Original Examination for Certificate of Competency 100.00
Renewal of Certificate of Competency ... 20.00
Owner-User Inspection Agency Certification 250.00
Boilers to 500 square feet heating surface 50.00
Boilers from 501 to 2500 square feet heating surface 100.00
Boilers over 2500 square feet heating surface 110.00
Replacement Boiler Certificate 15.00
Consultation, witness, special inspection, etc. (per hour) 60.00
Boiler Inspection and Certification by Deputy Inspectors 40.00
Pressure Vessel Inspection 25.00
Pressure Vessel Inspection by Owner-User
25 or less on single statement (per vessel) 5.00
26 through 100 on single statement (per statement) 100.00
101 through 500 on single statement (per statement) 200.00
over 500 on single statement (per statement) 400.00
Elevator Inspection
Existing Elevators
Hydraulic 75.00
Electric 75.00
Dumbwaiters 75.00
Handicapped 75.00
Other Elevators 75.00
Replacement Elevator Certificate 15.00
New Elevators
Hydraulic 300.00
Electric 700.00
Dumbwaiters 200.00
Handicapped 200.00
Other Elevators 200.00
Consultation and Review (per hour) ... 60.00
Coal Mine Certifications
Mine Foreman 50.00
Assistant Mine Foreman 50.00
Temporary Mine Foreman 35.00
Fire Boss 50.00
Shot Firer 50.00
Surface Foreman 50.00
Temporary Surface Foreman 35.00
Hard Rock Foreman 50.00
Temporary Hard Rock Foreman 35.00
Electrician underground low volt 50.00
Electrician underground high volt 50.00
Electrician surface low volt 50.00
Electrician surface high volt 50.00
Annual Electrical Recertification 25.00
Hoistman 25.00
Motorman 25.00
Certification Retest (per section) 10.00
Hydrocarbon Mine Certifications
Gilsonite mine foreman 50.00
Temporary Gilsonite mine foreman 35.00
Gilsonite shot firer 50.00
Oil Shale mine foreman 50.00
Temporary Oil Shale mine foreman 35.00
Oil Shale shot firer 50.00
Oil Shale surface foreman 50.00
Temporary Oil Shale surface foreman ... 35.00
Electrician underground low volt 50.00
Electrician underground high volt 50.00
Electrician surface low volt 50.00
Electrician surface high volt 50.00
Annual Electrical Recertification 25.00
Hoistman 25.00
Motorman 25.00
Certification Retest (per section) 10.00
Hard Rock Mine Certification
Hard rock mine foreman 50.00
Temporary hard rock mine foreman 35.00
Hard rock surface foreman 50.00
Temporary hard rock surface foreman ... 35.00
Shot firer 50.00
Electrician underground low volt 50.00
Electrician underground high volt 50.00
Electrician surface low volt 50.00
Electrician surface high volt 50.00
Annual Electrical Recertification 25.00
Hoistman 25.00
Motorman 25.00
Certification Retest (per section) 10.00

ITEM 63
To Industrial Commission
From General Fund 99,600
Schedule of Programs:
Building Operation and Maintenance 99,600

ITEM 64
To Insurance Department
From General Fund 2,558,100
Schedule of Programs:
Administration 2,558,100
The following license, regulation, and certification fees are approved for the Insurance Department.
Administration
Financial Examination
Initial Certificate of Authority (Foreign and Domestic) 500.00
Continuation of Certificate of Authority (annual) 50.00

Reinstatement of Certificate of Authority 500.00
Redomestication Filing 750.00
Filing of Amended
Certificate of Authority 100.00
Filing of Amendments to Articles of
Incorporation, Charter, or Bylaws 25.00
Filing Annual Statement and report of
Utah business 250.00
Application for merger, acquisition of
change of control (Form A) 1,500.00
Application for Material Transactions
between affiliated companies (Form B) 25.00
Application for Stock Solicitation Permit
Public offering, but not a SEC filing . 1,000.00
Private placement and/or SEC filing . 250.00
Individual License to solicit in accordance
with the Stock Solicitation Permit 50.00
Filing Annual Statement and Renewal of
Fraternals 50.00
Organizational Permit for
Mutual Insurer 500.00
Rates and Forms
Filing of Registered Agent 10.00
Risk Retention Group Annual
Statement Filing 250.00
Initial Rate Service Organization License 250.00
Surplus Lines Annual Statement Filing 250.00
Annual Renewal of Rate Service Organization
License 50.00
Filing policy forms, rates, rules, and related
documents, each 15.00
Licensing
Third Party Administrator License, or renewal,
per year, or fraction thereof, each 20.00
Organization License, resident or non-resident,
or renewal, per two-year period or fraction
thereof (Includes the first 20 or any number
up to 20 listed designees on such license) 30.00
Resident Agent's License, or renewal,
per two-year period, or fraction thereof 30.00
Nonresident Agent's License, or renewal,
per two-year period, or fraction thereof 30.00
Consultant's License, resident or nonresident,
or renewal, per two-year period, or
fraction thereof, each 40.00
Broker's License, resident or nonresident, or
renewal, per two-year period, or
fraction thereof, each 40.00
Adjuster's license, or renewal, per two-year
period or fraction thereof, each 40.00
Surplus line broker's license, or renewal,
per year or fraction thereof, each 20.00
Managing General Agent License, or renewal, per
two-year period or fraction thereof, each 40.00
Amendment to Organization License or for each
designee added to an Organization
License 12.00
Termination of designee from an organization
license 5.00
Appointment Certificate of agent or renewal, per
two-year period or fraction thereof, each 12.00
Termination of agent's Certificate of
Appointment 5.00
Authorization to appoint and
remove agents 10.00
Issuance of duplicate License/Code changes
in existing license 10.00
Filing Certificate of Examination administered
by schools, universities, or associations,
per individual 10.00
Examination for License when administered by
Insurance Department (for any one
examination) 30.00
Penalty for failure to complete continuing
education and/or failure to renew
agent license 75.00
Miscellaneous
Photocopy, per page 0.25
Copy complete annual statement, per book 40.00
Copy annual statement, per page 0.70
Affixing Commissioner's seal and certifying
any paper 10.00
Accepting service of legal process 10.00
Copy of Department's Annual Report
to Governor 10.00
Issuance of mailing lists, or computer print-
outs, per page 1.00
Relative Value Study Book 10.00
Note: the fees are minimum fees. If the domiciliary state has a higher fee, the Utah fee shall be retaliatory.

ITEM 65
To Insurance Department
From Dedicated Credits 38,000
From Beginning Non-Lapsing 133,100
From Closing Non-Lapsing ..... (149,100)
Schedule of Programs:
Relative Value Study 22,000
It is the intent of the Legislature that all revenue received by the Insurance Department through 59-9-105 be used solely for the relative value study, addendums to the study, and mediation costs associated with the study only.
It is the intent of the Legislature that following each addendum and during the regular budget process, the Department must provide to the Legislative Fiscal Analyst an explanation of revenue received and expenditures made during the fiscal year.
The following license, regulation, and certification fees are approved for the Insurance Department.
Photocopy, per page 0.25
Copy complete annual statement, per book . 40.00
Copy annual statement, per page 0.70
Affixing Commissioner's seal and certifying
any paper 10.00
Accepting service of legal process 10.00
Copy of Department's Annual Report
to Governor 10.00
Issuance of mailing lists, or computer print-
outs, per page 1.00
Relative Value Study Book 10.00
Note: the fees are minimum fees. If the domiciliary state has a higher fee, the Utah fee shall be retaliatory.

ITEM 66
To Insurance Department
From Thrift Recovery Account 2,000,000
Schedule of Programs:
Comprehensive Health
Insurance Pool 2,000,000

ITEM 67
To Insurance Department
From Dedicated Credits 19,000
Schedule of Programs:
Insurance Newsletter 19,000

ITEM 68
To Public Service Commission
From General Fund 1,073,000
From Dedicated Credits 15,000
Schedule of Programs:
Administration 1,088,000

ITEM 69
To Public Service Commission
From Dedicated Credits 60,000
Schedule of Programs:
Research and Analysis 60,000
It is the intent of the Legislature that this item of appropriation be considered non-lapsing.

ITEM 70
To Public Service Commission
From Dedicated Credits 600,000
From Beginning Non-Lapsing 100,000
Schedule of Programs:
Hearing Impaired 700,000

ITEM 71
To Public Service Commission
From Dedicated Credits 3,000,000
Schedule of Programs:
Universal Telephone Trust 3,000,000

ITEM 72
To Public Service Commission
From General Fund 24,200
Schedule of Programs:
Building Operation
and Maintenance 24,200

ITEM 73
To Department of Commerce -
Division of Public Utilities
From Federal Funds 89,300
From Commerce Service Fund 2,490,300
Schedule of Programs:
Division of Public Utilities 2,579,600
The following license, regulation, and certification fees are approved for the Department of Commerce.
Operating Authority
Interstate Exemption 25.00
Intrastate Exemption 50.00
Cab Card Stamp 6.00
Pipeline Safety
Inspection Fees
Residential, less than 50 ..... 25.00
Residential, 50 to 100 ..... 50.00
Residential, over 100 ..... 100.00
Commercial 50.00
Intrastate Transmission Facility 300.00
Photocopies (per copy) 0.30
Booklets ..... cost or 5.00
List of Licensees ..... cost or 25.00
Verification (per copy) 0.30
Returned Check Charge 15.00
Temporary Permits
3 months 20.00
6 months 20.00
Late Renewal Fee 10.00
License/Registration Reinstatement 50.00
Duplicate License 10.00
License/Registration Certificate 10.00
Priority Application Processing Fee 75.00
(This fee, as well as the License/Registration Reinstatement fee, is in addition to the regular filing fee.)
No fee charged and collected by the Department will be refunded for failure to qualify or voluntary or involuntary withdrawal of application or request for service.
Overpayments in excess of $10.00 will be automatically refunded. Smaller overpayments refunded only upon written request. All applicants seeking a license by reciprocity shall pay the same application fee.

ITEM 74
To Department of Commerce -
Division of Public Utilities
From Commerce Service Fund 100,000
From Beginning Non-Lapsing 36,800
Schedule of Programs:
Professional and Technical .....
Services 136,800
It is the intent of the Legislature that this item of appropriation be considered non-lapsing.

ITEM 75
To Department of Commerce -
Committee on Consumer Services
From Commerce Service Fund 430,500
Schedule of Programs:
Committee on Consumer Services 430,500
The following license, regulation, and certification fees are approved for the Department of Commerce.
Photocopies (per copy) 0.30
Booklets ..... cost or 5.00
List of Licensees ..... cost or 25.00
Verification (per copy) 0.30
Returned Check Charge 15.00
Temporary Permits
3 months 20.00
6 months 20.00
Late Renewal Fee 10.00
License/Registration Reinstatement 50.00
Duplicate License 10.00
License/Registration Certificate 10.00
Priority Application Processing Fee 75.00
(This fee, as well as the License/Registration Reinstatement fee, is in addition to the regular filing fee.)
No fee charged and collected by the Department will be refunded for failure to qualify or voluntary or involuntary withdrawal of application or request for service.
Overpayments in excess of $10.00 will be automatically refunded. Smaller overpayments refunded only upon written request. All applicants seeking a license by reciprocity shall pay the same application fee.

ITEM 76
To Department of Commerce -

Committee on Consumer Services
From Commerce Service Fund 250,000
Schedule of Programs:
Professional and Technical
Services 250,000
It is the intent of the Legislature that this item of appropriation be considered non-lapsing.
It is the intent of the Legislature that these funds not be used for advertising or public relations, but only for professional and technical services for the Committee.

COMMUNITY AND
ECONOMIC DEVELOPMENT

ITEM 77
To Department of Community and Economic Development - Administration
From General Fund $1,303,200
From Dedicated Credits 10,000
From Transfers 40,000
Beginning Non-Lapsing 46,600
Schedule of Programs:
Executive 1,107,000
Communication and Research 246,200
Sports Development 46,600
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 78
To Department of Community and Economic Development - Office of Child Care
From General Fund 101,400
From Dedicated Credits 15,000
From Transfers 600,000
Schedule of Programs:
Office of Child Care 716,400

ITEM 79
To Department of Community and Economic Development - Industrial Assistance Fund
From General Fund Restricted 134,800
Schedule of Programs:
Administration 134,800
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 80
To Department of Community and Economic Development - Office of Job Training for Economic Development
From General Fund 1,234,300
From Federal Funds 9,889,800
Schedule of Programs:
Job Training Partnership Act
Programs 9,895,400
Single Head of Household
Training 757,500
High Technology Training 471,200
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 81
To Department of Community and Economic Development - Division of Indian Affairs
From General Fund 162,100
Dedicated Credits 5,000
Schedule of Programs:
Administration 167,100
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 82
To Department of Community and Economic Development - Asian and Polynesian Affairs Division
From General Fund 104,600
From Dedicated Credits 5,000
Schedule of Programs:
Administration 109,600
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 83
To Department of Community and Economic Development - Black Affairs Division
From General Fund 91,300
From Dedicated Credits 4,000
Schedule of Programs:
Administration 95,300
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 84
To Department of Community and Economic Development - Hispanic Affairs Division
From General Fund 89,000
From Dedicated Credits 5,000
Schedule of Programs:
Administration 94,000
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 85
To Department of Community and Economic Development - Business and Economic Development
From General Fund 7,897,800
From Federal Funds 395,500
From Dedicated Credits 82,500
From Beginning Non-Lapsing 500,000
Schedule of Programs:
Administration 495,100
SMETRO 445,000
Film Commission 448,600
International Development 1,145,300
National Development 988,900
Business Expansion and Retention 306,600
Small Business Development Center .. 340,000
Rural Development 355,900
Procurement Outreach 794,000
Business Creation 331,300
Centers of Excellence 3,000,000
Office of Veterans Affairs 155,100
Special Opportunity Fund 70,000
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 86
To Department of Community and Economic Development - Travel Development
From General Fund 3,453,100
From Transportation Fund 118,000
From Dedicated Credits 250,600
Schedule of Programs:

Administration 333,800
Information Services 518,700
In-State Promotion 614,400
Travel Publications 389,300
Publicity 77,500
National Travel Development 56,500
International Travel Development 366,500
Sales Promotion 100,600
Advertising 1,364,400

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 87
To Department of Community and Economic Development - Expositions
From General Fund 562,300
From Dedicated Credits 2,211,300
Schedule of Programs:
Administration 2,773,600

ITEM 88
To Department of Community and Economic Development - State History
From General Fund 1,423,400
From Federal Funds 547,200
From Dedicated Credits 13,000
Schedule of Programs:
Administration 448,600
Collections and Education 511,400
History Publications 118,000
Office of Preservation 855,600
History Projects 50,000

It is the intent of the Legislature that the funds for the State Centennial History Project be non-lapsing.

It is the intent of the Legislature that $15,000 for the State Centennial History Project ("Centennial Authors") appropriated to the Division's History Projects Program be non-lapsing.

ITEM 89
To Department of Community and Economic Development - Utah State Historical Society
From Dedicated Credits 259,000
Schedule of Programs:
Utah State Historical Society 259,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 90
To Department of Community and Economic Development - Utah State Centennial Commission
From Dedicated Credits 1,300,000
Beginning Non-Lapsing 1,000,000
Schedule of Programs:
Centennial Commission 2,300,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 91
To Department of Community and Economic Development - Fine Arts
From General Fund 2,037,800
From Federal Funds 666,800
From Dedicated Credits 193,500
Schedule of Programs:
Administration 720,300
Grants to Non-Profit Arts Organizations 999,300
Community Arts Outreach and Development 1,178,500

ITEM 92
To Department of Community and Economic Development - State Library
From General Fund 3,031,600
From Federal Funds 1,138,400
From Dedicated Credits 1,209,200
Schedule of Programs:
Administration 734,600
Blind and Physically Handicapped 936,900
Library Development 2,850,000
Information Services 662,700
Revolving Fund 195,000

It is the intent of the Legislature that the Funds for the Library Networking Initiative be non-lapsing.

ITEM 93
To Department of Community and Economic Development - Community Development
From General Fund 1,434,100
From Federal Funds 11,473,000
From Dedicated Credits 4,800
From Mineral Lease 428,300
From Homeless Trust Fund 850,000
Schedule of Programs:
Administration 186,900
Community Assistance 7,038,800
Housing Development 3,109,600
Community Services 1,784,400
Zoos 1,020,000
Homeless Committee 1,050,500

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 94
To Department of Community and Economic Development - Community Development Capital Budget
From General Fund 564,100
From Federal Funds 322,000
From Mineral Lease 11,354,200
From Repayments 9,634,000
Emergency Shelter and Supportive Housing 132,000
Critical Needs Housing 564,100
Housing Preservation Grant 190,000
Permanent Community Impact Board 20,988,200

ITEM 95
To Utah Technology Finance Corporation
From General Fund 500,000
From General Fund Restricted- Utah Technology Finance 530,000
From Federal Funds 500,000
From Beginning Non-lapsing 2,497,000
From Closing Non-lapsing ..... (1,200,000)
Schedule of Programs:
Operations 385,700
Innovation Finance 2,341,300

Entrepreneurial Support 100,000

GENERAL GOVERNMENT
AND CAPITAL FACILITIES

ITEM 96
To Department of Administrative Services -
Executive Director's Office
From General Fund ..... $ 510,600
Schedule of Programs:
Executive Director's Office 510,600

ITEM 97
To Department of Administrative Services -
Executive Director's Office - Fuel Mitigation
From General Fund 946,300
Schedule of Programs:
Executive Director's Office 946,300
It is the intent of the Legislature that funds in the Department of Administrative Services - Fuel Tank Mitigation program be non-lapsing.

ITEM 98
To Department of Administrative Services -
Division of Information Technology
Services
From General Fund 245,300
Schedule of Programs:
Information Technology Services
Microwave 145,300
Automated Geographic Reference .. 100,000

ITEM 99
To Department of Administrative Services -
Division of Administrative Rules
From General Fund 224,200
Schedule of Programs:
Rules Administration 224,200

ITEM 100
To Department of Administrative Services -
Division of Facilities Construction
and Management - Administration
From General Fund 2,406,500
From Revenue Transfer 200,000
Schedule of Programs:
Administration 2,606,500
It is the intent of the Legislature that the Division of Facilities Construction and Management discontinue the use of "fees for previous work performed for the state" as a selection criterion in the Architectural/ Engineering Service selection process. It is understood that this issue will be evaluated during the 1993 interim with recommendations forthcoming in the 1994 Legislative Session.
It is the intent of the Legislature that the State Building Board study and make recommendations to the 1994 Legislature regarding what selection criteria should be considered in procuring the services of architects and engineers.
It is the intent of the Legislature that any unexpended balance lapse to the contingency account in the Capital Projects Fund, up to the amount appropriated therefrom.
It is the intent of the Legislature that any request for construction or major renovation of adult or juvenile correctional facilities include an analysis and summary of work that can be performed by inmate labor. Included with this analysis should be details as to how the work plan for the inmates would be developed and any mitigating circumstances or significant concerns related to the use of inmate labor on the projects.

ITEM 101
To Department of Administrative Services -
Division of Facilities Construction and
Management - Facilities Management
From General Fund 2,413,500
From Revenue Transfers 2,350,000
From Non-Lapsing ..... (52,500)
Schedule of Programs:
Capitol Hill 2,219,500
Governor's Mansion 30,000
Preventive Maintenance 164,000
Employment Security Building 2,245,000
Washington County Youth Facility 52,500
It is the intent of the Legislature that funds in the Washington County Youth Corrections Facility Lease Payment account be non-lapsing.
It is the intent of the Legislature that the funds in the Employment Security Lease Payment Account be non-lapsing.

ITEM 102
To Department of Administrative Services -
Finance Division - Administration
From General Fund 6,359,100
From Dedicated Credits 613,600
From Transportation Fund 450,000
Schedule of Programs:
Director's Office 243,900
Payroll 1,023,500
Warrant Disbursement 341,600
Accounts Receivable 95,500
Accounting Operations 745,900
Financial Reporting 388,900
Finance Control Group 1,065,200
Data Processing and Systems 1,506,300
FIRMS Development 1,388,000
Training Group 195,700
Financial Management 428,200
It is the intent of the Legislature that funds appropriated to the FIRSTplus development be non-lapsing.
The Division of Finance is authorized to allocate costs of the FIRSTplus project to agencies expected to use the system. The allocation is contingent upon the availability of funds. The FY 1993 allocation may not exceed the remaining direct costs of the FIRSTplus project. The total cost of the project is estimated to be approximately $7,000,000 to be funded in FY 1994 and FY 1995 if needed. Funding prior to FY 1994 is estimated to be $3,350,000.

ITEM 103
To Department of Administrative Services -
Finance Division - Substantial Substitute
From General Fund 1,170,000
Schedule of Programs:
Substantial Substitute 1,170,000

ITEM 104
To Department of Administrative Services - Finance Division - Mandated Expenditures
From General Fund 153,000
Schedule of Programs:
Government Affiliations 53,000
Navajo Trust Litigation 100,000
It is the intent of the Legislature that funds for the Navajo Trust Fund Litigation be non-lapsing.

ITEM 105
To Department of Administrative Services - Purchasing Division
From General Fund 941,300
From Dedicated Credits 72,000
From Revenue Transfers 3,400
Schedule of Programs:
Purchasing 1,016,700
It is the intent of the Legislature that the Division of Purchasing coordinate with the Division of Finance in promoting the automation of vendor payment discounts so that as new payments systems are developed the state is able to take advantage of the time value of money and the purchase discounts available.

ITEM 106
To Department of Administrative Services - Archives Division
From General Fund 1,462,700
From Dedicated Credits 50,000
Schedule of Programs:
Administration 333,200
Records Analysis 270,800
Micrographics 262,900
Patron Services 164,600
Storage and Retrieval 284,700
Processing 196,500

ITEM 107
To Department of Human Resource Management
From General Fund 1,936,100
From Dedicated Credits 62,200
From Non-Lapsing 3,600
Schedule of Programs:
Administration 320,200
Classification and Compensation 948,200
Employment Services 725,300
Flex Benefits 8,200
Funds are included in agency appropriations to allow merit step increases of 2.75 percent for eligible employees on the State's pay plan, health insurance premiums increases of 10.05 percent and dental insurance premium increases of 4.63 percent. Also included are funds for selective salary range adjustments for eligible employees as recommended by the Department of Human Resources based on the 1992 salary survey. The adjustments are limited to those employees who will be below midpoint of the new salary ranges.
It is the intent of the Legislature that any refunds received from the State employees long-term disability, medical and dental programs be considered designated and appropriated in FY 1994 for a portion of the salary package of State employees.

ITEM 108
To Tax Commission - Tax Administration and Revenue Collection
From General Fund 14,733,600
From Uniform School Fund 13,216,900
From Transportation Fund 4,851,000
From Dedicated Credits 8,205,500
From Federal Funds 350,000
Petroleum Storage Fund 27,000
Schedule of Programs:
Administration 5,445,600
Auditing Division 6,451,200
Operations 6,193,100
Collections 4,683,400
Technology Management 7,739,100
Motor Vehicle Division 5,514,700
Motor Vehicle Enforcement Division 1,449,400
Property Tax Division 3,170,400
Multi-State Tax Compact 166,600
Seasonal Employees 570,500
It is the intent of the Legislature that the State Tax Commission reallocate resources within their existing budget so as to enhance collection efforts.
The following fees are authorized for FY 1994:
Temporary Permit 6.00
Liquor Profit Distribution Fee 6.00
Microfilm Research Fee 6.50
Data Processing Set-Up 55.00
Lien Subordination 300.00
Special Fuel License 30.00
Motor Vehicle Information 2.00
Salvage Inspection Fee 50.00
Interstate Fuel Tax Agreement Reinstatement Fee 100.00
Special Group License Plate Fee 4.50
Special Group License Plate Renewal ..... .50
Custom Programming Fee ..... 85.00 per hr.
Research Fee (Special Requests) .. 20.00 per hr.
Photocopies (over 10 copies) ..... .10 per page
Faxed Document Processing Fee . 1.00 per page
Cigarette Tax License 30.00
Motor Vehicle Manufacturer's Plates 8.00
Motor Vehicle Salesman's License 30.00
Motor Vehicle Manufacturer's License .. 100.00
Motor Vehicle Dealer License 125.00
Used Motor Vehicle Dealer License 125.00
Motor Vehicle Dealer Plates 10.00
Motor Vehicle Transporters License 50.00
Motor Vehicle Body Shop License 110.00
Motor Vehicle Dismantler's Plates 8.00
Motor Vehicle Transporters Plates 8.00
Motor Vehicle Dismantler's License 100.00
Motor Vehicle Salesman's License Transfer 5.00
Motor Vehicle Crusher's License 100.00
Motor Vehicle Remanufacturer's License 100.00
Used Motor Cycle Dealer License 50.00
New Motor Cycle Dealer License 50.00
Distributor's License 60.00
Motor Vehicle Record - Certified Copy 5.00
Motor Fuel License 30.00
Representative License 25.00

Motor Vehicle Dealer Additional Place of Business 25.00
International Fuel Tax Agreement Decal . 2.00

ITEM 109
To Tax Commission – License Plate Production
From Dedicated Credits 1,578,500
Schedule of Programs:
License Plate Production 1,578,500

ITEM 110
To Tax Commission – Liquor Profits Pass-Through
From General Fund 3,909,000
Schedule of Programs:
Liquor Profits 3,909,000

ITEM 111
To Tax Commission – Litigation
From Non-Lapsing Balance 100,000
Schedule of Programs:
Litigation 100,000
It is the intent of the Legislature that all funds in the Tax Litigation program be non-lapsing.

ITEM 112
To Career Services Review Board
From General Fund 129,700
Schedule of Programs:
Career Services Review Board 129,700
It is the intent of the Legislature that funds for hearings expense within the Career Services Review Board be Non-lapsing.

ITEM 113
To State Retirement Board – Administration
From Retirement Fund 14,832,700
Schedule of Programs:
Support Services 6,592,300
Investments 7,067,500
Benefit Services 1,172,900
It is the intent of the Legislature that the Retirement Board may make necessary expenditures above and beyond this appropriation in fulfillment of its fiduciary responsibility. All such expenditures shall be discussed with the Office of the Legislative Fiscal Analyst and reported to the 1994 General Session of the Legislature.

ITEM 114
To Retirement Board – Group Insurance
From Dedicated Credits 4,171,700
Schedule of Programs:
Group Insurance Administration ... 4,171,700
It is the intent of the Legislature that the Group Insurance Office expend the amount as approved for administrative expenditures. However, in no case shall the total administrative expenditures by the Group Insurance Office, including capital outlay, exceed four percent of net earned premiums.

DEBT SERVICE

ITEM 115
To State Board of Bonding Commissioners – Debt Services
From General Fund 68,097,100
From Dedicated Credits 6,413,300
Schedule of Programs:
1987 Building Bonds 24,002,500
1989 Revolving Recapital Revenue Fund 1,041,400
1989 Building Bond 3,312,500
1990 Building Bond 1,201,500
1991 Building Bonds 4,278,500
1991 Water Bonds 855,500
1991 Refunding 1990–1991 Authority 24,546,300
1992 Building Bonds 11,603,000
1992 Water Bonds 198,000
1992 Refunding 1,161,300
1992 UBOA Employee Security Revenue Bonds 2,231,100
1992 UBOA Washington City Revenue Bonds 78,800

INTRAGOVERNMENTAL SERVICES

ITEM 116
To Department of Administrative Services – Central Service Division
From Dedicated Credits/Intragovernmental Revenues 13,957,700
Schedule of Programs:
Administration 345,000
Central Mailing 2,361,400
Central Stores 2,654,200
Motor Pool 5,911,400
Copy Centers 2,685,700
Approved FTE Positions – 63.50
Approved Capital Outlay:
Administration $35,000
Central Mailing 54,000
Motor Pool 5,907,500
Copy Centers 875,000
It is the intent of the Legislature that the Central Mail Program within the Division of Central Services continue to operate within its existing framework, which excludes the Department of Human Services, until such time as the Legislative Auditor General is able to report on findings relative to statewide mail operations.
It is the further intent of the Legislature that the Division of Central Services implement the recommendation, as outlined by the Legislative Audit report No. 93-01.

ITEM 117
To Department of Administrative Services – Surplus Property Division
From Dedicated Credits/Intragovernmental Revenues 1,020,600
Schedule of Programs:
Surplus Property 1,020,600
Approved FTE Positions – 17
Approved Capital Outlay $110,500

ITEM 118
To Department of Administrative Services – Division of Information Technology Services
From Dedicated Credits/Intragovernmental Revenues 38,582,400
Schedule of Programs:
Telecommunication and Data Processing 38,582,400
Approved FTE Positions – 220

Approved Capital Outlay 10,216,000

It is the intent of the Legislature that the Division of Information Technology Services and the State Data Processing Coordinator develop alternatives to the present Information Technology Review process. Those alternatives should include, but not be limited to, the establishment of an independent Board of Review. These alternatives should be given to the Office of the Legislative Fiscal Analyst no later than August 1, 1993, for review and discussion.

It is the further intent of the Legislature that subject to any recommendations from the Telecommunications Task Force on this subject, that the alternative recommendations as proposed be reviewed by the General Government and Capital Facilities Appropriation's Subcommittee in the 1994 General Session of the Legislature. This subcommittee should recommend proposed legislation subject to final analysis of the alternatives.

ITEM 119

To Department of Administrative Services – Risk Management

From Dedicated Credits –
Intragovernmental Revenues 20,736,100

Schedule of Programs:
Risk Management 20,736,100

Approved FTE Positions – 21

Approved Capital Outlay $64,000

It is the intent of the Legislature that Division of Risk Management make risk management training available for internal auditors in other state agencies and institutions.

ITEM 120

To Department of Administrative Services – Division of Facilities Construction and Management – Facilities Management

From Dedicated Credits –
Intragovernmental Revenues 10,693,600

Schedule of Programs:
Facilities Management 10,693,600

Approved FTE Positions – 85

Approved Capital Outlay $92,500

It is the intent of the Legislature that the FTE limit for the Facilities Management Internal Service Fund be increased by one for each facility if the Midtown Office Building and/or the Human Services Building at 1385 South State Street are acquired by the State and the Division of Facilities Construction and Management assumes the responsibility for the management and operations.

ITEM 121

To Department of Administrative Services – Division of Fuel Dispensing

From Intragovernmental Revenues .. 7,015,800

Schedule of Programs:
Fuel Dispensing and Tank Management 7,015,800

Approved FTE Positions – 6

Approved Capital Outlay $285,500

It is the intent of the Legislature that Internal Service Funds of the Department of Administrative Services be allowed to add FTE's beyond the authorized level if it represents a benefit to the State and a decrease of FTE's in the user Agency. The total FTE's within State government shall not change with this shift of FTE's.

CAPITAL BUDGET

ITEM 122

To Department of Administrative Services – Division of Facilities Construction and Management

From General Fund 9,851,200

From Transportation Fund 2,240,200

Schedule of Programs:
Salt Lake Community College – Science and Industry Building Phase II ... 6,667,200
Statewide Capital Improvements ... 3,184,000
Department of Transportation
Building Construction .....
Emery 879,700
Duchesene 840,600
Provo Land 520,000

Per Section 63-1-35, U.C.A., the Building board shall prioritize the allocation of improvement funds between the statewide fund categories and the top five agency requests for improvement projects as listed in the Board's 1993 Five-Year Building Program.

It is the intent of the Legislature that the Division of Facilities Construction and Management use $143,000 from the statewide contingency fund to purchase or option land in Utah County for a juvenile correctional facility. It is the further intent of the Legislature that the $143,000 in the contingency fund be identified as coming from the unencumbered balance on the Box Elder Courts building project.

It is the intent of the Legislature that $90,000 from the Statewide Contingency Fund be used for Capital Improvements (A,R,&I).

It is the intent of the Legislature that the Division of Facilities Construction and Management use $2,185,000 from the FY 1994 Capital Improvement allocation within the Capital Budget for the following projects:
Sevier Valley Applied Technology Center – Road and Parking – $435,000
Governor's Office Remodel – $200,000
House of Representatives Chamber – $650,000
Dept. of Corrections – Electrical Upgrade – $900,000

It is the intent of the Legislature that the proposed Human Services Forensics Facility be further analyzed to review the effect of limiting its costs to $12,000,000 as well as other possible options to the current proposed program with the intent of providing the most cost effective facility at the lowest possible cost.

It is the intent of the Legislature that the Division of Facilities Construction and Management and the Department of Corrections

consider the possibility of utilizing private sector construction and operations for the proposed Pre-Release, Parole and Probation facility. An analysis of alternatives should be provided to the General Government and Capital Facilities Appropriations Subcommittee in the 1994 session of the Legislature.

It is the intent of the Legislature, dependent upon the results of the space utilization study, that the Capital Facility requests of the Bridgerland, Odgen/Weber, and Davis Applied Technology Centers as currently programmed be given high priority in the FY 1995 budget, after funding for completion of the Marriott Library is completed.

It is the intent of the Legislature that the State of Utah enter into a lease purchase agreement for the facility currently leased and such other adjacent space as required to meet the space needs of the Board of Education in Salt Lake City subject to satisfactory completion of negotiations with the owners thereof. Such lease purchase agreement must provide for a satisfactory renovation of the facility.

It is the intent of the Legislature that the Division of Facilities Construction and Management enter into a lease purchase agreement for the facility currently leased for the Department of Human Services at 1385 South State Street in Salt Lake City in order to achieve a savings over the current lease agreement.

To provide for improved safety and protection of life in State owned buildings and structures and to assure identifiable emergency exits in the event of power failures, the Division of Facilities Construction and Management shall develop guidelines for the use of self-illuminating (photo-luminescent low-level signs and exit path markings, which can be seen near the floor in newly constructed and newly remodeled State owned buildings and structures. The Division shall secure the advice of the Utah Fire Marshall in developing such guidelines.

It is the intent of the Legislature the Division of Facilities Construction and Management use $187,500 from the Statewide Contingency Fund to purchase land at the Ogden/Weber Applied Technology Center.

It is the intent of the Legislature that the Division of Facilities Construction and Management utilize $70,000 from either the Capital Improvements funding allocation or the Statewide Planning Fund to program the Family Health Services Clinic Building, Department of Health located at the University of Utah.

ITEM 123

To Department of Administrative Services -
Division of Facilities Construction
and Management - Capital Planning
From General Fund 281,000
Schedule of Programs: .....
Human Services - Forensics Facility 51,000
Corrections - Prerelease
Parole and Probation Facility 30,000
Weber State University -
Heat Plant Program and Design 200,000

ITEM 124

To Department of Administrative Services -
Division of Facilities Construction
and Management - Capital Budget
From General Fund ..... (50,000)

To Fund an Interim Committee for General Government and Capital Facilities

It is the intent of the Legislature that if the Legislative Management Committee does not authorize an Interim Committee for General Government and Capital Facilities by April 30, 1993, this item shall not take effect.

HIGHER EDUCATION

ITEM 125

To University of Utah - Education and General
From General Fund $120,190,500
From Dedicated Credits 44,966,800

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

It is the intent of the Legislature that funds budgeted for fuel and power be closely supervised by the State Board of Regents. It is also the intent of the Legislature that if any surplus funds in fuel and power in FY 1994 appear likely that they be transferred for use within the institution for fuel and power efficiency investments or other equipment purchases with the approval of the Board of Regents but must be reported to the Legislature in the annual budget requests. No supplemental appropriation for fuel and power will be considered except for emergency measures.

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish

appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 126
To University of Utah - Educationally Disadvantaged
From General Fund 608,600

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 127
To the University of Utah - School of Medicine
From General Fund 14,118,400
From Dedicated Credits 3,998,300

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 128
To the University of Utah - University Hospital
From General Fund 3,382,000

Patient fees may be retained by the Hospital provided they are spent in compliance with the Hospital's operating budget approved by the State Board of Regents.

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 129
To the University of Utah - Regional Dental Education Program
From General Fund 403,600
From Dedicated Credits 58,700

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 130
To the University of Utah - Research and Training
From General Fund 2,566,200

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 131
To University of Utah - Public Service
From General Fund 742,400
Schedule of Programs:
Center for Economic Development 92,900
Seismograph Stations 254,900
Museum of Natural History 314,100
State Arboretum 80,500

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 132
To University of Utah - Statewide T.V. Administration
From General Fund 2,095,900
From Uniform School Fund 503,200
Schedule of Programs:
Statewide T. V. Administration 185,600
Public Broadcasting and Educational T. V. 2,413,500

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 133
To University of Utah - Mineral Lease Research
From Mineral Lease Account 2,006,700

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The funds specified in this item of appropriation are to be used for the purpose, and subject to the limitations, specified in Section 59-21-2 of the Utah Code.

These funds are to be used in conformance with federal guidelines for Mineral Lease.

ITEM 134
To University of Utah - Land Grant Trust Funds
From Dedicated Credits - Land Grant Trust Income 502,100

ITEM 135
To Utah State University - Education and General
From General Fund 62,698,100
From Federal Funds 50,000
From Dedicated Credits 24,037,300

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on cur-

rent space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

It is the intent of the Legislature that funds budgeted for fuel and power be closely supervised by the State Board of Regents. It is also the intent of the Legislature that if any surplus funds in fuel and power in FY 1994 appear likely that they be transferred for use within the institution for fuel and power efficiency investments or other equipment purchases with the approval of the Board of Regents but must be reported to the Legislature in the annual budget requests. No supplemental appropriation for fuel and power will be considered except for emergency measures.

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 136

To Utah State University – Educationally Disadvantaged

From General Fund 97,100

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 137

To Utah State University – Water Research Laboratory

From General Fund 1,139,600

From Mineral Lease 641,200

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 138

To Utah State University – Ecology Center

From General Fund 665,400

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 139

To Utah State University – Research and Training Grants

From General Fund 811,900

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 140

To Utah State University – Southeastern Utah Continuing Education Center

From General Fund 456,400

From Dedicated Credits 236,100

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 141

To Utah State University – Uintah Basin Continuing Education Center

From General Fund 1,061,700

From Dedicated Credits 782,100

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 142

To Utah State University – Man and His Bread Museum

From General Fund 125,700

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 143

To Utah State University – Production Center

From General Fund 281,000

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 144
To Utah State University - Mineral Lease Research
From Mineral Lease Account 1,253,500

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The funds specified in this item of appropriation are to be used for the purpose, and subject to the limitations, specified in Section 59-21-2 of the Utah Code.

These funds are to be used in conformance with federal guidelines for Mineral Lease.

ITEM 145
To Utah State University - Agricultural Experiment Station
From General Fund 7,997,400
From Federal Funds 1,813,800
From Dedicated Credits 900,000

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 146
To Utah State University - Cooperative Extension Division
From General Fund 6,692,000
From Federal Funds 1,762,600
From Dedicated Credits 150,000

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 147
To Utah State University - Land Grant Trust Income
From Dedicated Credits - Land Grant Trust Income 100,600

ITEM 148
To Utah State University - Federal Vocational Education Program
From Federal Funds 150,000

ITEM 149
To Weber State University - Education and General
From General Fund 40,157,900
From Dedicated Credits 17,736,000
From Mineral Lease Account 842,300
Schedule of Programs
Education and General 58,236,100
Cooperative Nursing 500,100

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

It is the intent of the Legislature that funds budgeted for fuel and power be closely supervised by the State Board of Regents. It is also the intent of the Legislature that if any surplus funds in fuel and power in FY 1994 appear likely that they be transferred for use within the institution for fuel and power efficiency investments or other equipment purchases with the approval of the Board of Regents but must be reported to the Legislature in the annual budget requests. No supplemental appropriation for fuel and power will be considered except for emergency measures.

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 150
To Weber State University - Educationally Disadvantaged
From General Fund 212,600

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 151
To Weber State University - Federal Vocational Education Program
From Federal Funds 321,000

ITEM 152
To Southern Utah University - Education and General
From General Fund 15,071,100
From Dedicated Credits 5,305,100
From Mineral Lease Account 289,300

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 153
To Southern Utah University - Educationally Disadvantaged
From General Fund 59,900

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 154
To Southern Utah University - Utah Shakespearean Festival
From General Fund 13,200

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 155
To Southern Utah University - Federal Vocational Education Program
From Federal Funds 49,500

ITEM 156
To Snow College - Education and General
From General Fund 7,788,200
From Dedicated Credits 2,317,300
From Mineral Lease Account 158,800

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs pri-

marily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 157

To Snow College - Educationally Disadvantaged

From General Fund 24,600

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 158

To Snow College - Federal Vocational Education Program

From Federal Funds 162,000

ITEM 159

To Dixie College - Education and General

From General Fund 8,621,000

From Dedicated Credits 2,598,600

From Mineral Lease Account 178,500

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 160

To Dixie College - Educationally Disadvantaged

From General Fund 15,100

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 161

To Dixie College - Zion Park Amphitheater

From General Fund 46,500

From Dedicated Credits 31,400

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 162

To Dixie College - Federal Vocational Education Program

From Federal Funds 130,000

ITEM 163

To College of Eastern Utah - Education and General

From General Fund 6,228,700

From Dedicated Credits 1,380,100

From Mineral Lease Account 130,000

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The

Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 164

To College of Eastern Utah – Educationally Disadvantaged

From General Fund 102,000

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 165

To College of Eastern Utah – Prehistoric Museum

From General Fund 144,200

From Dedicated Credits 1,000

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 166

To College of Eastern Utah – San Juan Center

From General Fund 1,025,700

From Dedicated Credits 289,400

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 167

To College of Eastern Utah – Federal Vocational Education Program

From Federal Funds 375,000

ITEM 168

To Utah Valley Community College – Education and General

From General Fund 17,364,100

From Dedicated Credits 10,773,500

From Mineral Lease Account 507,900

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs pri-

marily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

If legislation, with or without a fiscal note, is passed authorizing Utah Valley Community College to offer baccalaureate degrees, the amount of any fiscal note will be used to fund federal mandates, and the $500,000 appropriated to the State Board of Regents will be used to finance the Utah Valley Community College test.

ITEM 169
To Utah Valley Community College -
Educationally Disadvantaged
From General Fund 55,800

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 170
To Utah Valley Community College -
Federal Vocational Education Program
From Federal Funds 423,600

ITEM 171
To Salt Lake Community College -
Education and General
From General Fund 29,035,300
From Dedicated Credits 12,195,900
From Mineral Lease Account 797,400

It is the intent of the Legislature that mandated costs incurred at each institution of higher education are the first priority to be paid. Mandated costs are defined to include costs relating to the ongoing operation of the institution. Mandated costs include benefit cost increases, fuel and power rate increases, fuel and power usage increases based on current space only, risk management insurance rates increases, other utility increases and operation and maintenance for facilities. The Legislature does not intend to consider any supplemental appropriation for mandated costs which could have been paid from current funds had they not been reallocated. The Board of Regents should submit their budget for FY 1995 showing that all mandated costs are included in their budget request.

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It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that funding for financial aid services, student advising and counseling, and student services be given first priority over other academic considerations in the allocation of "student support" funds.

ITEM 172
To Salt Lake Community College -
Educationally Disadvantaged
From General Fund 64,500

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 173
To Salt Lake Community College -
Skills Center
From General Fund 2,456,600
From Dedicated Credits 418,500

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 174
To Salt Lake Community College -
Federal Vocational Education Program
From Federal Funds 640,400

ITEM 175
To State Board of Regents - Administration
From General Fund 1,662,800
From Dedicated Credits 64,600

It is the intent of the Legislature that all carry-forward funds be identified separately by line item for the information of the Legislature.

The Board of Regents shall identify for legislative review all requests for new or expanding programs.

It is the intent of the Legislature that under the budget documents for the FY 1995 budget request, the State Board of Regents provide an analysis, for the most recent completed fiscal year, of direct and full instructional cost for technical/vocational education programs separately from other instructional programs.

It is the intent of the Legislature that the Board of Regents should submit their budget for FY 1995 using a format on tuition revenues that outlines budgeted amounts for gross tuition revenues, total tuition waivers by category, and net tuition revenues.

The Board of Regents, in conjunction with the institutions, shall provide for the Legislature, a complete accounting of the reimbursed overhead account. This shall include actual expenditures for FY 1993, planned expenditures in FY 1994, and projected expenditures in FY 1995.

The Regents should also submit their budget for FY 1995 showing the Uniform School Fund as the funding source for programs primarily the responsibility of or benefitting the public education system.

The Board of Regents should adopt an enrollment strategy designed to provide open access to community colleges and to establish appropriate enrollment limits at universities. The enrollment strategy should ensure access for students to institutions for which they are academically prepared. The enrollment strategy and related funding mechanism should not disadvantage institutions disproportionately.

It is the intent of the Legislature that the State Board of Regents and the State Board of Education through the Vocational Education Liaison Committee prepare a proposal to enhance Vocational Education in the Utah State Prison System.

It is the intent of the Legislature that a portion of the funds appropriated for salary increases for higher education employees be distributed to all higher education employees performing satisfactorily.

ITEM 176
To Board of Regents - Western Interstate Commission for Higher Education
From General Fund 979,600

ITEM 177
To Board of Regents - Student Aid
From General Fund 2,033,300

ITEM 178
To Board of Regents - Utah Teaching Career Scholarship Program
From General Fund 641,800
From Dedicated Credits 50,000

ITEM 179
To Board of Regents - Applied Technology Centers
From General Fund 600,000

ITEM 180
To Board of Regents - Utah Valley Community College Baccalaureate Degree Test
From General Fund 500,000

If legislation, with or without a fiscal note, is passed authorizing Utah Valley Community College to offer baccalaureate degrees, the amount of any fiscal note will be used to fund federal mandates, and the $500,000 appropriated to the State Board of Regents will be used to finance the Utah Valley Community College test.

ITEM 181
To Board of Regents - University Centers
From General Fund 575,000

NATURAL RESOURCES

ITEM 182
To Department of Natural Resources - Department of Administration
From General Fund $1,665,000
From Federal Funds 60,200
From Transfers 15,000
Schedule of Programs:
Office of the Executive Director 498,900
Administrative Services 887,800
Public Affairs 154,200
Bear Lake Commission 50,000
Utah Heritage 149,300

It is the intent of the Legislature that funding for the Bear River Commission be expended only as a one-to-one match with funds from the State of Idaho.

ITEM 183
To Department of Natural Resources - Internal Services Fund
From Dedicated Credits - Intra-governmental Revenue 4,143,500
From Retained Earnings ..... (100)
Schedule of Programs:
Warehouse Budget 733,500
Approved FTE Level - 2.0
Approved Rates - Fuel markup of 12 percent and other goods at 19 percent.
Approved Capital Outlay - $18,500
Approved Revenue Estimate - $724,200
Motor Pool Budget 2,737,700
Approved FTE Level - 4.0
Approved Rates - Daily rates at $4.00 plus mileage as follows:
Intermediate ..... $.13
Full Size ..... .15
1/2 Ton, 2WD ..... .15
1/2 Ton, 4WD ..... .21
3/4 Ton, 2WD ..... .17
3/4 Ton, 4WD ..... .23
1 Ton, 4WD ..... .26
2 1/2 - 5 Ton ..... .36
10 Ton ..... .39
Approved Revenue Estimate - $2,737,100

Approved Capital Outlay - $2,055,000
Data Processing Department
Complex Budget 672,200
Approved FTE Level - 5.4
Approved Rates - Shall be adjusted not to exceed $724,200
Approved Capital Outlay - $100,000
Approved Revenue Estimate - $724,200

ITEM 184
To Department of Natural Resources
Rent Utilities, Fixture Payments, Security and Maintenance
From General Fund 1,349,200
Schedule of Programs:
Rent 1,349,200

ITEM 185
To Department of Natural Resources - Division of State Lands and Forestry
From General Fund 1,166,600
From Federal Funds 777,000
From Dedicated Credits 676,300
From General Fund Restricted - Land Grant Maintenance Account ... 3,143,800
From General Fund Restricted - Noxious Weed Account 16,000
Schedule of Programs:
Policy Integration 387,200
Board 52,900
Support Services 862,600
Trust And Asset Management 878,000
Trust Management Projects 160,000
Resource Conservation and Allocation 572,400
Conservation Camps 725,800
Sovereign Lands 121,000
Field Services 1,201,300
Forest Projects 101,000
Weed Control 16,000
Audit Litigation 48,000
Leaf-It-To-Us 10,000
America the Beautiful 493,500
Inholdings Resolution 150,000
It is the intent of the Legislature to transfer two trucks from the Division of State Lands and Forestry to the Department of Natural Resources Motor Pool.

ITEM 186
To Department of Natural Resources - Division of Oil, Gas, and Mining
From General Fund 960,300
From Federal Funds 3,112,100
From Dedicated Credits 81,600
From General Fund-Fixed Collections . 1,160,500
Schedule of Programs:
Administration 920,400
Board 25,900
Oil and Gas Conservation 1,030,700
Minerals Reclamation 228,800
Coal Reclamation 1,140,200
Underground Injection 187,600
Abandoned Mine 1,720,700
Reclamation Mining 60,200
Oil, Gas and Mining Fees
Copy Fees
Mine Permit application 5.00
Bid Specifications 20.00
Telefax of material ..... .25 per page
Photocopy - Staff Copy ..... .25 per page
Photocopy - Self Copy ..... .10 per page
Prints from microfilm - Staff Copy ..... .55 per paper-foot
Prints form microfilm - Self Copy ..... .40 per paper-foot
Print of microfiche - Staff Copy .. .25 per page
Print of microfiche - Self Copy ... .10 per page
Well logs (from originals) - Staff Copy ..... .75 per paper-foot
Well logs (from originals) - Self Copy ..... .50 per paper-foot
Print of computer screen ..... .50 per screen
Fees for Compiling or Photocopying Records
Actual time spent compiling or copying ..... Personnel rate/hr.
Data entry or records segregation ..... Personnel rate/hr.
Fees for Third Party Services
Copying maps or charts ..... Actual cost
Copying odd sized documents ... Actual cost
Fees for Specific Reports
Monthly Production Report
Picked up 17.50
Mailed 20.00
Annual Subscription 210.00
Monthly Notice of Intent to Drill/ Well Completion Report
Picked up ..... .50
Mailed 1.00
Annual Subscription 6.00
Current Administrative Rules, - Oil and Gas, Coal, Non-Coal, Abandon Mine Lease (first copy is free)
Picked up 10.00
Mailed 13.00
Custom-tailored data reports
Diskettes/tapes ..... Computer Time and ..... Personnel rate/hr.

ITEM 187
To Department of Natural Resources - Division of Utah Geological Survey
From General Fund 1,586,100
From Federal Funds 299,400
From Dedicated Credits 86,000
From Mineral Lease 607,500
From Transfers 50,000
Schedule of Programs:
Administration 292,900
Support/Information 644,800
Applied Geology 421,200
Board 1,100
Geologic Mapping 371,100
Economic Geology 897,900
It is the intent of the Legislature that the appropriation for the Utah Geological Survey from Federal Mineral Lease revenues be non-lapsing for FY 1994.
It is the intent of the Legislature that $50,000 from General Fund be non-lapsing, and that these funds be used for the purchase of strong motion instruments.

ITEM 188
To Department of Natural Resources - Division of Energy

From General Fund 505,000
From Federal Funds 2,505,200
From Oil Overcharge Funds 2,701,100
Schedule of Programs:
Administration 344,500
Energy Council 8,700
Energy Extension 122,400
Institutional Conservation 501,200
State Buildings Demo 501,300
Weatherization 1,798,500
Conservation 480,800
Technical Services 417,400
Western Interstate Energy Board 15,000
Energy Technology Research and Development 1,501,500
Clean Air Incentives 20,000

ITEM 189
To Department of Natural Resources - Division of Water Resources
From General Fund 2,228,600
From Water Resources Investigation Fund 497,700
From Water Resources Construction Fund 150,000
From Water Resources Conservation and Development Fund 860,200
From Federal Funds 396,400
Schedule of Programs:
Administration 382,000
Board 34,500
Interstate Streams 221,100
Cloudseeding 553,900
Cities Water 97,700
Construction 1,243,400
Planning 1,244,800
Development/Study 170,000
West Desert Operation 13,000
Water Education 172,500

ITEM 190
To Department of Natural Resources - Division of Water Resources
Water Education - non-lapsing
From Dedicated Credits 35,000
Schedule of Programs:
Water Education 35,000
It is the intent of the Legislature that contributions to Water Education be non-lapsing.

ITEM 191
To Department of Natural Resources - Division of Water Rights
From General Fund 4,521,100
From Dedicated Credits 470,800
Schedule of Programs:
Administration 325,300
Appropriation 377,200
Dam Safety 405,600
Adjudication 464,000
Cooperative Studies 573,400
Technical Services 480,000
Advertising 85,000
Regional Offices 1,810,600
River Systems 470,800
Fees of State Engineer

1. For examining and filing applications and temporary applications to appropriate water, applications for temporary and permanent change, applications for exchange, applications for an extension of time in which to resume use of water, claims to water based on diligence, underground water claims, application to recover injected ground water, and for all services to and including the issuance of a certificate of appropriation, and for republication of notice to water users after amendment of application, the State Engineer shall collect fees based upon the following schedule:
   a. For a quantity of water of 0.1 second-foot or less 75.00
   b. For a quantity of water more than 0.1 second-foot but not exceeding 0.5 second-foot 100.00
   c. For a quantity of water more than 0.5 second-foot, but not exceeding 1.0 second-foot 125.00
   d. For each additional second-foot, or fraction thereof, up to but not exceeding 25.0 second-feet, for each second-foot or fraction thereof; 15.00
   e. For applications in excess of 25.0 second-foot 500.00
   f. For a volume of water 20 acre feet or less 75.00
   g. For a volume of water more than 20 acre-feet, but not exceeding 100 acre-feet 100.00
   h. For a volume of water more than 100 acre-feet, but not exceeding 500 acre-feet 125.00
   i. For each additional 500 acre-feet, or part thereof, but not exceeding 12,500 acre-feet, for each 500 acre-feet, or part thereof; 15.00
   j. For applications in excess of 12,500 acre-feet 500.00
   k. For any application that proposes to appropriate by both direct flow and storage, there shall be charged the fee for quantity or volume, whichever is greater, but not both.
2. For a well driller's permit, initial 50.00
   renewal, (annual). 25.00
3. For filing a request for an extension of time in which to submit proof of appropriation 14 years or more after the date of approval of the application. 75.00
4. For each certification of copies 4.00
5. A reasonable charge for preparing copies of any and all documents.
6. Application to segregate a water right. . 25.00
7. Application to inject water 2,500.00

Fees for Appropriation of Water in Utah

1. For examining and filing application and temporary applications to appropriate water, applications for temporary and permanent change, applications for exchange, applications for an extension of time within which to resume use of water, claims to water based on diligence, under-ground water claims, and for all services to and including the issuance of a certificate of appropriation, and for republication, the State En-

gineer shall collect fees based upon the following schedule:

Flow—C.F.S. More Than	But Not Exceeding	Storage of Flow—Acre-Feet More Than	But Not Exceeding	FEE
0.0	0.1	0	20	$ 75
0.1	0.5	20	100	100
0.5	1.0	100	500	125
1.0	2.0	500	1,000	150
2.0	3.0	1,000	1,500	175
3.0	4.0	1,500	2,000	200
4.0	5.0	2,000	2,500	215
5.0	6.0	2,500	3,000	230
6.0	7.0	3,000	3,500	245
7.0	8.0	3,500	4,000	260
8.0	9.0	4,000	4,500	275
9.0	10.0	4,500	5,000	290
10.0	11.0	5,000	5,500	305
11.0	12.0	5,500	6,000	320
12.0	13.0	6,000	6,500	335
13.0	14.0	6,500	7,000	350
14.0	15.0	7,000	7,500	365
15.0	16.0	7,500	8,000	380
16.0	17.0	8,000	8,500	395
17.0	18.0	8,500	9,000	410
18.0	19.0	9,000	9,500	425
19.0	20.0	9,500	10,000	455
20.0	21.0	10,000	10,500	470
21.0	22.0	10,500	11,000	485
22.0	23.0	11,000	11,500	500
23.0	24.0	11,500	12,000	500
24.0	25.0	12,000	12,500	500

For any application that proposes to appropriate by both direct flow and storage there shall be charged a fee for quantity or volume, whichever is greater, but not both.

ITEM 192

To Department of Natural Resources –
Division of Wildlife Resources

From General Fund	240,500
From General Fund Restricted–Wildlife Resources Account	18,642,800
From Federal Funds	4,070,700
From Dedicated Credits	431,600
Beginning Non-Lapsing	469,600
Closing Non-Lapsing	(360,000)
Schedule of Programs:	
Administration	1,232,000
Fiscal Management	1,416,800
Information and Education	1,066,300
Law Enforcement	4,516,400
Habitat Projects	100,000
Habitat	2,329,500
Data Processing	236,100
Board	35,800
Fisheries Management	2,289,600
Fish Culture	2,467,300
Fish Experiment Station	720,800
Fish Habitat	174,000
Big Game	3,480,100
Non-Game	1,399,800
Small Game	621,100
Water Fowl	892,200
Hunter Education	316,100
Hardware Ranch	21,700
Duck Stamp	179,600

It is the intent of the Legislature that the Department of Natural Resources improve efficiency and control within the Division of Wildlife Resources. That the Division analyze its structure and reorganize to reduce bureaucracy and organizational complexity. That the Department of Natural Resources keep the Legislature apprised of its progress and plans through the Legislative Fiscal Analyst and that it report to the appropriate Legislative interim committee before the next General Session in 1994. That no reorganization requiring statutory changes be implemented without proper hearing and approval by the Legislature.

It is the intent of the Legislature that the Division of Wildlife Resources consider increasing the number of cougar permits.

LICENSES

Resident Fishing (6–11)	8.00
Resident Fishing (12–15)	8.00
Resident Fishing (16–64)	18.00
Resident Fishing (65+)	9.00
Resident Fishing, 5-Day (12–15)	4.00
Resident Fishing, 5-Day (16+)	9.00
Resident Fishing (Disabled)	.50
Resident Fishing (Mentally Retarded)	5.00
Nonresident Fishing Season (Any Age)	40.00
Nonresident Fishing, 1-Day (Any Age)	5.00
Nonresident Fishing, 5-Day (Any Age)	15.00
Resident Small Game (12–13)	6.00
Resident Small Game (14+)	12.00
Nonresident Small Game (12+)	40.00
Resident Big Game (14+)	5.00
Nonresident Big Game (14+)	5.00
Resident Combination (14+)	25.00
Resident Lifetime License	500.00
Resident Furbearer (Any Age)	25.00
Nonresident Furbearer (Any Age)	150.00
Resident/Nonresident Falconry	10.00
Nonresident Falconry Meet	10.00
Resident/Nonresident Commercial Hunt Area	5.00

DEER TAGS

Resident Rifle Deer Tag	14.00
Resident Archery Deer Tag	14.00
Resident Muzzleloader Deer Tag	14.00
Nonresident Rifle Deer Tag	195.00
Nonresident Archery Deer Tag	195.00
Nonresident Muzzleloader Deer Tag	195.00
Resident Antlerless Deer Permit/Tag	10.00

There is a $3.00 postage and handling fee for these permits.

Nonresident Antlerless Deer Permit/Tag	75.00

There is a $3.00 postage and handling fee for these permits.

Resident Deer Depredation	10.00

STAMPS

Resident/Nonresident Waterfowl Stamp	3.30
Wyoming Flaming Gorge Stamp	5.00
Arizona Lake Powell Stamp	8.00
Nonresident 1-Day Fishing Stamp	5.00
Upland Game Habitat Stamp	5.00

FISHING PERMITS
Set-Line Permit 10.00
Spearfishing Permit 5.00
BIG GAME PERMITS/TAGS
Resident Limited Entry Deer 40.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Limited Entry Deer 400.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident High Country Buck Deer 30.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident High Country Buck Deer . 250.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Archery Elk 40.00
Resident General Elk 40.00
Resident Limited Entry Bull Elk 75.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Control Elk 50.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Depredation Elk 50.00
Resident Limited Entry
Hunter Choice Elk 75.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Limited Entry Muzzleloader Elk 75.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Archery Elk 300.00
Nonresident General Elk 300.00
Nonresident Limited Entry Bull Elk ... 450.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Control Elk 300.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident/Nonresident Antlerless
Archery Elk 10.00
A person holding the appropriate permit may pay an additional $10.00 fee and receive a permit to take the animal with archery tackle 15 days prior to the season date specified on the permit.
Limited Entry Archery Bull Elk 10.00
A person holding the appropriate permit may pay an additional $10.00 fee and receive a permit to take the animal with archery tackle 15 days prior to the season date specified on the permit.
Nonresident Limited Entry Hunter
Choice Elk 300.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Entry
Muzzleloader Elk 450.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Limited Buck Antelope 35.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Limited Buck Antelope ... 215.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Limited Doe Antelope 10.00
There is a $3.00 postage and handling fee for these permits.
Resident Depredation Antelope 10.00
Nonresident Limited Doe Antelope 125.00
There is a $3.00 postage and handling fee for these permits.
Resident/Nonresident Arch. Buck Antelope10.00
A person holding the appropriate permit may pay an additional $10.00 fee and receive a permit to take the animal with archery tackle 15 days prior to the season date specified on the permit.
Resident/Nonresident Archery Moose ... 10.00
A person holding the appropriate permit may pay an additional $10.00 fee and receive a permit to take the animal with archery tackle 15 days prior to the season date specified on the permit.
Resident Bull Moose 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Antlerless Moose 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Bull Moose 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Antlerless Moose 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Bison 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Bison 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Desert Bighorn Sheep 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Resident Rocky Mountain Bighorn Sheep 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.
Nonresident Desert Bighorn Sheep .. 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big

game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Rocky Mountain Bighorn Sheep 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Rocky Mountain Goat 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Rocky Mountain Goat ... 1,000.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Cougar Permit 25.00
There is a $3.00 postage and handling fee for these permits.

Resident Bear Permit 50.00
There is a $3.00 postage and handling fee for these permits.

Resident Bear Permit (Archery-Bait) ... 50.00
There is a $3.00 postage and handling fee for these permits.

Resident Cougar-Bear Pursuit Permit .. 25.00

Resident/Nonresident Cougar or Bear Damage Permit 25.00

Nonresident Cougar Permit 250.00
There is a $3.00 postage and handling fee for these permits.

Nonresident Bear Permit 250.00
There is a $3.00 postage and handling fee for these permits.

Nonresident Bear Permit (Archery-Bait) 250.00
There is a $3.00 postage and handling fee for these permits.

Resident/Nonresident Limited Entry Wild Turkey 25.00
There is a $3.00 postage and handling fee for these permits.

Resident/Nonresident General Season Wild Turkey 10.00

Ptarmigan Permit ..... .00
There is a $3.00 postage and handling fee for these permits.

Band-tailed Pigeon Permit ..... .00
There is a $3.00 postage and handling fee for these permits.

Sandhill Crane Permit ..... .00
There is a $3.00 postage and handling fee for these permits.

Early Season Canada Goose Permit ..... .00
There is a $3.00 postage and handling fee for these permits.

Tundra Swan Permit ..... .00
There is a $3.00 postage and handling fee for these permits.

SPORTSMAN PERMITS

The successful applicants will pay the fee associated with the resident fee for that particular species.

Resident Bull Moose 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Hunter's Choice Bison 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Desert Bighorn Ram 200.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Bull Elk 75.00
A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

FALCONRY PERMITS

Resident Capture Permit Apprentice Class 20.00

Resident Capture Permit General Class . 35.00

Resident Capture Permit Master Class .. 35.00

Nonresident Capture Permit General Class 100.00

Nonresident Capture Permit Master Class 100.00

FURBEARER TAGS AND TRAP REGISTRATION

Resident Bobcat Temp. Possession Tag . 5.00/tag

Nonresident Bobcat Temp.
Possession Tag 5.00/tag
Resident Trap Registration (Payable Once) 5.00
Nonresident Trap Registration
(Payable Once) 5.00

DUPLICATE LICENSES, PERMITS AND TAGS

Duplicate licenses are one-half the original price of the license or $5.00 whichever is less.

Duplicate tags are one-half the original price of the tag or $5.00 whichever is less. No duplicate bobcat temporary possession tags are issued.

Duplicate permits are one-half the original price of the permit or $5.00 whichever is less.

Duplicate helper cards for commercial fishing $5.00
Duplicate Hunter Education Cards $10.00

WOOD PRODUCTS ON DIVISION OF WILDLIFE RESOURCES LANDS

Firewood ..... 10.00/2 cords
Christmas Tree 5.00

The $5.00 fee will be waived if the applicant possesses a current valid Utah hunting or fishing license.

Ornamentals (Maximum $60.00 per permit)
Conifers 5.00/tree
Deciduous 3.00/tree
Posts (Maximum $50 per permit) ..... .40/each

HUNTER EDUCATION FEES

Hunter Education Training 4.00

$3.00 goes to the volunteer instructor and $1.00 goes to the division for a student manual, student shoulder patch and a test.

Service long distance call to another state, country or province 2.00

LEE KAY CENTER FEES

Adult 2.00
Youth (15 and Under) 1.00
Sportsmen Club Meetings 20.00

CERTIFICATES OF REGISTRATION COLLECTION, IMPORTATION, TRANSPORTATION AND SUBSEQUENT POSSESSION OF ZOOLOGICAL ANIMALS

The following certificate of registration fees include a $5.00 nonrefundable application fee. Fees may be waived for educational or research activities. This is determined on a case-by-case basis. Unless specifically stated in the certificate of registration, all certificates are renewable annually. A single certificate of registration may authorize more than one activity.

Personal

Collection and Subsequent Possession
Resident 10.00
Nonresident 25.00
Collection (Band, Tag, Mark) and Release
Resident 10.00
Nonresident 25.00
Importation and Subsequent Possession . 10.00
Possession includes lawful preexisting ... 5.00
Possession for lecturing, displaying or exhibiting for a fee 5.00
(under $1,000 annual reciepts)

Commercial

Importation and Subsequent Possession 25.00
(under $5,000 annual sales)
(renewable every 5 years)
..... 100.00
(over $5,000 annual sales)
(renewable every 5 years)
Possession includes lawful preexisting possession 25.00
(under $5,000 annual sales)
(renewable every 5 years)
..... 100.00
(over $5,000 annual sales)
(renewable every 5 years)
Possession for lecturing, displaying or exhibiting for a fee 25.00
(over $1,000 annual receipts)
(renewable every 5 years)

Education/Research

Collection and Subsequent Possession
Resident 10.00
Nonresident 25.00
Collection (Band, Tag, Mark) and Release
Resident 10.00
Nonresident 25.00
Importation and Subsequent Possession . 10.00
Possession includes lawful preexisting 5.00
Possession for lecturing, displaying or exhibiting for a fee 5.00

POSSESSION OF LIVE GAME BIRDS (PRIVATE WILDLIFE FARM/AVICULTURE INSTALLATION)

The following certificate of registration fees include a $5.00 nonrefundable application fee.

Commercial

Possession 25.00
(under $5,000 annual sales)
(renewable every 5 years
..... 100.00
(over $5,000 annual sales)
(renewable every 5 years)

FOR TAKING BEAR AND COUGAR

Bear Baiting Handling Fee 5.00

TAKING, POSSESSING, SELLING, PURCHASING AND DISPOSING OF FURBEARERS

The following certificate of registration fees include a $5.00 nonrefundable application fee.

Resident Furdealer 25.00
Resident Furdealer's Agent 25.00
Nonresident Furdealer 75.00
Nonresident Furdealer's Agent 25.00

TAKING WILDLIFE FROM A VEHICLE

No fee assessed.

FOR COMMERCIAL FISHING AND DEALING COMMERCIALLY IN AQUATIC WILDLIFE

The following certificate of registration fees include a $5.00 nonrefundable application fee.

Dealer in Live/Dead Bait 75.00
Helper Cards 15.00
Commercial Seiner 1,000.00
Helper Cards 100.00

Commercial Brine Shrimper 10,000.00
Helper Cards 1,500.00

COMMERCIAL AQUACULTURE INSTALLATIONS, COMMERCIAL FEE FISHING INSTALLATIONS, PRIVATE FISH PONDS AND SHORT-TERM FISHING EVENTS

The following certificate of registration fees include a $5.00 nonrefundable application fee.

Private Fish Pond
Initial Fee 30.00
Renewal Fee - Renewable each year for 5 years 5.00

After a period of six years, or in the event the annual renewals are not maintained for any reason, the waters shall again undergo original application, inspection and fee payments.

Commercial Fee Fishing Installation ... 30.00
Renewable annually
Commercial Aquaculture Installations . 150.00
Renewable annually
Short-Term Fishing Events 5.00

Fees for short-term fishing event will be waived if the ponds or holding containers and fish are all supplied and set up by an owner or operator of a certificated, disease-certified aquaculture installation.

Private Stocking 30.00
Renewable annually

Tentative upon approval of Wildlife Board and 1993 Legislative Session.

Public Aquaculture 150.00
Renewable annually

Tentative upon approval of Wildlife Board and 1993 Legislative Session.

Requirement of Certificate Of Registration and fee will be waived if agency is engaged in a long-term cooperative relationship with Division Of Wildlife Resources and their activity is covered by a Memorandum Of Understanding with Division Of Wildlife Resources.

Aquaria 5.00
Renewable annually

Tentative upon approval of Wildlife Board and 1993 Legislative Session.

TAKING NONGAME MAMMALS

Taking of Prairie Dogs - Limited to parts of Iron and Garfield Counties. Fish and Wildlife Service Regulations. ..... .00

POSTED HUNTING UNITS

New Application 5.00
Renewal Application 5.00

COMMERCIAL HUNTING AREAS

New Application 150.00
Renewal Application 150.00
Bird Bands ..... .05/each

SERVICES

Reproduction of Records:
Self Service ..... .10/copy
Service Provided by Division Staff .... .25/copy
Geographic Information System
Personnel Time 35.00/hour
Processing (one-hour increments) .. 40.00/hour
Data Processing Time
Programming 40.00/hour
Production 20.00/hour
Application Fee for License Agency 20.00

EASEMENT AND LEASE SCHEDULE

Application Fees for Uses of Division Lands (Nonrefundable):
Leases 50.00
Easements, Including: 50.00
Rights-of-way
Rights-of-entry
Assessment Fees:
Amendment to lease, easement, right-of-way, right-of-entry 25.00
Certified document 5.00
Research on leases or title records . 50.00/hour
Rights-of-way Fees (cost per rod):
Electric Power Lines, Telephone Cables
(Short-term disturbance, intermittent maintenance)
Width of Easement
Initial
0' - 30' 12.00
31' - 60' 18.00
61' - 100' 24.00
101' - 200' 30.00
201' - 300' 40.00
> 300' 50.00
Renewal
0' - 30' 8.00
31' - 60' 12.00
61' - 100' 16.00
101' - 200' 20.00
201' - 300' 28.00
> 300' 34.00
Outside Diameter of Pipe
Initial
< 2.0" 6.00
2.0" - 13" 12.00
13.1" - 25" 18.00
25.1" - 37" 24.00
> 37" 48.00
Outside Diameter of Pipe
Renewal
< 2.0" 4.00
2.0" - 13" 8.00
13.1" - 25" 12.00
25.1" - 37" 16.00
> 37" 32.00
Roads, canals (permanent loss of habitat plus high maintenance disturbance):
Width of Easement
New Construction
1' - 33' 18.00
33.1' - 66' 24.00
Width of Easement
Existing
1' - 33' 12.00
33.1' - 66' 18.00

Leases (resulting in a permanent loss of a block of habitat, e.g. water tanks, communication towers, reservoirs) Fee will be developed through customary practices on a case-by-case basis plus three-to-one mitigation for loss of habitat plus assessment and value of lost land. Rights-of entry Fee will be developed through customary practices on a case-by-case basis with a minimum of $500.00 plus on-site mitigation for habitat disturbance.

Customary practices will follow formulas developed by State Lands and Forestry.

ITEM 193
To Department of Natural Resources -
Wildlife Resources Cooperative
Environmental Studies
From Federal Funds 300,000
From Dedicated Credits 48,900
Schedule of Programs:
Cooperative Program 348,900
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 194
To Department of Natural Resources -
Wildlife Resources Contributed Research
From Dedicated Credits 288,000
Schedule of Programs:
Contributed Research 288,000
It is the intent of the Legislature that these funds be non-lapsing.

ITEM 195
To Department of Natural Resources -
Wildlife Resources Predator Control
From General Fund 70,200
From Transfers ..... (70,200)

ITEM 196
To Department of Natural Resources -
Wildlife Resources Reimbursement
From General Fund 180,400
From Transfers ..... (180,400)

ITEM 197
To Department of Natural Resources -
Division of Parks and Recreation
From General Fund 7,010,000
From Federal Funds 570,800
From Dedicated Credits 3,752,600
From General Fund Restricted -
Boating Account 1,994,600
From General Fund Restricted -
Recreational Vehicle Account 1,131,400
Schedule of Programs:
Administration 773,200
Board 10,200
Operations and Maintenance 12,984,100
Planning 312,200
Public Information 214,000
Acquisition and Development 110,100
Federal Grant Coordinator 55,600

CAPITAL FACILITIES - NATURAL RESOURCES

ITEM 198
To Department of Natural Resources -
Water Resources Cities Water Loan Fund
From Repayments 2,435,400
From Beginning Non-Lapsing 700
Schedule of Programs:
Cities Water Loan Fund 2,436,100

ITEM 199
To Department of Natural Resources -
Water Resources Revolving Construction Fund
From Repayments 2,413,500
From Beginning Non-Lapsing 4,000
Schedule of Programs:
Revolving Construction Fund 2,417,500

ITEM 200
To Department of Natural Resources -
Water Resources Conservation and
Development Fund
From General Fund 398,200
From Repayments 5,022,600
From Beginning Non-Lapsing 215,400
Schedule of Programs:
Conservation and Development
Fund 5,636,200

ITEM 201
To Department of Natural Resources -
Division of Wildlife Resources -
Capital Budget
From General Fund Restricted - Wildlife
Resources Account 621,400
From Federal Funds 1,903,100
From Dedicated Credits 75,000
Schedule of Programs:
Information and Education 225,000
Fisheries 1,201,500
Game Management 1,173,000

ITEM 202
To Department of Natural Resources -
Division of Parks and Recreation -
Capital Budget
From General Fund 1,200,000
From Federal Funds 300,000
From Dedicated Credits 100,000
Schedule of Programs:
Land and Water Conservation 300,000
Facilities Acquisition and
Development 50,000
Park Renovation and Maintenance ... 100,000
Riverways/Trails 210,000
Bear Lake Marina 250,000
Antelope Island 250,000
Interior Park Roads 400,000
Pioneer Trail Park 40,000
It is the intent of the Legislature that Riverways and Trails funding not needed for trail and riverway maintenance and operation be used for grants.
It is the intent of the Legislature the Riverways and Trails grants be made on at least a one-to-one dollar match and only to parties that assume responsibility for maintenance and operation of the project. Any exceptions to this intent must be recommended by the Board of Parks and Recreation and have prior approval of the Legislature. These funds shall be non-lapsing.
It is the intent of the Legislature that upon completion of the Bear Lake Marina and Antelope Island improvements the funds which continue to be appropriated shall be used for maintenance and improvement of facilities operated by the Department of Parks and Recreation.

PUBLIC EDUCATION

ITEM 203
To State Board of Education -
State Office of Education

From Uniform School Fund $10,487,100
From Uniform School Fund - .....
Drivers' Education Account 2,478,000
From Federal Mineral Lease Funds 641,200
From Dedicated Credits 2,690,500
From Uniform School Fund -
Professional Practices Account 56,000
From Federal Funds 62,221,400
From Transfer -
Dedicated Credits Intragovernmental
Revenue 528,900
Schedule of Programs:
Board Members 314,000
Assessment 2,345,600
Operations 55,984,600
Administration 895,900
Equal Education Opportunity 781,100
Office of Superintendent - Other 420,700
Office of Superintendent - .....
Indirect Cost 2,338,900
Approved FTE - 41.20
Approved Capital Outlay - 7,500
Approved Indirect Cost Rate -
Nonrestricted - 19.0%
Approved Indirect Cost Rate -
Restricted - 8.6%
Internal Service Fund 1,025,200
Approved FTE - 9.3
Approved Capital Outlay - 12,500
Information and
Instruction Systems 3,948,600
Certification 1,172,200
Vocational Education 12,863,100
Superintendent-Discretionary Fund 377,300
Indirect Cost Reduction ..... (3,364,100)

ITEM 204
To State Board of Education -
State Office of Education
From Dedicated Credits 133,800
From Beginning Non-Lapsing Balances . 17,900
Schedule of Programs:
Education Technology Administration . 151,700

ITEM 205
To State Board of Education -
State Office of Rehabilitation
From Uniform School Fund 7,805,000
From Federal Funds 23,215,200
From Dedicated Credits 118,000
Schedule of Programs:
Administration 599,900
Visually Handicapped 3,237,600
Rehabilitation Services 23,215,500
Disability Determination 3,394,400
Services to Hearing Impaired 690,800

ITEM 206
To State Board of Education -
State Office of Education - Child Nutrition
From Uniform School Fund 100,000
From Federal Funds 54,031,400
From Uniform School Fund -
Liquor Control Tax Account 8,600,000
Schedule of Programs:
Child Nutrition Program 62,731,400

ITEM 207
To State Board of Education -
State Office of Education
From Uniform School Fund 2,980,500
Schedule of Programs:
American Fork Training School 876,700
State Hospital 804,200
Corrections Institutions 1,299,600
It is the intent of the Legislature that the Corrections Education Contract of the State Board of Education implement all nine components of the Recidivism Reduction Model in FY 1994.

ITEM 208
To State Board of Applied Technology Education
From Uniform School Fund 1,566,100
Schedule of Programs:
Vocational Education
Critical Industry Fund 1,566,100

ITEM 209
To State Board of Applied Technology Education
Applied Technology Centers
From Uniform School Fund 13,479,300
From Dedicated Credits 4,821,900
Restricted Funds 116,800
Other 272,900
From Beginning Non-lapsing Balances .. 721,600
From Closing Non-lapsing Balances ... (548,400)
Schedule of Programs:
Bridgerland Applied
Technology Center 4,206,100
Davis Applied Technology Center ... 4,634,900
Ogden-Weber Applied
Technology Center 4,938,700
Sevier Valley Applied Technology
Center 2,470,700
Uintah Basin Applied
Technology Center 2,613,700
It is the intent of the Legislature that the State Board for Applied Technology Education, the Legislative Fiscal Analyst, and staff from the Governor's Office of Planning and Budget work together to develop a funding formula for the Applied Technology Centers.

ITEM 210
To State Board of Education -
Utah Schools for the Deaf and the Blind
From Uniform School Fund 10,562,600
From Dedicated Credits 50,000
From Land Grant Revenue 58,700
From Transfers 432,800
From Beginning Non-lapsing Balances ... 39,600
From Closing Non-lapsing Balances .... (18,200)
Schedule of Programs:
Administration 825,800
Resident Care 449,000
Educational Services 944,000
Special Account 1,539,500
Instruction 5,860,800
Support Services 747,500
Outreach 758,900
It is the intent of the Legislature that the Utah Schools for the Deaf and the Blind work with Central Motor Pool to analyze what transportation options are available through State resources to meet the transportation

needs of the students being served by the Utah Schools for the Deaf and the Blind and report these findings to the Legislature.

It is the intent of the Legislature that the teachers of the Utah Schools for the Deaf and the Blind receive an increase in pay comparable to that provided for certified teachers in FY 1994.

It is the intent of the Legislature that the Career Ladder program at the Utah Schools for the Deaf and the Blind be changed on a basis proportionate to Career Ladder programs in surrounding school districts.

It is the intent of the Legislature that the Utah Schools for the Deaf and the Blind participate in the educational technology initiative on the same basis as the school districts.

ITEM 211

To State Board of Education – Fine Arts and Hansen Planetarium
From Uniform School Fund 1,650,700
Schedule of Programs:
Utah Symphony 661,700
Ballet West 315,700
Utah Opera 118,600
Modern Dance 162,600
Hansen Planetarium 367,100
Visual Arts 25,000

It is the intent of the Legislature that the State Office of Education and the Legislative Fiscal Analyst shall evaluate the arts and science programs associated with this appropriation and the funding mechanism for these programs during the 1993 interim. This evaluation should include an assessment of the role and mission of arts and science education and how that role fits with the State Strategic Plan and the fulfillment for the mission of Public Education and the State Board and Analyst shall report the findings and recommendations in the next Legislative session.

DEPARTMENT OF HUMAN SERVICES

ITEM 212

To Department of Human Services – Executive Director Operations
From the General Fund $9,017,200
From Federal Funds 11,320,000
From Dedicated Credits 4,058,200
From Revenue Transfers 1,179,100
Schedule of Programs:
Executive Director 552,800
Administrative Hearings 389,700
Electronic Data Processing 1,943,100
Management Service 7,262,000
Finance 1,073,800
Human Resources 1,043,100
General Services 705,700
Federal Food 382,000
Special Projects 1,053,600
Central Licensing 1,540,000
Liability Management 1,048,900
Disabilities Council 571,600
Quality Control 935,100
Social Services Block-Pass Through . 1,880,000
Office of Social Services 1,227,200
Contracts 3,965,900

In accordance with Section 63-38-3(2)(a) Utah Code Annotated, the following fees are approved for the licenses issued by the Department of Human Services, Office of Licensing for FY 1994.

Initial License (any new program except Comprehensive Mental Health or Comprehensive Substance Abuse) 200.00
Adult Day Care (0-50 Consumers)
Per Program 50.00
Per Consumer Capacity 1.25
Adult Day Care (50 or More Consumers)
Per Program 100.00
Per Consumer Capacity 1.25
Child Day Care, Family Day Care and Group Day Care
Per Program 25.00
Per Child/Capacity 1.50
Child Placing Agency 150.00
Comprehensive Mental Health Treatment 600.00
Comprehensive Substance Abuse Programs 600.00
Day Treatment 75.00
Driving Under the Influence
Education Service 50.00
Outpatient Treatment 50.00
Residential Support 50.00
Residential Treatment
Per Program 100.00
Per Consumer Capacity (Youth Residential Treatment only) 1.50
Life Safety Pre-inspection 100.00
Social Detoxification 100.00
Outdoor Youth Program
Per Program 100.00
Per Consumer Capacity 5.00

ITEM 213

To Department of Human Services – Division of Mental Health
From General Fund 34,937,500
From Federal Funds 2,710,100
From Dedicated Credits 1,941,200
From Revenue Transfers 6,892,000
Schedule of Programs: .....
Director's Office 728,800
Community Support 436,500
Community Services 3,081,000
Mental Health Centers 14,919,700
State Hospital 24,344,600
Residential Services 2,970,200

ITEM 214

To Department of Human Services – Division of Substance Abuse
From General Fund 8,339,100
From General Fund Restricted
Intoxicated Driver 500,000
Federal Funds 9,992,800
Dedicated Credits 54,800
Schedule of Programs:
Administration 722,500
State Services 1,690,800
Local Services 15,005,300
Non-formula Funding 968,100
Drivers Under the Influence – Fees on Fines 500,000

ITEM 215
To Department of Human Services
Office of Family Support Administration
From General Fund 51,985,600
From Federal Funds 117,231,500
From Dedicated Credits 2,168,800
Transfers 5,446,800
Schedule of Programs:
Administration 6,763,400
Regional Offices 41,930,100
Aid to Families with
Dependent Children 86,160,200
General Assistance 5,976,000
Food Stamp Cash Out 1,711,300
Refugee Relocation 615,200
Federal Energy Program 9,860,200
Child Care 23,580,700
Supplemental Security
Income Supplement 235,600

It is the intent of the Legislature to instruct the Office of Family Support in coordination with the Division of Aging and Adult Services to make regular visits to senior centers, senior housing units, and other gathering places of seniors for the purpose of QMB (Qualified Medicare Beneficiaries) outreach; also directing that the application for QMB be accepted at these sites.

ITEM 216
To Department of Human Services –
Division of Services for People
with Disabilities
From General Fund 21,560,100
From Federal Funds 2,388,400
From Dedicated Credits 1,100,000
From Revenue Transfers 44,813,400
Schedule of Programs:
Administration 1,673,200
Service Delivery 4,477,700
Utah State Developmental Center .. 25,566,000
Residential Services 24,266,000
Day Services 7,582,900
Transportation 864,200
Supported Employment 3,174,800
Family Support 1,984,100
Attendant Care 273,000

It is the intent of the Legislature that every person seeking services in the State disability programs shall be informed of all the choices and options available to them, which may include the Utah State Developmental Center, ICF/MRs and community settings.

ITEM 217
To Department of Human Services –
Office of Recovery Services
From Federal Funds 16,963,000
From Dedicated Credits 7,355,300
From Revenue Transfers 2,362,500
Beginning Non-Lapsing 810,400
Schedule of Programs:
Administration 1,863,100
Financial Services 2,304,400
Management Services 4,584,700
Child Support Services 9,955,900
Collection Services 3,927,700
Data Development 4,855,400

ITEM 218
Division of Family Services
From General Fund 17,917,100
From General Fund Restricted–
Spouse Abuse 300,000
From Federal Funds 22,609,600
From Dedicated Credits 1,380,600
Transfers 3,188,200
Children's Trust Fund 350,000
Schedule of Programs:
Administration 974,600
Service Delivery 24,062,600
Contracts 698,100
In Home Services 1,288,800
Out of Home Services 9,847,600
Facility Based Services 2,347,300
Treatment Services 2,032,700
Restricted Services 3,349,000
Special Needs 307,200
Children's Justice Center 435,600
Children's Trust Fund 350,000
Conference on the Family 52,000

ITEM 219
To Department of Human Services –
Division of Aging and Adult Services
From General Fund 5,741,200
From Federal Funds 6,178,900
From Dedicated Credits 38,000
From Revenue Transfers 586,000
Schedule of Programs:
Administration 977,900
Local Government Grants 8,289,400
Adult Services 1,683,500
Non Formula Funds 1,593,300

ITEM 220
To Department of Human Services –
Internal Service Funds
From Dedicated Credits 4,612,000
Schedule of Programs:
General Services 1,839,000
Field Facilities 260,200
Central Processing 462,500
Electronic Data Processing 2,050,300
Approved FTE Positions – 50.5
Approved Capital Outlay $171,000

ITEM 221
To Department of Health –
Executive Director's Operations
From the General Fund 7,127,000
From Federal Funds 1,193,500
From Dedicated Credits 1,137,800
From Revenue Transfers 612,300
Schedule of Programs:
Executive Director 2,686,600
Medical Examiner 1,118,200
State Laboratory 4,157,700
Administrative Services 2,108,100

In accordance with Section 26-1-6, the following fees are approved for the services of the Department of Health for FY 1994.

It is the intent of the Legislature that the Department of Health identify services for which fees can reasonably be estab- lished, and charge fees for those services such that the public health is not compromised.

The Department may charge actually duplicating cost, not to exceed five cents per page of duplicated material, and actual staff time required to compile materials, not to exceed $18.50 per hour to comply with the requirements of the Government Records Management Act.

OFFICE OF THE MEDICAL EXAMINER

Autopsy–Non–Jurisdictional Case 850.00
+ cost of body trans.

External Examination
Non–Jurisdictional Case 300.00
+ cost of body trans.

Reports – Jurisdictional Case ..... No Charge
Next of Kin (no charge first copy),
Other Physicians/Hospitals,
Other Government Agencies (including military personnel)

External Examination Report 10.00
Autopsy Report 15.00
Miscellaneous papers 15.00

Preparation, Consultation, and Appearance on Office of the Medical Examiner Civil Court Case – portal to portal expenses, including transportation 150.00/hour
..... plus expenses

Appearance for Non–Office of the Medical Examiner Criminal Court Case – including transportation expenses 150.00/hour
..... plus expenses

Consultation as Medical Examiner on Non–Office of the Medical Examiner Case – including telephone time 150.00/hour

Use of Office of the Medical Examiner facility and Medical Examiner Assistants 300.00/case

Slides and Prints (negatives) 1.75
Each Slide 2.50
..... plus cost of film
Each Video Tape 75.00
Black and White 8 x 10 ..... 5.00
Black and White 5 x 7 ..... 2.50
Overlays 25.00
Glass Slides 3.50
X–rays 5.00

STATE HEALTH LABORATORY

Bureau of Environmental Chemistry and Toxicology

Chain of Custody Sample Handling 10.00
Priority Handling of Samples (Surcharge)50 percent Minimum . 10.00 charge
Expert Preparation Time (Research) .. 25.00 hr
Expert Witness Fee (Portal to Portal) . 50.00 hr
Photocopied Documents (Up to 10 pages) 15.00
For each extra page 1.00

Sample Containers
BOD ..... .60
BTX 1.25
Carbamates 1.25
Conductivity ..... .15
Cyanide ..... .60
Drinking Rad. ..... .60
F–Nutrient ..... .50
Lead/Copper ..... .60
Max–THM 1.25
Nitrate/Sulfate ..... .15
Nutrient ..... .50
Oil and Grease 3.00
Pesticides 8.00
Phenol 6.00
THM 1.25
Total Chemistry ..... .60
Total Metal ..... .50
Sulfides ..... .15
Surface Rad. ..... .60
VOC 1.25

Drinking Water Tests
Lead and Copper (Metals Type 8) 26.00

Chemistry Type 7 Inorganics
Primary Drinking Water Contaminants . 150.00
Arsenic
Barium
Cadmium
Chromium
Fluoride
Lead
Mercury
Nitrate plus Nitrite (total)
Selenium
Silver
Sodium
Sulfate
Total Dissolved Solids
Turbidity

Chemistry Type 8 ..... 270.00
Includes 14 Primary Drinking Water contaminants. Estimated cost (part of the analysis may be referred or subcontracted) plus the following secondary contaminants:
Alkalinity
Calcium
Chloride
Color
Copper
Corrosivity (Langlier index)
Iron
Manganese
Odor
pH
Surfactants (MBAS)
Zinc

Total Water Chemistry Type 6 ..... 250.00
33 parameters:
Arsenic
Barium
Bicarbonate
Cadmium
Calcium
Carbon Dioxide,
Carbonate
Carbonate Solids
Chemical Balance
Chloride
Chromium
Copper
Fluoride
Hydroxide
Iron
Lead
Magnesium
Manganese

Mercury
Nitrate plus Nitrite (total)
pH
Potassium
Selenium
Silver
Sodium
Specific Conductance
Sulfate
Total Alkalinity
Total Dissolved Solids
Total Hardness
Total Suspended Solids
Turbidity
Zinc
Drinking Water Organic Contaminants
THMs EPA Method 501 ..... 75.00
Maximum Total Potential
THM Method 510 ..... 80.00
Primary Organics (Pesticides): 300.00
Endrin
Lindane
Methoxychlor
Toxaphene
2,4-D, 2,
4,5-TP (Silvex)
VOCs (Regulated): Method 502.2 ..... 150.00
Benzene
Carbon Tetrachloride
D-Dichlorobenzene
1,2 Dichloroethane
1,1-Dichloroethylene
Trichloroethylene
1,1,1-Trichloroethane
Vinyl Chloride
VOCs (Regulated plus List 1, 2
3 Unregulated) 250.00
List 2 Unregulated VOCs (by themselves) 90.00
Other Drinking Water Organic Tests:
Haloacetic Acids Method 552 ..... 150.00
Haloacetonitriles Method 551 ..... 100.00
Radiochemicals In Drinking Water:
Gross Alpha 60.00
Radium 226 ..... 125.00
Radium 228 ..... 155.00
Radon by Lucas-Cell 50.00
..... and sampling cost
Microbiology:
Drinking Water Bacteriology 10.00
Drinking Water Parasitology (either) .. 125.00
Cryptosporidium and/or giardia (both) . 175.00
Hibler Test for Water (MPE) 40.00
Phase II-IV Drinking Water Contaminants:
Inorganics and Heavy Metals
(18 parameters) 220.00
Antimony
Arsenic
Barium
Beryllium
Cadmium
Chromium
Copper
Cyanide
Fluoride
Lead
Mercury
Nickel
Selenium
Sodium
Sulfate
Total Dissolved Solids (TDS)
Turbidity
Thallium
Pesticides/PCBs/SOCs
33 regulated contaminants 1,440.00
33 regulated contaminants plus list II
unregulated 1,700.00
VOCs (21 regulated parameters) 225.00
VOCs (21 regulated plus List 1) 250.00
VOCs (21 regulated plus List 2) 250.00
VOCs (21 regulated plus List 1 and list 3) 275.00
VOCs List 1 (by itself) 225.00
VOCs List 3 (by itself) 225.00
VOCs List 1 and List 3 ..... 225.00
PCBs Confirmation Method 508A 100.00
Unregulated Organics:
Lists 1, 2, and 3 ..... 875.00
List 2 ..... 650.00
Inorganics
Type 1 - Individual water chemistry parameters
Alkalinity (Total) 9.00
Aluminum 11.00
Ammonia 15.00
Antimony 15.00
Arsenic 15.00
Barium 11.00
Beryllium 11.00
BOD5 - Please schedule with
the Laboratory 30.00
Boron 11.00
Cadmium 15.00
Calcium 11.00
Chromium 11.00
Chloride 8.00
Chlorophyll A 20.00
COD 20.00
Color 11.00
Copper 11.00
Cyanide 40.00
Fluoride 9.00
Hardness (Calculation: Ca + Mg) 5.00
Iron 11.00
Langlier Index (Calculation: pH,
calcium, TDS, alkalinity) 5.00
Lead 15.00
Magnesium 11.00
Manganese 11.00
Mercury 20.00
Molybdenum 11.00
Nickel 15.00
Nitrogen, Total Kjeldahl (TKN) 30.00
Nitrate) Please schedule with 20.00
Nitrite) the Laboratory 20.00
Nitrate and Nitrite 10.00
Odor 10.00
pH 5.00
Phosphate, ortho - Schedule with
Laboratory 20.00
Phosphorus, Total 15.00
Potassium 11.00
Selenium 15.00
Silica 11.00
Silver 15.00
Sodium 11.00

Solids, Total Dissolved (TDS) 13.00
Solids, Total Suspended (TSS) 13.00
Solids, Settable (SS) 13.00
Solids, Total Volatile 15.00
Solids, Percent 13.00
Solids, Residual Suspended 25.00
Specific Conductance 9.00
Sulfate 11.00
Sulfide 30.00
Thallium 15.00
Turbidity 10.00
Vanadium 11.00
Zinc 11.00
Inorganic Chemistry Groups:
Type 2 - Partial Chemistry
(19 parameters) 100.00
Bicarbonate
Calcium
Carbonate
Carbonate Solids
Carbon Dioxide
Chemical Balance
Chloride
Hydroxide
Magnesium
pH
Potassium
Sodium
Specific Conductance
Sulfate
Total Alkalinity
Total Dissolved Solids
Total Hardness
Total Suspended Solids
Turbidity
Type 4 - Total Water Chemistry
(33 parameters, Metals
are dissolved)
Surface water 250.00
Arsenic
Manganese
Barium
Mercury
Bicarbonate
Nitrate plus Nitrite
Cadmium
pH
Calcium
Potassium
Carbonate
Selenium
Carbonate Solids
Silver
Carbon Dioxide
Sodium
Chemical Balance
Specific Conductance
Chloride
Sulfate
Chromium
Total Alkalinity
Copper
Total Dissolved Solids
Fluoride
Total Hardness
Hydroxide
Total Phosphate
Iron
Total Suspended Solids
Lead
Turbidity
Magnesium
Zinc
Type 5 - Total Water Chemistry
(33 parameters as
in Type 4, Metals are acid soluble) 250.00
Type 6 - Total Water Chemistry
(33 parameters as
in Type 4, Metals are totals) 250.00
Metals Tests:
Type 1 - Metals .....
(Tissues, Paint, Sediment, Soil, ... 15.00/metal
or air filters) ..... (30.00 min)
Type 2 - Acid Soluble Metals
(not digested)
(12 determinations) - Water 110.00
Arsenic
Barium
Cadmium
Chromium
Copper
Iron
Lead
Manganese
Mercury
Selenium
Silver
Zinc .....
Type 3 - Dissolved metals
(12 determinations) 110.00
Type 7 - Total Metals In Water (Digested) 160.00
(12 determinations)
Nutrient Tests:
Type 9 - Ammonia 90.00
Dissolved Nitrate and Nitrite
Dissolved Total Phosphate
Total Phosphate
Total Kjeldahl Nitrogen
Requires two bottles
Biochemical Oxygen Demand (BOD5) tests:
Type 4 - BOD5 ..... 35.00
Total Suspended Solids
Type 5 - BOD5
Soluble BOD5
Total Suspended Solids 60.00
Organics
BTEX (Benzene, Toluene, Ethylbenzene,
Xylene) 75.00
Carbamates 250.00
Chlorinated Acid Herbicides (615)
Water or Soil 175.00
Chlorinated Pesticides and PCBs (608)
Water or soil 175.00
Chlorophyll A 20.00
Ethylene Glycol in water 75.00
Oil and Grease 45.00
Organophosphate Pesticides (614) 150.00
Organic Solvent Screen (FID) 100.00
PCBs in oil 75.00
Phenols (Total) 30.00
Semi-volatile 425.00
(Base, Neutral, Acid Extractables) - Water
EPA Method 625
Total Organic Carbon (TOC) 25.00

Total Petroleum
Hydrocarbons (non-BTEX) 75.00
Triazine Herbicides (619) 150.00
Volatiles (Purgeables)
EPA Method 624 ..... 250.00
EPA Method 505 ..... 150.00
EPA Method 531.1 ..... 275.00
EPA Method 504 ..... 90.00
EPA Method 515.1 ..... 150.00
EPA Method 507 ..... 150.00
EPA Method 525 ..... 450.00
EPA Method 524 ..... 300.00
EPA Method 550.1 ..... 250.00
EPA Method 506 ..... 150.00
EPA Method 549 ..... 200.00
EPA Method 548 ..... 150.00
EPA Method 547 ..... 200.00
EPA Method 508 A 100.00
Miscellaneous Organic Chemistry .... by quote
TCLP
Extraction Procedure
Grease, paint, oil 180.00
Solid 100.00
TCLP zero headspace Extraction (ZHE) 160.00
Extract Analysis
Metals 15.00/ea
Semi-volatiles including Pesticides 500.00
Volatiles 200.00
EP Toxicity Test
Extraction Procedure 100.00
Metals 15.00/ea
Pesticides and Herbicides 300.00
Radiochemistry Section:
Gross alpha or beta 60.00
Gross alpha and beta 60.00
Radium226, (Deemanation) 125.00
Radium228, (ppt/separation) 155.00
Uranium (Total Activity) 100.00
Radon by Lucas-Cell 50.00
and sampling cost
Germanium/lithium gamma scan on
water and solid samples.
Analysis includes nuclide identifi-
cation and quantitation. Per nuclide. . 75.00
Toxicology Section:
Alcohol 20.00
Blood alcohol 35.00
Blood or Tissue Drug Analysis 150.00
Blood Cannabinoids 200.00
Cannabinoid (Marijuana)
RIA Screen (Urine) 10.00
Cannabinoids RIA Screen (Blood) 30.00
Cocaine RIA Screen 10.00
Confirmation of positive drug screens ... 50.00
Confirmation of positive urine
cannabinoid screen 60.00
Drug preparations (identification or
quantitation) 50.00
Expert testimony (portal to portal) ... 50.00/hr
Opiate RIA Screen 10.00
Bureau of Microbiology
Sample Containers
Fecal - Bacteriological 2.50
Fecal - Parasitological 4.00
GenProbe 1.50
TB 3.50
Environmental testing ..... .25
Culture tube 3.60
Blood tube x 3 ..... 3.50
Blood tube x 9 ..... 5.00
Immunology Section:
HIV Ab, HBsAg 15.00
HIV Ab, HBsAb 20.00
Hepatitis A Antibody 10.00 (min.40)
Hepatitis B Surface Antigen(HBsAg) 6.00
Hepatitis B Surface Antibody (HBsAb) .. 15.00
HIV-1 - Antibody (Note: this test includes
a confirmatory Western Blot if needed) . 10.00
HIV-1 - Confirmation (Note: this is for a
Western Blot only, a reactive EIA is
not required) 25.00
Syphilis RPR 3.50
Syphilis VDRL 4.00
Syphilis FTA 7.00
Rubella immune status 10.00
St. Louis Encephalitis and Western Equine
Encephalitis (available June -
October only) 10.00
Lyme Disease DFA 20.00
HIV prostitute law - research and
testimony 50.00/hr
Chain of Custody sample surcharge 10.00
Samples for research 5.00
Virology Section:
Chlamydia culture 30.00
Herpes culture 10.00
Herpes typing 15.00
Verotoxin bioassay 25.00
Gonorrhea (GenProbe collection kit req.) .. 4.50
Chlamydia (GenProbe collection kit req.) .. 6.00
Gonorrhea and Chlamydia
(GenProbe collection kit req.) 8.50
Gen Probe collection kit 1.50
Rabies - high-risk animals or human
exposure with low-risk animals 50.00
Rabies - low risk animals,
no human exposure 50.00
CMV culture 10.00
Bacteriology Section:
Clinical
Enteric pathogens (Salmonella, Shigella,
Campylobacter, and E. coli O157:H7) 10.00
Strep culture and typing 5.00
Mycobacteria AFB only 15.00
Mycobacteria culture and sensitivity 25.00
Tuberculosis sensitivity 18.00
Bordetella culture and DFA 14.00
Legionella culture and DFA 25.00
Other bacterial culture and sensitivity 7.00
Tick identification and lyme
disease culture 15.00
Ova and parasites 15.00
Environmental
Bulk asbestos determination 20.00
Drinking water bacteriology 10.00
Swimming pool bacteriology 10.00
Polluted water bacteriology 10.00
Environmental legionella (swab) 7.00
Environmental legionella (liter of water) . 30.00
Water analysis via Hibler test (MPE) 40.00
Drinking water parasitology
(Cryptosporidium ..... (1 analyte) 125.00
and/or Giardia) ..... (both analytes) 175.00
Miscellaneous

Serum cholesterol and HDL 2.60
(with transportation) 2.80
Food microbiology - plate count 6.00
environmental swab 12.00
coliform count 15.00
Newborn Screening:
Routine first and follow-up screening ... 21.00
Diet Monitoring 7.00
Bureau of Laboratory Improvement
Environmental Laboratory Certification:
Annual certification fee (chemistry and/or microbiology)
Utah laboratories 300.00
Out of state laboratories 600.00
(plus travel expenses)
Annual registration fee 175.00
Analytical categories by program
Safe Drinking Water by Analyte and Method
Microbiological
Each Method
Total Coliform MTF 20.00
Total Coliform MF 20.00
Total Coliform PA 20.00
Total Coliform MMO-MUG 20.00
Fecal Coliform 20.00
Escherichia coli MTA 20.00
Escherichia coli MI 20.00
Heterotrophic Plate Count 20.00
Inorganic Chemicals
Each Method
Arsenic 10.00
Barium 10.00
Cadmium 10.00
Chromium 10.00
Lead 10.00
Mercury 10.00
Nitrate 20.00
Selenium 10.00
Silver 10.00
Fluoride 20.00
Asbestos 20.00
Nitrite 20.00
Antimony 10.00
Beryllium 10.00
Cyanide 10.00
Nickel 10.00
Thallium 10.00
Copper 10.00
Organic Chemicals
Each Method
Regulated Halogenated Volatiles 30.00
Regulated Aromatic Volatiles 30.00
Regulated Volatile Organic Compounds . 60.00
Regulated EDB/DBCP 60.00
Regulated PCBs 30.00
Regulated Nitrogen and
Phosphorus Pesticides 120.00
Regulated Chlorinated Pesticides 30.00
Regulated Chlorophenoxy Herbicides ... 30.00
Regulated Base/Neutrals - Acids 120.00
Regulated Carbamates 30.00
Regulated Trihalomethanes 30.00
Unregulated Halogenated Volatiles 30.00
Unregulated Aromatic Volatiles 30.00
Unregulated Volatile Organic Compounds 60.00
Unregulated Chlorinated Pesticides 30.00
Unregulated Nitrogen and Phosphorus
Pesticides 120.00
Unregulated Chlorophenyoxy Herbicides . 30.00
Unregulated Base/Neutrals - Acids 120.00
Unregulated Carbamates 30.00
Enothal 30.00
Diquat 30.00
PAH 50.00
Dioxin 60.00
Radiological
Gross Alpha 25.00
Gross Beta 25.00
Total Radium 25.00
Radium-226 ..... 25.00
Strontium-89/90 ..... 25.00
Tritium 25.00
Cesium-134 ..... 25.00
Uranium 25.00
Radium 228 ..... 25.00
Radon 222 ..... 25.00
Clean Water by Analyte and Method
Microbiological
Each Method
Total Coliforms 20.00
Fecal Coliforms 20.00
Fecal Streptococci 20.00
Inorganic Test Procedures
Each Method
Acidity 10.00
Alkalinity 10.00
Aluminum 10.00
Ammonia 20.00
Antimony 10.00
Arsenic 10.00
Barium 10.00
Beryllium 10.00
BOD5 ..... 20.00
Boron 10.00
Bromide 10.00
Cadmium 10.00
Calcium 10.00
C BOD5 ..... 20.00
COD 20.00
Chloride 10.00
Chlorine, Total Residue 20.00
Chromium VI 10.00
Chromium 10.00
Cobalt 10.00
Color 10.00
Copper 10.00
Cyanide 20.00
Cyanide Amendable to Chlorination 20.00
Fluoride 10.00
Gold 10.00
Hardness 10.00
Iridium 10.00
Iron 10.00
Total Kjeldahl Nitrogen 20.00
Lead 10.00
Magnesium 10.00
Manganese 10.00
Mercury 10.00
Molybdenum 10.00
Nickel 10.00
Nitrate 20.00
Nitrate/Nitrite 20.00
Nitrite 20.00
Oil and Grease 20.00

Total Organic Carbon 20.00
Orthophosphate 20.00
Osmium 10.00
Dissolve Oxygen 10.00
Palladium 10.00
Phenols 20.00
Phosphorus 10.00
Platinum 10.00
Potassium 10.00
Residue Total 10.00
Residue Filterable 10.00
Residue Nonfilterable TSS 10.00
Residue Settleable 10.00
Residue Volatile 10.00
Rhodium 10.00
Ruthenium 10.00
Selenium 10.00
Silica 10.00
Silver 10.00
Sodium 10.00
Specific Conductance 10.00
Sulfate 10.00
Sulfide 10.00
Sulfite 10.00
Surfactants 15.00
Thallium 10.00
Tin 10.00
Titanium 20.00
Turbidity 20.00
Vanadium 10.00
Zinc 10.00
Organic Compounds
Each Method
Purgeable Halocarbons 50.00
Purgeable Aromatic 50.00
Acrolein and Acrylonitrile 50.00
Phenols 50.00
Benzidines 50.00
Phthalate Esters 50.00
Nitrosamines 50.00
Organochlorine Pesticides and PCB 50.00
Polynuclear Aromatic Hydrocarbons 50.00
Haloethers 50.00
Chlorinated Hyudrocarbons 50.00
2,3,7,8 Tetrachlorodibenzo–P–Dioxin ... 100.00
Purgeables 50.00
Base/Neutrals and Acids 120.00
Chlorinated Pheoxy Acid Herbicides 50.00
Benzidin, Chlorinated Organic Compounds, Pentachlorophenol, Pesticides 50.00
Misc Organic – SM 50.00
Misc Organic – USGS 50.00
Radiological
Gross Alpha 25.00
Gross Beta 25.00
Total Radium 25.00
Radium 226 ..... 25.00
RCRA
Microbiological
Total coliform Multiple tube fermentation 20.00
Total coliform Membrane filter 20.00
Inorganic Chemicals
Each Method
Aluminum 10.00
Antimony 10.00
Arsenic 10.00
Barium 10.00
Beryllium 10.00
Boron 10.00
Cadmium 10.00
Calcium 20.00
Chromium 10.00
Chromium, Hexavalent 10.00
Cobalt 10.00
Copper 10.00
Iron 10.00
Lead 10.00
Magnesium 20.00
Manganese 10.00
Mercury 10.00
Molybdenum 10.00
Nickel 10.00
Osmium 10.00
Potassium 20.00
Selenium 10.00
Silicon 20.00
Silver 10.00
Sodium 20.00
Thallium 10.00
Vanadium 10.00
Zinc 10.00
Miscellaneous Groups
Each Method
Cyanide Total and Amenable 36.00
Purgeable Organic Halides 25.00
Total Organic Halides 25.00
Sulfides 20.00
Sulfates 20.00
Total Organic Carbon 20.00
Phenolics 20.00
Oil and Grease 20.00
Nitrate 20.00
Chlorides 20.00
pH 20.00
Specific Conductance 30.00
Cation Exchange of Soils 30.00
Compatibility Test for Wastes and Membrane Liners 30.00
Paint Filter Liquids Test 30.00
Saturated Hydraulic Conductivity, Saturated Leachate Conductivity and Intrinsic Permeability 30.00
Radiological
Gross Alpha and Beta 25.00
Alpha–Emitting Radium Isotopes 25.00
Radium 228 ..... 25.00
Hazardous Waste Characteristics
Each Method
Ignitability 20.00
Corrosivity 20.00
Reactivity 20.00
Sample Extraction Procedures
Each Method
EP Toxicity 20.00
TCLP 50.00
Multiple Extraction Procedure 15.00
Extraction Procedure for Oily Wastes 15.00
Organic Chemicals
Each Method
Halogenated Volatile Organics 50.00
EDB and DBCP 50.00
Nonhalogenated Volatile Organics 50.00
Aromatic Volatile Organics 50.00
Volatile Organic Compounds–Water 50.00

Acrolein, Acrylonitrile,
Acetonitrile 50.00
Phenols 50.00
Phthalate Esters 50.00
Nitrosamines 50.00
Organochlorine Pesticides and PCB 50.00
Nitroaromatics and Cyclic Ketones 50.00
Polynuclear Aromatic Hydrocarbons 50.00
Haloethers 50.00
Chlorinated Hydrocarbons 50.00
Organophosphorus Pesticides - Water .. 50.00
Organophosphorus Pesticides - Soil 50.00
Chlorinated Herbicides 50.00
Volatiles 50.00
Semivolatiles 100.00
Chlorinated Dioxins and Dibenzo Furans 60.00
Other Programs Analytes by Method
Each individual Analyte by each
specific method 30.00
Laboratories applying for certification are subject to the annual certification fee, plus the fee listed for each category in each they are to be certified. Permits for authorized individuals to withdraw blood for the purpose of determining alcohol or drug content.
Triennial fee 20.00
Impounded Animals Use Certification: . 300.00
Annual fee
NOTE: The Laboratory performs a variety of tests under contract and in volume to other agencies of government. The charge for these services is determined according to the type of service and the test volume, and is based on cost to the Laboratory and therefore may be lower than the fee schedule. Because of changing needs, the Laboratory receives requests for new tests or services that are impossible to anticipate and list fully in a standard fee schedule. Charges for these services are authorized and are to be based on costs.

ITEM 222
To Department of Health -
Division of Health Care Resources
From General Fund 2,427,400
From Federal Funds 616,400
From Dedicated Credits 725,700
From Emergency Medical Trust 959,700
From Beginning Non-Lapsing 285,300
From Closing Non-Lapsing ..... (153,000)
From Revenue Transfers 61,100
Schedule of Programs:
Director 259,000
Emergency Medical Services 2,157,600
Health Facility Licensure 509,500
Health Data Analysis 261,200
Vital Records and Health Statistics .. 1,410,900
Primary Care and Rural Health 324,400
In accordance with Section 26-1-6, the following fees are approved for the services of the Department of Health for FY 1994.
Bureau of Emergency Medical Services
Registration, Certification and Testing
Certification Fee 10.00
Instructor Certification Fee 25.00
Recertification Fee 10.00
Lapsed Certification Fee 15.00
Written Test Fee 12.50
Practical Test Fees
EMT - Basic Certification Practical 25.00
EMT - Basic Recertification Practical ... 30.00
EMT - (D) Practical 0.00
Paramedic Reciprocity Practical 136.00
National Registry 18.00
The fees listed above apply to the following certification levels:
Emergency Medical Technician (EMT) - Basic
EMT IV
EMT Intermediate
EMT Defibrillator
EMT Paramedic
Emergency Medical Dispatcher (EMD)
EMT Instructor
EMD Instructor
Training Supplies and Accessories
Charge for course supplies to be based upon most recent acquisition cost plus 20 percent rounded up to the nearest $.10 (computed quarterly), FOB Salt Lake City, Utah.
Trauma Center
Trauma Center Verification 1,500.00
Bureau of Health Facility Licensure
Annual License Fees
A base fee of $40.00 plus the appropriate fee as indicated below applies to any new or renewal license.
A. Hospitals:
Fee Per Licensed Bed 10.50
B. Nursing Care Facilities, and Small Health Care Facilities:
Fee Per Licensed Bed 9.50
C. Residential Care Facilities:
Fee Per Licensed Bed 7.00
D. End Stage Renal Disease Centers (ESRDs):
Fee Per Licensed Station 45.00
E. Freestanding Ambulatory Surgery Centers Birthing Centers, and Abortion Clinics:
Fee Per Licensed Unit 90.00
F. Hospice Agencies: 55.00
G. Home Health Agencies: 250.00
H. Mammography Screening Facilities . 200.00
The fee for each additional license or copy issued to the same facility during the license year shall be: 20.00
Plan Review and Inspection Fees
A. Hospitals:
Number of Beds
Up to 16 ..... 1,500.00
17 to 50 ..... 3,500.00
51 to 100 ..... 5,000.00
101 to 200 ..... 6,000.00
201 to 300 ..... 7,000.00
301 to 400 ..... 8,000.00
Over 400 ..... 8,000 + 50 per each additional bed
In the case of complex or unusual hospital plans, the Bureau of Health Facility Licensure will negotiate with the provider an appropriate plan review fee at the start of the review process based on the best estimate of the review time involved and the standard hourly review rate.
B. Nursing Care Facilities and Small

Health Care Facilities: ..... Number of Beds
Up to 16 ..... 1,000.00
17 to 50 ..... 2,250.00
51 to 100 ..... 4,000.00
101 to 20 ..... 5,000.00
C. New Residential Care Facilities
Number of Beds .....
Up to 16 ..... 675.00
17 to 50 ..... 1,500.00
51 to 100 ..... 2,675.00
101 to 200 ..... 3,350.00
D. Freestanding Ambulatory
Surgical Facilities: ..... 750.00 per
..... operating room
E. Other Freestanding Ambulatory
Facilities including Birthing Centers,
Abortion Clinics, and similar facilities:
..... 250.00 per
..... service unit
F. End Stage Renal Disease Facilities
..... 100.00 per
..... service unit
Each additional inspection required
(beyond the two covered by the fees
listed above) or each additional
inspection requested by the facility
shall cost $100.00 plus .27 cents
per mile, for travel to and
from the site by a Department
representative. ..... 100.00 plus
..... .27 per mile
Plan Review and Inspection Fees
for Remodels of Licensed Facilities.
The plan review fee for remodeling
an area of a currently operating
licensed facility that does not involve
an addition of beds, operating room,
service units, or other clinic type
facilities:
A. Hospitals, Freestanding Surgery
Facilities: ..... 16 per
..... sq. ft.
B. All others excluding Home
Health Agencies: ..... 14 per
..... sq. ft.
C. Each required on-site
inspection: ..... 100.00 plus
..... .27 per mile
..... traveled
Other Plan-Review Fee Policies
A. If an existing facility has
obtained an exemption from the
requirement to submit preliminary
and working drawings, the Department
will conduct a detailed on-site
inspection in lieu of the plan review.
The fee for this will be: ..... 100.00 plus
..... .27 per mile
..... traveled
B. A facility that uses plans
and specifications previously
reviewed and approved by the
Department will be charged 60
percent of the scheduled plan
review fee. ..... 60 percent
..... of scheduled fee
C. Thirty cents per square foot will
be charged for review of facility
additions or remodels that house special
equipment such as a CAT scanner or
linear accelerator. ..... 30 per Sq. Ft.
D. If a project is terminated or
delayed during the plan review
process a fee based on services
rendered will be retained as follows:
1. Preliminary drawing review-25
percent of the total fee.
2. Working drawings and specifications
review-80 percent of the total fee.
If the project is delayed beyond
12 months from the date of the
State's last review the applicant
must re-submit plans and pay a new
plan review fee in order to renew
the review action. Depending on
the extent of the previous review
process, item [B] above may apply.
Other Fees
1.a. New Provider/Change in Ownership
Applications: A $500.00 fee will be
assessed for services rendered
providers seeking initial licensure
or change of ownership to cover
the cost of processing the application,
staff consultation, review
of facility policies, initial inspection,
etc. This fee will be due at the time of
application. 500.00
b. Residential Care - Limited
Capacity/Change of Ownership
Applications: A $250.00 application
fee will be assessed for services
rendered to providers seeking
initial licensure or change of
ownership to cover the cost of
processing the application,
staff consultation and initial
inspection.
This fee will be due at the time
of application. 250.00
2. If an application is terminated or
delayed during the application process
a fee based on services rendered will be
retained as follows:
a. Policy and Procedure Review-50
percent of the total fee. ..... 50 percent of
..... Scheduled Fee
b. Onsite inspections-90
..... percent of the total fee.
..... 90 percent of
..... Scheduled Fee
3. Health Care Facility Licensure
Rules. (Licensees receive one copy
of each newly published edition of
applicable Health Care Facility
Licensure Rules. Additional copies
of the rules will reflect the cost of
printing and mailing.) ..... Cost +
..... mailing
Bureau of Vital Records
Search and issuance of certified copy of
certificates of birth, 1905 to present:
Five years centered on the requested year 12.00
Each additional five years 12.00

Search of entire file from 1905 ..... 50.00
Duplicate copies requested with
initial search: 5.00
Commemorative heritage birth certificate 35.00
Search and issuance of certified copy of
certificates of death, fetal death,
acknowledgement of paternity, 1905
to present: Five years centered on the
requested year 9.00
Each additional five years 9.00
Search of entire file from 1905 ..... 50.00
Certificate of divorce or application for
marriage license, 1978 to present: 9.00
Amendments to correct information after
one year of event or court ordered changes
to vital records: 20.00
Preparation, registration, and issuance
of a certified copy of a delayed birth
certificate or a new birth
certificate after adoption, legitimation, or
adjudication of paternity: 40.00
Copies of a "Sealed Record" by court order 20.00
Duplicate copies requested with
initial search: 5.00
Expedited Service 10.00
Copies of, or information from, vital
statistics records requested in "furtherance
of a statistical or medical research program:"
1. If number of records requested is under
100, the fee per record is: 9.00
2. If records requested exceeds 100:
a. If records are to be selected by
name, these fees apply: (1) per record if name,
date of event and place of event are provided
5.00 (2) per record if name and date of event
are provided 7.00
(3) per record if name only is provided .. 9.00
b. If records are to be selected by variablesoth-
er than name, these fees apply: (1) per record
for 1 variable 5.00
(2) per record for 2 variables 7.00
(3) per record for 3 or more variables ... 9.00
Registration for inclusion in the Utah
Mutual Consent Voluntary
Adoption Registry 25.00
Copies of Birth Parent(s) Non-Identifying
Health, Genetic, and Social Histories ... 10.00
Updating of Information in the Adoption
Registry or the Health, Genetic, and
Social Histories 2.00
Government Agencies – Requests for
certificate copies for official business
from federal governmental agencies shall
require the appropriate fee, except that
requests for Veterans' benefits shall
be honored without payment of the required
fee. State or local governmental agencies in
Utah may be provided certificate copies for
official purposes without payment of the
required fee, except the Department may
contract with those agencies requesting
large volumes of service.
Insufficient Information – If the information
supplied by the applicant is not sufficient
to enable the State or local registrar to
supply the record requested and the applicant,
after written request by State or local
registrar, does not furnish the necessary
information within 90 days of the date
of request, the registrar shall retain the fee.
Overpayment – Overpayment of the required
fee received by the State or local registrar
shall be retained by them, except any
overpayment shall be refunded upon written
request of the applicant within one year
or when such overpayment is in excess of $5.00.
Expedited Service – Requests are to be marked
EXPEDITE and the expedite fee of $10.00
enclosed along with the other fees.
A response will be sent as a facsimile
copy or mailed on the day the order is
received, or by the morning of the next
work day, provided that the requested
record and the application are complete
and in order.
Bureau of Health Data Analysis
Fees may be waived based on special need or
for initial data requests.
Health Data Plan/Statute/Rule
/Ambulatory Data Plan ..... Cost + Mailing
..... Resource Documents
1. Hospital Financial and
Utilization Profile ..... Cost + Mailing
2. Medical Staff Specialty Profile Cost + Mailing
3. Hospital Effectiveness and
Efficiency of Select Surgical
Procedures ..... Cost + Mailing
4. Select Technology Intensive
Procedures ..... Cost + Mailing
5. 25 Most Frequently Performed
Inpatient Surgeries by DRG ... Cost + Mailing
6. Maternity Care ..... Cost + Mailing
7. Access to Hospitals by
Patient Demographics ..... Cost + Mailing
8. Insurance Coverage ..... Cost + Mailing
9. Behaviorally Based Preventable
Disease and Early Death: Charges
and Outcomes. ..... Cost + Mailing
10. Environmental Disease: Charges
and Outcomes ..... Cost + Mailing
Special Documents
Fee may be waived based on special
circumstances, such as an
individual purchaser and non-commercial,
not-for-profit agency requests.
1. Technology Intensive Procedures (Select
Longitudinal Analysis) 75.00
2. Organ Transplants 65.00
3. Mental Disorders, Drug and Alcohol
Use Utilization and Charges by DRG. ... 65.00
4. Patterns of Mental Health Practice
Adjusted Utilization Rates of Select
Mental Health Procedures 50.00
5. Mental Health Primary Payer Summary
By Hospital Group 50.00
6. Access Indicators by Geographic Area . 50.00
7. Patient Origin, Market Share, Payer Mix,
and Disease Prevalence 75.00
8. Leading Causes of Inpatient Death:
Charges and Outcome 125.00
9. Preventable Mortality Related to Smoking
Risk-Adjusted Charges and Outcomes. . 125.00
Electronic Data Release
1. Public Data Set (Complete) 250.00

2. Research Oriented Data Set 250.00
Financial Performance
Fees may be waived for initial request by individual or organization.
1. Financial Analysis of Utah Hospital industry 1986–1990 ..... 15.00

ITEM 223
To Department of Health – Division of Health Care Resources
From General Fund 310,000
From Federal Funds 100,000
Schedule of Programs:
Physician Loan Repayment Program and Scholarship Fund 410,000

ITEM 224
To Department of Health – Division of Health Care Resources
From General Fund 200,000
Schedule of Programs:
Nursing Education Financial Assistance 200,000

ITEM 225
To Department of Health – Division of Community Health
From General Fund 4,106,400
From Federal Funds 3,839,500
From Dedicated Credits 326,600
From Revenue Transfers 218,100
Schedule of Programs:
Director 1,256,700
HIV/AIDS Prevention/Control 1,486,500
Chronic Disease Control 1,995,100
Epidemiology 2,137,900
Health Promotion and Risk Reduction 1,263,400
Environmental Health Services 351,000
In accordance with Section 26–1–6, the following fees are approved for the services of the Department of Health for FY 1994.
DIVISION OF COMMUNITY HEALTH SERVICES
Bureau of Chronic Disease
Cardiovascular Disease/Hypertension Control:1
Class Manuals
Cooking Demonstration (per person) 2.00
Cooking Demonstration Class (per person) 10.00
CPR Training Class 10.00
Blood Pressure Standardization Class 10.00
Cholesterol Procedure Manual 25.00
Early Start for a Healthy Heart Manual .. 25.00
Cardiovascular Health Education Class 7.00
Stress Management (per hour of instruction) 25.00
Relaxation Tape Only 5.00
Family Cardiovascular Health Education Class 10.00
Standardization of Blood Pressure (manual) Measurement Technique 8.00
Protocol for Patient Counseling in Blood Pressure Screening Clinics 5.00
Cuisine Fit for Life (6 session series) 90.00
(Limited topic series) 20.00
Professional manual (Cuisine) 25.00
Family High Risk Teacher Curriculum Guide 15.00
Family High Risk Professional Manual ... 35.00
Total Cholesterol Testing (targeted audience) 7.00
"So You Have High Blood Cholesterol" booklet 1.50
"Eating to Lower Your High Blood Cholesterol" booklet 1.50
"Eat for Life, the Low Fat, Low Cholesterol Way" booklet ..... .50
Cholesterol Standardization Class (per person) 75.00
Cholesterol Testing Proficiency Tests (per year) 100.00
HDL Testing 10.00
Total Lipid Profile (special audience only) .. 15.00
No fees are charged to local health departments. However, private agencies are charged for class materials, film rentals and instructor services.
Film Rentals
All films or slide presentations 10.00
Cancer Screening and Control Program
Maximum fee charged on program's sliding fee schedule 27.00
NOTE: The following cancer screening fee schedule is based on 100 percent of the federal poverty guidelines.

COMMUNITY HEALTH SERVICES CANCER SCREENING PROGRAM SLIDING FEE SCHEDULE, 1994

Fee	$5.00	$10.00	$15.00	$19.00	$23.00	$27.00
Family Size	FAMILY ANNUAL INCOME					
1	0	8,514	10,216	11,919	13,621	15,549
	8,513	10,215	11,918	13,620	15,548	And Up
2	0	11,489	13,786	16,084	18,381	20,679
	11,488	13,785	16,083	18,380	20,678	And Up
3	0	14,463	17,356	20,249	23,141	26,034
	14,462	17,355	20,248	23,140	26,033	And Up
4	0	17,439	20,926	24,414	27,901	31,389
	17,438	20,925	24,413	27,900	31,388	And Up
5	0	20,414	24,496	28,579	32,661	36,744
	20,413	24,495	28,578	32,660	36,743	And Up
6	0	23,389	28,066	32,744	37,421	42,099
	23,388	28,065	32,743	37,420	42,098	And Up
7	0	26,364	31,636	36,909	42,181	47,454
	26,363	31,635	36,908	42,180	47,453	And Up
8	0	29,339	35,206	41,074	46,941	52,809
	29,338	35,205	41,073	46,940	52,808	And Up
9	0	32,314	38,776	42,239	51,701	58,164
	32,313	38,775	45,238	51,700	58,163	And Up
10	0	35,289	42,346	49,404	56,461	63,519
	35,288	42,345	49,403	56,460	63,518	And Up
11	0	38,264	45,916	53,569	61,221	68,874
	38,263	45,915	53,568	61,220	68,873	And Up
12	0	41,239	49,486	57,734	65,981	74,229
	41,238	49,485	57,733	65,980	74,228	And Up
Each Additional Person	2,975	3,570	4,165	4,760	5,355	5,950

PENSIONS AND SOCIAL SECURITY ARE INCLUDED AS ANNUAL INCOME

ANNUAL INCOME IS DEFINED AS ANNUAL FAMILY INCOME

BREAST EXAM ONLY: 50% OF ABOVE RATE
($5.00 min., rounded to the next dollar)

$5.00	$5.00	$8.00	$10.00	$12.00	$14.00

PAP AND PELVIC ONLY: 75% OF ABOVE RATE
($5.00 min., rounded to the next dollar)

$5.00	$8.00	$11.00	$14.00	$17.00	$20.00

Bureau of Health Promotion and Risk Reduction
Healthy Utah Program
Healthy Utah/Healthy Heart Workshop
Participant Fee per person 40.00
Laboratory Analysis: serum cholesterol plus high density lipoprotein (HDL) 4.00
CDC Health Risk Computer Appraisal 1.50

Fitness Computer Profile 1.50
Nutrition Computer Profile 1.50
Bureau of HIV/AIDS Prevention and
Control Notification and post-test
counseling of patients involved
in an emergency medical services (EMS)
body fluid exposure.
1) Counseling of an individual with a ..... Cost
positive HIV antibody test. ..... Recovery
2) a. Notification of an individual with a
negative HIV antibody test by phone. .. 6.00 or
b. Notification of an individual with a
negative HIV antibody test by
certified letter and phone. 10.00
Bureau of Epidemiology
Immunization Vaccines (see note below) Partial
..... Cost
..... Recovery
NOTE: 53A-11-305 Utah Code Annotated
authorizes the Department to recover
all or part of the cost of vaccines
by charging local health departments.

ITEM 226
To Department of Health - Division
of Family Health Services
From General Fund 5,227,200
From Federal Funds 38,441,400
From Dedicated Credits .....
840,400
From Revenue Transfers 1,988,700
Schedule of Programs:
Director 1,432,000
Maternal and Infant Health 4,218,400
Child Health 1,585,300
Special Health 7,605,600
Communicative Disorders 728,500
Dental Health 317,400
Woman, Infant and Children 30,610,500

It is the intent of the Legislature that the Division of Family Health Services identify those services for which charges can be established that are consistent with those charges in the private sector and that do not compromise the Division's mission of improving public health. These services shall be billed to both third-parties and clients, provided that clients are billed according to a sliding fee schedule based on income, family size and medical expenses. This fee schedule shall be approved annually by the Legislature. In accordance with Section 26-1-6, the following fees are approved for the services of the Department of Health for FY 1994.

FAMILY HEALTH SERVICES
SLIDING FEE SCHEDULE, 1994
MONTHLY INCOME RANGES
JANUARY 1993

CLIENT FINANCIAL RESPONSIBILITY	0%	20%	40%	60%	100%
% OF FEDERAL POVERTY GUIDELINE	0% 133%	133% to 150%	150% to 185%	185% to 225%	to >225%

Family Size	Federal Poverty Guideline ($)	MONTHLY INCOME ($)				
1	568	0 755	756 851	852 1,050	1,051 1,277	1,278 And Up
2	766	0 1,019	1,020 1,149	1,150 1,417	1,418 1,723	1,724 And Up
3	964	0 1,282	1,283 1,446	1,447 1,784	1,785 2,169	2,170 And Up
4	1,163	0 1,546	1,547 1,744	1,745 2,151	2,152 2,616	2,617 And Up
5	1,361	0 1,810	1,811 2,041	2,042 2,518	2,519 3,062	3,063 And Up
6	1,559	0 2,074	2,075 2,339	2,340 2,884	2,885 3,508	3,509 And Up
7	1,758	0 2,337	2,338 2,636	2,637 3,251	3,252 3,954	3,955 And Up
8	1,956	0 2,601	2,602 2,934	2,935 3,618	3,619 4,401	4,402 And Up
Each Additional	198	264	298	367	446	446

Note: The FHS fee schedule is based on official poverty levels published in the Federal Register Feb. 14, 1992, pp. 5455-5457. When new poverty guidelines are published the fee scale will be changed as required in federal law, Title V of the Social Security Act, and in accord with guidelines published by the Department of Health and Human Services, Office of the Secretary.

DIVISION OF FAMILY HEALTH SERVICES
Office Visit, New Patient
Problem focused straightforward 35.00
Expanded problem, straightforward 46.00
Detailed, low complexity 68.00
Comprehensive Moderate complexity 91.00
Comprehensive high complexity 114.00
Office Visit, Established Patient
Minimal Service or non-MD 12.00
Problem focused straightforward 32.00
Expanded problem, low complexity 42.00
Detailed, moderate complexity 54.00
Comprehensive high complexity 82.00
Well Child Care
Init. Eval and Mgt., Inf. (<1 yr.) 68.00
Per. Reeval, and Mgt., Inf. (<1 yr.) 68.00
Per. Reeval, and Mgt., Child. (1-4) 68.00
(1) Discontinued by American Medical
Association in Physicians Current
Procedural Terminology 1992.
Psychological
Developmental Test 56.00
Diagnostic Exam (per hour) 114.00
Psych Tests, Eval (per hour) 114.00
Individual Psychotherapy, 20-30 minutes 58.00
Individual Psychotherapy, 45-50 minutes 114.00
Family Med Psychotherapy, w/o
30 minutes 42.00
Family Med Psychotherapy, Conjoint
30 minutes 114.00
Psych Report (per hour) 114.00
Environmental Intervention w/Agencies
Employers, etc. 32.00
Environmental Intervention 15 minutes . 16.00
Physical and Occupational Therapy
Therapeutic Exercise (30 min.) 42.00
Occupational Therapy (Training

in ADL) (30 min.) 42.00
Office Visit 42.00
Same as Office visit above
Office Visit Check Out 42.00
Speech
Brief Assessment 34.00
Intermediate Assessment 50.00
Comprehensive Assessment 95.00
Basic Limited Assessment 34.00
Basic Intermediate Assessment 50.00
Comprehensive Assessment 95.00
Audiology
Audiom., Pure Tone Screen 27.00
Audiom., Pure Tone Threshold 29.00
Audiom., Air and Bone 35.00
Speech Audiom., Threshold 25.00
Speech Audiom., Thr. and Disc. 35.00
Basic Comprehen., Audiometry 63.00
Tympanometry 15.00
Conditioning Play Audiom. 63.00
Central Auditory Function 69.00
Brainstem Evoked Response 231.00
Hearing Aid Exam, Monaural 63.00
Hearing Aid Exam Binaural 86.00
Ear Mold 35.00
Perinatal Care
Total Maternity Care, Vag. Del. 1,013.00
Total Maternity Care, C–Section 1,133.00
High Risk Maternity, Vag. Del. 1,133.00
High Risk Maternity, C–Section 1,133.00
Perinatal Care Coordination 21.00
Diaphragm Fitting 12.00
IUD Insertion 50.00
Risk Assessment (Low) 7.00
Risk Assessment (High) 7.00
Group Pre/Postnatal Education 7.00
Nutritional Assess/Counseling 7.00
Psychosocial Counseling 21.00
Early Intervention
Individual Assessment (60 min.) 50.00
Team Assessment 150.00
Individual Therapy (60 min.) 50.00
Group Therapy (60 min.) 20.00
Home Intervention 50.00
NOTE: In order to comply with intent language passed by the 1992 Legislature, this Schedule of Charges for the Division of Family Health Services must be updated regularly as part of the Division's continuing implementation of a comprehensive accounts receivable system. The charges for these common procedures should be consistent with the private sector. Since Family Health Services must try to bill for any procedure performed and since potentially there is an unlimited number of procedures, this list contains, of necessity, only those procedures for which Family Health Services bills most commonly.
If new procedures are performed or new charges established they will be reflected in a public list of charges published by the Division.

ITEM 227
To Department of Health – Medical Assistance
From General Fund 103,086,200
From General Fund Restricted
Nursing Facility 2,441,400
From Dedicated Credits 11,401,900
From Federal Funds 375,294,400
From Revenue Transfers 15,867,300
Schedule of Programs:
Medicaid Base Program 394,716,100
Medicaid Special Seeding 9,604,100
Medicaid Mental Health 38,542,100
Title XIX Funding for
Human Services 61,870,000
Utah Medical Assistance Program .. 3,358,900
It is the intent of the Legislature that the Department of Health request a federal fund waiver to permit the Utah Medicaid Program to apply a sliding co–payment based on a pregnant woman's countable assets of $5,000 or greater, 20 percent for assets of $10,000, and 30 percent for assets of $20,000 or higher. The co–payment percentage will be applied to the total estimated cost to the utah Medicaid Program for prenatal, delivery, and postpartum costs for a normal delivery. The Department of Health may waive the asset co–payment in cases where it determines that social, medical or other reasons, place the woman in the high risk category. The Department shall report its progress in obtaining the Medicaid waiver to the Health Interim Committee.

ITEM 228
To Department of Health – Health Care Financing
From General Fund 5,818,100
From General Fund Restricted
Nursing Facilities 30,400
From Federal Funds 17,323,400
From Dedicated Credits 256,700
From Revenue Transfers 7,463,300
Schedule of Programs:
Director's Office 1,290,800
Financial Services 3,877,600
Managed Health Care 1,735,900
Information Systems 2,221,100
Facility Review 2,262,700
Coverage and Reimbursement 1,031,100
Contracts 17,400,600
Utah Medical Assistance Program .. 1,072,100
It is the intent of the Legislature that the Division of Health Care Finance shall implement cost containment measures to reduce utilization in the Medicaid Program.

ITEM 229
To Department of Health – Internal Service Fund – Data Processing
From Dedicated Credits 2,136,500
Schedule of Programs:
Data Processing 2,136,500
Approved FTE Positions – 37
Approved capital Outlay – $338,500

DEPARTMENT OF PUBLIC SAFETY

ITEM 230
To Department of Public Safety -
Comprehensive Emergency Management
From the General Fund ..... $ 388,300
From Federal Funds 3,197,300
Schedule of Programs:
Administration 3,585,600

ITEM 231
To Department of Public Safety -
Commissioner's Office
From General Fund 1,568,400
From Federal Funds 100,000
From Dedicated Credits 40,000
Schedule of Programs:
Commissioner's Office 1,343,400
Fleet Management 194,100
Community Crime Prevention 170,900

It is the intent of the Legislature that all monies seized or forfeited to the State as a result of drug or narcotic related activity through the state or federal court process, be deposited into a General Fund Restricted - Drug Forfeiture Non-Lapsing Account.

The Department of Public Safety is authorized to expend amounts not to exceed $200,000 from seizures awarded by the state court and $100,000 from the seizures awarded by the federal court to aid in enforcement efforts to combat drug trafficking.

Funds disbursed to other governmental entities through existing contractual agreements shall be exempt from this intent statement.

An additional $250,000 from seizures awarded by the State or Federal courts is to be disbursed to local law enforcement agencies at the discretion of the Department of Public Safety to aid in efforts to combat drug trafficking.

Funds seized and forfeited as a result of the Salt Lake Airport Drug Program, not to exceed the Department expenditure to that program, shall be exempt from the language of this intent statement.

The Department shall provide the Appropriations Subcommittee for Transportation and Public Safety a complete accounting of expenditures and revenues fromthese funds as part of the annual budget hearings.

Anticipated expenditures shall be limited to the following:
Helicopter Operating Expense 75,000
Joint Operations with National Guard 10,000
Computers for Intelligence Network . 25,000
Investigations Division Vehicles 50,000
Specialized Training 10,000
Computer Training and Travel 10,000
Imprest Fund 20,000
Extraordinary Investigations 40,000
Specialized Equipment 25,000
Emergency Response Team Expenses 20,000
Technical and Professional Services .. 15,000
Replace Body Armor 25,000
Emergency Response Team Vehicle . 100,000
Replacement Engine for Helicopter .. 100,000
Crime Lab Equipment 50,000
Narcotics Reward Fund 5,000
Refurbish Skylane 50,000

It is the intent of the Legislature that receipts above $40,000 of reimbursable flight time for the Department of Public Safety's aircraft be deposited into a Dedicated Credit Non-Lapsing Account to be used only to replace or repair aircraft engines.

ITEM 232
To Department of Public Safety -
Highway Patrol
From General Fund 15,408,500
From Federal Funds 504,800
From Transportation Fund 5,155,300
From Dedicated Credits 502,600
From Commerce Service Fund 340,200
Schedule of Programs:
Administration 627,600
Field Operations 16,026,500
Commercial Vehicle 1,783,800
Safety Inspections 461,000
Truck Inspection 367,300
Protective Services 773,800
Training 1,733,900
Federal Projects 137,500
The following fees are approved
for the services of the Utah Highway
Patrol for FY 1994:
Station Approval and Set Up 100.00
Annual Station License 25.00
Station License Reinstatement 25.00
Inspection Certification Fee
(valid three years) 10.00
Inspector Reinstatement If Suspended ... 10.00
Inspector Reinstatement If Revoked 25.00
Safety Inspection Manual 10.00

ITEM 233
To Department of Public -
Safety Promotion
From General Fund 121,500
From Dedicated Credits 800
Schedule of Programs:
Safety Promotion 122,300

ITEM 234
To Department of Public Safety -
Investigative Services
From General Fund 2,970,000
From Federal Funds 806,500
From Dedicated Credits 30,000
From Transfers 151,000
Schedule of Programs:
Narcotics and Liquor Law Enforcement 3,066,100
Medicaid Fraud 891,400

ITEM 235
To Department of Public Safety -
Peace Officers' Standards and Training
From General Fund 300,000
From General Fund Restricted -
Public Safety Support Fund 991,500
From Dedicated Credits 195,900
Schedule of Programs:
Basic Training 852,200
Regional Training 635,200

ITEM 236
To Department of Public Safety -
Law Enforcement Services
From General Fund 4,426,200
From General Fund Restricted -
Public Safety Support Fund 172,400
From Dedicated Credits 743,600
From Transfers 185,000
Schedule of Programs:
Regulatory Licensing 151,300
Criminal Identification 1,580,400
State Crime Lab 802,100
Communications 2,993,400
The following fees are approved for the services of the Department of Public Safety for FY 1994:
Regulatory Licensing
Security Guard Company
Biennial original license 500.00
Security Guard Company
Biennial renewal license 300.00
Armed security guard
Biennial original license 25.00
Armed security guard
Biennial renewal license 10.00
Unarmed security guard
Annual original license 15.00
Unarmed security guard
Annual renewal license 2.50
Concealed weapons permit 35.00
Biennial renewal license 5.00
Detection deception (polygraph)
Annual original license 25.00
Detection deception (polygraph)
Annual renewal license 25.00
Detection deception (polygraph)
Annual intern license 10.00
Burglar Alarm Company
Biennial original license 100.00
Burglar Alarm Company
Biennial renewal license 125.00
Alarm agent annual original license 20.00
Alarm agent annual renewal license 5.00
Applicant criminal background check ... 10.00

ITEM 237
To Department of Public Safety -
Driver License
From Transportation Fund 9,340,400
From Federal Fund 17,000
Schedule of Programs:
Administration 813,900
Driver Services 5,351,400
Driver Records 3,192,100
The following fees are approved for the services of the Driver License Division for FY 1994:
Commercial driver school
Annual original license 80.00
Commercial driver school
Annual renewal license 50.00
Commercial driver school
Duplicate 5.00
Commercial driver school
Annual instructor license 15.00
Commercial driver school
Annual instructor renewal license 10.00
Commercial driver school
Duplicate instructor 3.00
Commercial Driver School Branch Office
Annual Original License 20.00
Commercial Driver School Branch Office
Annual Renewal License 20.00
Commercial Driver School
Reinstatement Fee 25.00
Commercial Driver School Branch Office
Reinstatement Fee 25.00
Commercial Driver School Instructor
Reinstatement Fee 25.00
Driver License Records:
Motor vehicle records 3.00
Certified Record (includes MVR)
first 15 pages 8.00
16 to 30 pages 13.00
31 to 45 pages 18.00
46 or more pages 23.00
Copies:
Per se arrest 5.00
Refusal arrest 5.00
Officer's accident report 5.00
Court conviction 5.00
Any other record or letter maintained
by Driver's License Division 5.00
Tape recording copy 5.00

ITEM 238
To Department of Public Safety -
Highway Safety
From General Fund 93,500
From Federal Funds 1,259,600
Schedule of Programs:
Fatal Accident Reports 38,900
In-House Grants 996,700
Administration 317,500
It is the intent of the Legislature that the Division of Highway Safety may transfer federal funds from this item of appropriation to any other item of appropriation.

ITEM 239
To Department of Public Safety -
State Fire Marshal
From General Fund 678,100
From Dedicated Credits 105,000
Schedule of Programs:
Fire Prevention and Investigation 688,100
Fire Fighter Training 95,000
The following fees are approved for the services of the State Fire Marshal Division for FY 1994:
Liquid Petroleum Gas License
Class I 300.00
Class II 300.00
Class III 70.00
Class IV 100.00
Branch Office 225.00
Liquid Petroleum Gas Certificate 30.00
Liquid Petroleum Gas
(dispenser Operator B) 10.00
Duplicate 30.00
Examination 20.00
Re-examination 20.00
Five year examination 20.00
Plan Reviews .....
More than 5,000 gallons of Liquid
Petroleum Gas 90.00
5,000 water gallons or less
Liquid Petroleum Gas 45.00

Special inspections ..... 30.00 per hour
Portable Fire Extinguisher and Automatic Fire suppression Systems
Licenses 200.00
Branch office licenses 100.00
Certificate of registration 30.00
Duplicate 30.00
License transfer 50.00
Application for exemption 100.00
Examinations 20.00
Re-examinations 15.00
Five year examination 20.00

ITEM 240
To Department of Public Safety
Information Management
From General Fund 884,100
Schedule of Programs:
Information Management 884,100

ITEM 241
To Utah National Guard
From General Fund 2,317,400
From Federal Funds 3,432,300
From Dedicated Credits 72,500
Schedule of Programs:
Administration 300,200
Armory Maintenance 5,522,000

DEPARTMENT OF TRANSPORTATION

ITEM 242
To Department of Transportation -
Support Services
From the General Fund ..... $ 878,900
From Transportation Fund 16,911,400
From Federal Funds 1,242,300
From Dedicated Credits 38,000
From Transportation Fund
Restricted Aeronautics 15,800
From Commerce Service Fund 759,800
From Lapsing Funds 339,000
Schedule of Programs:
Administration 17,302,600
Comptroller 1,669,800
Accounting System 380,000
Internal Auditor 379,100
Community Relations 453,700

ITEM 243
To Department of Transportation -
Engineering Services
From General Fund 170,000
From Transportation Fund 10,746,300
From Federal Funds 7,242,500
From Dedicated Credits 798,500
Schedule of Programs:
Safety Operations 3,205,400
Policy and Planning 6,343,300
Preconstruction 9,408,600

It is the intent of the Legislature that no funds be expended from the budget of the Department of Transportation for the planning or development of the proposed I-15 Off-Ramp at North Temple in Salt Lake City.

It is the intent of the Legislature that the Department of Transportation initiate planning and design of the identified highway project that connects I-15 and Washington Boulevard in the 2550/2700 North corridor, provided the Wasatch Front Regional Council prioritizes this item on its Transportation Position Improvement Program.

It is the intent of the Legislature that the Department of Transportation continue to implement the adjustment improvements in the three urban districts and department headquarters in Salt Lake City as described in the document, "Management and Operations Adjustment Plan", dated January 1992. It is also the intent of the Legislature that the department continue to evaluate and implement adjustment improvements consistent with the initiatives contained in the above named document, including those identified for construction engineering and planning.

It is the intent of the Legislature that the Department make a report to the interim legislative committee, prior to the General 1994 Session, indicating the efficiencies and cost reductions that have been achieved and those that are anticipated as a result of implementing these improvement actions.

It is also the intent of the Legislature that the Department of Transportation, in conjunction with these improvement initiatives, be given authorization to adjust the assignment of FTE positions between line items as may be necessary in order to achieve the objectives of this plan. Such reassignments of FTE positions will be included in the report to the interim committee, and any transfer of funding will be facilitated through a supplemental appropriations request in the 1994 Session. It is anticipated that the Department will act as quickly as possible to reduce the number of transition employees that are adversely impacted by reorganization efforts. Additional funding to address the transition issue will also be considered through a supplemental appropriations request in the 1994 Session of the Legislature.

ITEM 244
To Department of Transportation -
District Management
From Transportation Fund 9,066,200
From Federal Funds 1,897,300
From Dedicated Credits 706,300
Schedule of Programs:
District 1 2,086,800
District 2 3,375,700
District 3 527,400
District 4 558,100
District 5 523,100
District 6 1,871,700
Southern Region 2,727,000

ITEM 245
To Department of Transportation -
Equipment Management
From Transportation Fund 2,745,900
From Dedicated Credits 12,077,000
Schedule of Programs:
Maintenance Planning 745,900

Equipment Purchases 6,000,000
Shops 8,077,000

ITEM 246
To Department of Transportation -
Maintenance Management
From General Fund 12,000
From Transportation Fund 59,318,500
Schedule of Programs:
District 1 10,435,800
District 2 11,964,200
District 3 7,726,300
District 4 8,563,700
District 5 7,879,600
District 6 9,920,900
Seasonal Pools 600,000
Lands and Buildings 2,300,000

It is the intent of the Legislature that all building requests exceeding $100,000 be submitted through the State Building Board, and should appear as an appendage to the building program as submitted by the Board, to the Legislature for consideration. It is further intended that the funds appropriated for buildings are to remain in the Transportation Fund until actual costs are incurred or when projects are let out for bid, at which time the Director of the Department of Transportation may transfer funds to the Building Board.

Any and all collections or cash income from the sale or salvage of land and buildings are to be lapsed to the Transportation Fund.

ITEM 247
To Department of Transportation -
Aeronautics
From Federal Funds 10,000,000
From Dedicated Credits 395,900
From Transportation Fund
Restricted Aeronautics 6,746,900
Schedule of Programs:
Administration 578,900
Airport Construction 10,936,100
Civil Air Patrol 50,000
Aid to Local Government 5,062,500
Airplane Operations 515,300

ITEM 248
To Department of Transportation -
B and C Road Fund
From Transportation Fund 50,915,000
Schedule of Programs:
B and C Roads 50,915,000

ITEM 249
To Department of Transportation -
Construction
From Transportation Fund 62,718,000
From Federal Funds 101,142,800
From Dedicated Credits 1,050,000
Schedule of Programs:
Construction Management 14,786,800
Federal Construction - New 30,000,000
Rehabilitation/Preservation 107,000,000
State Construction - New 13,124,000

It is the intent of the Legislature that there is appropriated to the Department of Transportation from the Transportation Fund, not otherwise appropriated, a sum sufficient, but not more than the surplus of the Transportation Fund, to be used by the Department for the construction, rehabilitation and preservation of State highways in Utah.

It is the intent of the Legislature that the appropriation fund first, a maximum participation with the federal government for the construction of federally designated highways, as provided by law; next the rehabilitation and preservation of State highways, as provided by law, and last, the construction of State highways, as funding permits.

It is also the intent of the Legislature that the FTEs for the field crews may be adjusted to accommodate the increase or decrease in the Federal Construction Program. No portion of the money appropriated by this item shall be used either directly or indirectly to enhance or increase the appropriation otherwise made by this act to the Department of Transportation for other purposes.

ITEM 250
To Department of Transportation -
Mineral Lease
From Mineral Lease 8,764,800
Schedule of Programs:
Mineral Lease 6,750,000
Payment in Lieu 2,014,800

It is the intent of the Legislature that the funds appropriated from the Federal Mineral Lease Account be used for improvement or reconstruction of roads not on the State Road System that have been heavily impacted by energy development. It is also the intent of the Legislature that private industry engaged in the developing of the State's natural resources be encouraged to participate in the construction of the roadway leading to their facilities.

The funds appropriated for improvement or reconstruction of energy impacted roads that are not on the State Road System are nonlapsing.

It is the intent of the Legislature that the Department distribute all funds made available from the State Mineral Lease Account to County Special Service Districts. The determination of amounts to be distributed to each Special Service District will be based solely on information provided by the United States Department of the Interior, Minerals Management Service. The only exception to using or adjusting Minerals Management Service data will be by unanimous written agreement between all Special Service Districts involved with the mineral lease allocation.

ITEM 251
To Department of Transportation -
Safe Sidewalk Construction
From Transportation Fund 500,000
Schedule of Programs:
Safe Sidewalk Construction 500,000

It is the intent of the Legislature that the funds appropriated from the Transportation Fund for pedestrian safety projects be used

specifically to correct pedestrian hazards on State highways.

It is also the intent of the Legislature that local authorities be encouraged to participate in the construction of pedestrian safety devices. The appropriated funds are to be used according to the criteria set forth in Section 27-14-5, Utah Code Annotated 1953. The funds appropriated for sidewalk construction are non-lapsing.

If local governments cannot use their allocation of Sidewalk Safety Funds in two years, these funds will then be available for other governmental entities which are prepared to use the resources.

It is the intent of the Legislature that local participation in the Sidewalk Construction Program be on a 75 percent State - 25 percent local match basis.

Section 2. This act shall take effect July 1, 1993.

CHAPTER 296
H. B. No. 441
Passed March 3, 1993
Approved March 23, 1993
Effective May 3, 1993

SALES TAX EXEMPTION - SUNSET REAUTHORIZATION

By John L. Valentine

AN ACT RELATING TO REVENUE AND TAXATION; EXTENDING THE SUNSET DATE FOR THE SALES AND USE TAX EXEMPTION FOR SALES AND LEASES OF CERTAIN EQUIPMENT PURCHASED BY QUALIFYING STEEL MILLS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
59-12-104, AS LAST AMENDED BY CHAPTERS 66 AND 298, LAWS OF UTAH 1992

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

Section 1. Section Amended.

Section 59-12-104, Utah Code Annotated 1953, as last amended by Chapters 66 and 298, Laws of Utah 1992, is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of motor fuels and special fuels subject to a Utah state excise tax under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 120% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales made through coin-operated laundry machines, coin-operated dry cleaning machines, or coin-operated car washes;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities and, after July 1, 1993, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) sales or use of property which the state is prohibited from taxing under the Constitution or laws of the United States or under the laws of this state;

(13) sales of meals served by:

(a) public elementary and secondary schools;

(b) churches, charitable institutions, and institutions of higher education, if the meals are not available to the general public; and

(c) inpatient meals provided at medical or nursing facilities;

(14) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state;

(15) sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements, which includes replacement machinery and equipment even though they may increase plant production or capacity, as determined by the commission) in any manufacturing facility in Utah. Manufacturing facility means an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget. For purposes of this subsection, the commission shall by rule define "new or expanding operations" and "establishment." By October 1, 1991, and every five years thereafter, the commission shall review this exemption and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemption should be continued, modified, or repealed. In its report to the Revenue and Taxation Interim Committee, the tax commission review shall include at least:

(a) the cost of the exemption;

(b) the purpose and effectiveness of the exemption; and

(c) the benefits of the exemption to the state;

(16) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification

tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(17) intrastate movements of freight and express or street railway fares;

(18) sales of newspapers or newspaper subscriptions;

(19) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(20) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products;

(21) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(a) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $100, and maintenance and janitorial equipment and supplies;

(b) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(c) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(22) seasonal sales of crops, seedling plants, or garden, farm, or other agricultural produce if sold by the producer;

(23) purchases of food made with food stamps;

(24) any container, label, shipping case, or, in the case of meat or meat products, any casing;

(25) property stored in the state for resale;

(26) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(27) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(28) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;

(29) any sale of a service described in Subsections 59-12-103 (1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(30) purchases of food made under the WIC program of the United States Department of Agriculture;

(31) sales or leases made after July 1, 1987, and before June 30, [~~1994~~] 1996, of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual, of the federal Executive Office of the President, Office of Management and Budget, but only if the steel mill was a nonproducing Utah facility purchased and reopened for the production of steel;

(32) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(33) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(34) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah; and

(35) until July 1, 1999, amounts paid for purchase of telephone service for purposes of providing telephone service.

CHAPTER 297
S. B. No. 20
Passed March 2, 1993
Approved March 22, 193
Effective July 1, 1993

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING ACT AMENDMENTS

By Lyle W. Hillyard
Paul T. Fordham

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING; CLARIFYING PROVISIONS RELATING TO PRESIDING OFFICERS IN ADJUDICATIVE PROCEEDINGS; STANDARDIZING DEFINITIONS OF UNLAWFUL AND UNPROFESSIONAL CONDUCT; REVISING PROVISIONS REGARDING TEMPORARY LICENSURE, EXEMPTION FROM LICENSURE, AND RENEWAL OF LICENSURE; IDENTIFYING GROUNDS FOR DENIAL OF LICENSE AND RELATED DISCIPLINARY PROCEEDINGS; STANDARDIZING PROVISIONS WHICH ESTABLISH BOARDS, APPOINT BOARD MEMBERS, AND DEFINE BOARD DUTIES AND RESPONSIBILITIES; REVISING THE COMPOSITION AND JURISDICTION OF SPECIAL APPEALS BOARDS; PROVIDING FOR AN AGGRIEVED INDIVIDUAL TO JUDICIALLY APPEAL AN ADVERSE DECISION OF A SPECIAL APPEALS BOARD; ESTABLISHING PROCEDURES FOR HANDLING LICENSE APPLICATIONS; ESTABLISHING GUIDELINES FOR ISSUING INACTIVE AND RESTRICTED LICENSES; PROVIDING PROCEDURES FOR THE VOLUNTARY SURRENDER OF LICENSURE; MAKING TECHNICAL CORRECTIONS; PROVIDING A COORDINATING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

8-4-5, AS LAST AMENDED BY CHAPTER 93, LAWS OF UTAH 1990
8-4-8, AS REPEALED AND REENACTED BY CHAPTER 258, LAWS OF UTAH 1989
26-21A-203, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1991
26-28-2, AS REPEALED AND REENACTED BY CHAPTER 131, LAWS OF UTAH 1990
58-3-2, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-3-3, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1986
58-3-4, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1986
58-3-10, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1986
58-5-1, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986
58-5-8, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-5-11, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-14, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-7-1.1, AS ENACTED BY CHAPTER 50, LAWS OF UTAH 1985
58-7-1.5, AS LAST AMENDED BY CHAPTER 214, LAWS OF UTAH 1988
58-7-2, AS LAST AMENDED BY CHAPTERS 50 AND 187, LAWS OF UTAH 1985
58-7-7, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-9-2, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-9-3, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-11-2, AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1988
58-11-3, AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1988
58-11-12, AS LAST AMENDED BY CHAPTER 88, LAWS OF UTAH 1988
58-12-2, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-12-28, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-12-30, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987
58-12-35, AS LAST AMENDED BY CHAPTERS 92 AND 214, LAWS OF UTAH 1987
58-12-41, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1981
58-12-43, AS LAST AMENDED BY CHAPTER 240, LAWS OF UTAH 1992
58-12-51.6, AS LAST AMENDED BY CHAPTER 237, LAWS OF UTAH 1991
58-12-52, AS LAST AMENDED BY CHAPTER 125, LAWS OF UTAH 1988
58-12-55, AS LAST AMENDED BY CHAPTERS 72 AND 125, LAWS OF UTAH 1988
58-12-58, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-12-60, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-12-66, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-67, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-69, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-71, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-12-72, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-12-73, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-15-2, AS ENACTED BY CHAPTER 49, LAWS OF UTAH 1985
58-15-4, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-15-11, AS ENACTED BY CHAPTER 49, LAWS OF UTAH 1985
58-16A-102, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-16A-103, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991

58-16A-105, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-16A-106, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-16A-111, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-17-2, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-17-3, AS LAST AMENDED BY CHAPTER 124, LAWS OF UTAH 1988
58-17-6, AS LAST AMENDED BY CHAPTER 124, LAWS OF UTAH 1988
58-17-7, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-17-15, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-17-18, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-20-1, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1986
58-20-3, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-22-2, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-22-3, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-24A-102, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-24A-108, AS ENACTED BY CHAPTER 237, LAWS OF UTAH 1991
58-24A-110, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-25A-2, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-25A-3, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-25A-6, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-25A-9, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-26-2, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-3, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-7, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-8, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-9, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-11, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-13, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-28-2, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1992
58-28-5, AS ENACTED BY CHAPTER 3, LAWS OF UTAH 1985
58-28-8, AS LAST AMENDED BY CHAPTER 180, LAWS OF UTAH 1992
58-31-2, AS ENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-3, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-4, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-5, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-10, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-11, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-13, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-15, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-31-17, AS ENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-35-2, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-35-3, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-35-7, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-37C-3, AS REPEALED AND REENACTED BY CHAPTER 155, LAWS OF UTAH 1992
58-37C-4, AS REPEALED AND REENACTED BY CHAPTER 155, LAWS OF UTAH 1992
58-39-3, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1987
58-39-5, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1987
58-39-6, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1987
58-39-7, AS ENACTED BY CHAPTER 31, LAWS OF UTAH 1981
58-39-7.5, AS ENACTED BY CHAPTER 31, LAWS OF UTAH 1981
58-39A-2, AS ENACTED BY CHAPTER 279, LAWS OF UTAH 1991
58-39A-3, AS ENACTED BY CHAPTER 279, LAWS OF UTAH 1991
58-40-2, AS ENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-40-4, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-41-2, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-41-4, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-41-6, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-41-8, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-42-3, AS ENACTED BY CHAPTER 218, LAWS OF UTAH 1985
58-42-5, AS LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1985
58-42-6, AS LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1985
58-42-13, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-42-14, AS LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1985
58-44-4, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-44-5, AS ENACTED BY CHAPTER 21, LAWS OF UTAH 1979
58-44-7, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-46-2, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985

58-46-3, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-46-4, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-46-5, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-46-10, AS ENACTED BY CHAPTER 22, LAWS OF UTAH 1979
58-47A-2, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-47A-3, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-47A-9, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-49-2, AS ENACTED BY CHAPTER 192, LAWS OF UTAH 1986
58-50-2, AS LAST AMENDED BY CHAPTERS 120 AND 206, LAWS OF UTAH 1991
58-50-3, AS LAST AMENDED BY CHAPTER 120, LAWS OF UTAH 1991
58-50-4, AS LAST AMENDED BY CHAPTERS 120 AND 206, LAWS OF UTAH 1991
58-53-2, AS ENACTED BY CHAPTER 141, LAWS OF UTAH 1988
58-53-4, AS LAST AMENDED BY CHAPTER 18, LAWS OF UTAH 1989
58-53-8, AS ENACTED BY CHAPTER 141, LAWS OF UTAH 1988
58-54-2, AS LAST AMENDED BY CHAPTER 199, LAWS OF UTAH 1991
58-54-3, AS LAST AMENDED BY CHAPTERS 112 AND 199, LAWS OF UTAH 1991
58-54-4, AS LAST AMENDED BY CHAPTER 181, LAWS OF UTAH 1992
58-55-2, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-3, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-4, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-5, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-6, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-12, AS REPEALED AND REENACTED BY CHAPTER 303, LAWS OF UTAH 1992
58-55-19, AS LAST AMENDED BY CHAPTER 303, LAWS OF UTAH 1992
58-56-3, AS LAST AMENDED BY CHAPTER 293, LAWS OF UTAH 1990
58-57-2, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-57-3, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-57-4, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-57-7, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-58-2, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991
58-58-3, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991
58-58-4, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991

ENACTS:
58-1-107, UTAH CODE ANNOTATED 1953
58-1-108, UTAH CODE ANNOTATED 1953
58-1-109, UTAH CODE ANNOTATED 1953
58-1-304, UTAH CODE ANNOTATED 1953
58-1-305, UTAH CODE ANNOTATED 1953
58-1-306, UTAH CODE ANNOTATED 1953
58-1-307, UTAH CODE ANNOTATED 1953
58-1-309, UTAH CODE ANNOTATED 1953
58-1-401, UTAH CODE ANNOTATED 1953
58-1-402, UTAH CODE ANNOTATED 1953
58-1-501, UTAH CODE ANNOTATED 1953
58-1-502, UTAH CODE ANNOTATED 1953
58-3-5.5, UTAH CODE ANNOTATED 1953
58-3-8.5, UTAH CODE ANNOTATED 1953
58-3-10.5, UTAH CODE ANNOTATED 1953
58-5-2.5, UTAH CODE ANNOTATED 1953
58-7-7.5, UTAH CODE ANNOTATED 1953
58-7-18, UTAH CODE ANNOTATED 1953
58-11-5.5, UTAH CODE ANNOTATED 1953
58-12-2.5, UTAH CODE ANNOTATED 1953
58-12-5.5, UTAH CODE ANNOTATED 1953
58-12-7.5, UTAH CODE ANNOTATED 1953
58-12-22.1, UTAH CODE ANNOTATED 1953
58-12-33.5, UTAH CODE ANNOTATED 1953
58-12-36.5, UTAH CODE ANNOTATED 1953
58-12-51.2, UTAH CODE ANNOTATED 1953
58-12-51.12, UTAH CODE ANNOTATED 1953
58-12-62.5, UTAH CODE ANNOTATED 1953
58-12-67.5, UTAH CODE ANNOTATED 1953
58-12-78.5, UTAH CODE ANNOTATED 1953
58-12-79, UTAH CODE ANNOTATED 1953
58-15-4.5, UTAH CODE ANNOTATED 1953
58-15-12, UTAH CODE ANNOTATED 1953
58-16A-110.5, UTAH CODE ANNOTATED 1953
58-17-7.5, UTAH CODE ANNOTATED 1953
58-17-8.5, UTAH CODE ANNOTATED 1953
58-20-3.5, UTAH CODE ANNOTATED 1953
58-20-7, UTAH CODE ANNOTATED 1953
58-22-4.5, UTAH CODE ANNOTATED 1953
58-22-8.5, UTAH CODE ANNOTATED 1953
58-25A-3.5, UTAH CODE ANNOTATED 1953
58-28-6.5, UTAH CODE ANNOTATED 1953
58-28-7.5, UTAH CODE ANNOTATED 1953
58-31-6.5, UTAH CODE ANNOTATED 1953
58-31-13.5, UTAH CODE ANNOTATED 1953
58-39-3.5, UTAH CODE ANNOTATED 1953
58-39-6.5, UTAH CODE ANNOTATED 1953
58-39A-5.5, UTAH CODE ANNOTATED 1953
58-42-13.5, UTAH CODE ANNOTATED 1953
58-46-3.5, UTAH CODE ANNOTATED 1953
58-46-4.5, UTAH CODE ANNOTATED 1953
58-49-11, UTAH CODE ANNOTATED 1953
58-50-10, UTAH CODE ANNOTATED 1953
58-53-9, UTAH CODE ANNOTATED 1953
58-54-4.5, UTAH CODE ANNOTATED 1953
58-55-5.5, UTAH CODE ANNOTATED 1953

REPEALS AND REENACTS:
58-3-7, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1986
58-5-7, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-7-5, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1985
58-7-17, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-9-4, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991

58-9-5, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-9-7, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-9-13, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-11-9, AS ENACTED BY CHAPTER 24, LAWS OF UTAH 1981
58-12-3, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1981
58-12-6, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1981
58-12-29.5, AS LAST AMENDED BY CHAPTER 125, LAWS OF UTAH 1986
58-12-51.5, AS LAST AMENDED BY CHAPTER 125, LAWS OF UTAH 1988
58-12-59, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-63, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-12-68, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-76, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-15-3, AS ENACTED BY CHAPTER 49, LAWS OF UTAH 1985
58-15-10, AS ENACTED BY CHAPTER 49, LAWS OF UTAH 1985
58-16A-107, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-16A-108, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-17-9, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-20-2.1, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987
58-20-4, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1986
58-22-4, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-22-6, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-22-7, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-24A-111, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-24A-114, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-25A-4, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-26-15, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-28-3, AS ENACTED BY CHAPTER 3, LAWS OF UTAH 1985
58-31-6, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-35-8, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-35-9, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-35-11, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-37C-9, AS REPEALED AND REENACTED BY CHAPTER 155, LAWS OF UTAH 1992
58-37C-11, AS ENACTED BY CHAPTER 155, LAWS OF UTAH 1992
58-37C-12, AS ENACTED BY CHAPTER 155, LAWS OF UTAH 1992
58-39-8, AS LAST AMENDED BY CHAPTER 28, LAWS OF UTAH 1987
58-39A-6, AS ENACTED BY CHAPTER 279, LAWS OF UTAH 1991
58-40-8, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-40-11, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-40-12, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-41-9, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-41-12, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-42-10, AS LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1985
58-44-8, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
58-44-9, AS ENACTED BY CHAPTER 21, LAWS OF UTAH 1979
58-46-6, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
58-46-9, AS ENACTED BY CHAPTER 22, LAWS OF UTAH 1979
58-47A-8, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-47A-10, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-49-3, AS ENACTED BY CHAPTER 192, LAWS OF UTAH 1986
58-49-8, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-50-6, AS LAST AMENDED BY CHAPTER 120, LAWS OF UTAH 1991
58-50-7, AS ENACTED BY CHAPTER 124, LAWS OF UTAH 1990
58-53-3, AS ENACTED BY CHAPTER 141, LAWS OF UTAH 1988
58-53-5, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989
58-54-6, AS LAST AMENDED BY CHAPTER 199, LAWS OF UTAH 1991
58-54-7, AS ENACTED BY CHAPTER 198, LAWS OF UTAH 1989
58-55-13, AS REPEALED AND REENACTED BY CHAPTER 303, LAWS OF UTAH 1992
58-57-6, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-57-8, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-58-6, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991
58-58-7, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991

RENUMBERS AND AMENDS:
58-1-101, (RENUMBERED FROM 58-1-1, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-102, (RENUMBERED FROM 58-1-2, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989)
58-1-103, (RENUMBERED FROM 58-1-3, AS LAST AMENDED BY CHAPTER 225, LAWS OF UTAH 1989)

58-1-104, (RENUMBERED FROM 58-1-4, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990)
58-1-105, (RENUMBERED FROM 58-1-5, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-106, (RENUMBERED FROM 58-1-6, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990)
58-1-201, (RENUMBERED FROM 58-1-7, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990)
58-1-202, (RENUMBERED FROM 58-1-8, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990)
58-1-203, (RENUMBERED FROM 58-1-9, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-301, (RENUMBERED FROM 58-1-11, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-302, (RENUMBERED FROM 58-1-12, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-303, (RENUMBERED FROM 58-1-13, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-308, (RENUMBERED FROM 58-1-14, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)
58-1-403, (RENUMBERED FROM 58-1-18, AS LAST AMENDED BY CHAPTER 92, LAWS OF UTAH 1987)
58-1-404, (RENUMBERED FROM 58-1-21, AS ENACTED BY CHAPTER 209, LAWS OF UTAH 1987)
58-1-503, (RENUMBERED FROM 58-1-20, AS ENACTED BY CHAPTER 187, LAWS OF UTAH 1985)

REPEALS:
13-1-12, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
58-1-3.5, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
58-1-8.5, AS ENACTED BY CHAPTER 161, LAWS OF UTAH 1987
58-1-10, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990
58-1-15, AS LAST AMENDED BY CHAPTER 103, LAWS OF UTAH 1990
58-1-16, AS LAST AMENDED BY CHAPTERS 70 AND 103, LAWS OF UTAH 1990
58-1-17, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
58-3-8, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1986
58-5-6, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-10, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-5-13, AS ENACTED BY CHAPTER 4, LAWS OF UTAH 1985
58-9-14, AS REPEALED AND REENACTED BY CHAPTER 250, LAWS OF UTAH 1991
58-12-7, AS ENACTED BY CHAPTER 27, LAWS OF UTAH 1981
58-12-35.1, AS LAST AMENDED BY CHAPTERS 161 AND 214, LAWS OF UTAH 1987
58-12-36, AS LAST AMENDED BY CHAPTER 214, LAWS OF UTAH 1987
58-12-53, AS LAST AMENDED BY CHAPTER 125, LAWS OF UTAH 1988
58-12-64, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983
58-12-78, AS ENACTED BY CHAPTER 213, LAWS OF UTAH 1990
58-16A-110, AS ENACTED BY CHAPTER 287, LAWS OF UTAH 1991
58-17-10, AS LAST AMENDED BY CHAPTER 252, LAWS OF UTAH 1990
58-17-11, AS LAST AMENDED BY CHAPTER 124, LAWS OF UTAH 1988
58-20-5.1, AS ENACTED BY CHAPTER 28, LAWS OF UTAH 1986
58-22-8, AS REPEALED AND REENACTED BY CHAPTER 183, LAWS OF UTAH 1992
58-24A-113, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1992
58-25A-12, AS ENACTED BY CHAPTER 42, LAWS OF UTAH 1989
58-26-16, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-17, AS REPEALED AND REENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-19, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-26-20, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1990
58-28-7, AS ENACTED BY CHAPTER 3, LAWS OF UTAH 1985
58-31-14, AS REPEALED AND REENACTED BY CHAPTER 82, LAWS OF UTAH 1992
58-35-10, AS REPEALED AND REENACTED BY CHAPTER 240, LAWS OF UTAH 1992
58-40-9, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-40-10, AS REPEALED AND REENACTED BY CHAPTER 108, LAWS OF UTAH 1992
58-41-10, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-41-11, AS LAST AMENDED BY CHAPTER 207, LAWS OF UTAH 1989
58-42-11, AS LAST AMENDED BY CHAPTER 218, LAWS OF UTAH 1985
58-44-3, AS ENACTED BY CHAPTER 21, LAWS OF UTAH 1979
58-44-6, AS LAST AMENDED BY CHAPTER 187, LAWS OF UTAH 1985
58-46-8, AS ENACTED BY CHAPTER 22, LAWS OF UTAH 1979
58-47A-7, AS ENACTED BY CHAPTER 193, LAWS OF UTAH 1990
58-50-8, AS ENACTED BY CHAPTER 124, LAWS OF UTAH 1990
58-53-6, AS ENACTED BY CHAPTER 141, LAWS OF UTAH 1988
58-54-9, AS ENACTED BY CHAPTER 198, LAWS OF UTAH 1989
58-54-10, AS ENACTED BY CHAPTER 198, LAWS OF UTAH 1989
58-56-18, AS LAST AMENDED BY CHAPTER 262, LAWS OF UTAH 1991

58-57-9, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-57-13, AS ENACTED BY CHAPTER 208, LAWS OF UTAH 1990
58-58-16, AS ENACTED BY CHAPTER 261, LAWS OF UTAH 1991

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

Section 1. Section Amended.

Section 8-4-5, Utah Code Annotated 1953, as last amended by Chapter 93, Laws of Utah 1990, is amended to read:

8-4-5. Licensure procedures.

(1) An applicant for licensure under this chapter shall:

(a) submit an application for a license as prescribed by the division; and

(b) pay a fee as determined by the Department of Commerce in accordance with Subsection 63-38-3 (2).

(2) (a) All licenses issued under this chapter shall expire on August 31 of each odd numbered year.

(b) A license may be renewed only if:

(i) the applicant for renewal is in compliance with the reporting provisions of this chapter; and

(ii) the applicant for renewal complies with the procedures for renewal in Section [~~58-1-14~~] 58-1-308.

Section 2. Section Amended.

Section 8-4-8, Utah Code Annotated 1953, as repealed and reenacted by Chapter 258, Laws of Utah 1989, is amended to read:

8-4-8. Endowment Care Cemetery Board — Appointments and powers.

There is created an Endowment Care Cemetery Board, which shall be appointed in accordance with the provisions of Section [~~58-1-7~~] 58-1-201 and shall serve in accordance with the provisions of Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 3. Section Amended.

Section 26-21a-203, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1991, is amended to read:

26-21a-203. Department rulemaking authority.

(1) The department, in consultation with the advisory committee created under this part, shall prior to July 1, 1992, make recommendations to the Division of Occupational and Professional Licensing regarding rules the division shall make under Section [~~58-1-6~~] 58-1-106 prior to January 1, 1993, relating to:

(a) establishing minimum qualifications for the following personnel involved in breast cancer screening or diagnostic mammography services:

(i) physician supervisors;

(ii) physicians who interpret results of mammography procedures;

(iii) radiologic technologists; and

(b) establishing quality assurance standards for:

(i) supervision by the physician supervisor; and

(ii) methods of reporting interpretations.

(2) The department, in consultation with the advisory committee created under this part, shall prior to July 1, 1992, make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) establishing quality assurance standards for all facilities performing screening or diagnostic mammography and developing mammogram x-ray films, including procedures for clinical follow-up of abnormal mammograms; and

(b) providing for:

(i) collection and periodic reporting of mammography examinations and clinical follow-up data to the department;

(ii) certification and revocation of certification of mammogram facilities;

(iii) inspection of mammogram facilities, including entry of agents of the department into the facilities for inspections;

(iv) setting fees for certification; and

(v) an appeal process regarding department certification decisions.

(3) The department shall review and revise as necessary the quality assurance standard rules using current scientific knowledge, but at least every two years.

(4) The department shall coordinate its activities under this part with the registration, licensing, and inspection of radiation machines used to perform mammograms under Section [~~26-1-27~~] 26-21a-202.

Section 4. Section Amended.

Section 26-28-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 131, Laws of Utah 1990, is amended to read:

26-28-2. Definitions.

As used in this chapter:

(1) "Anatomical gift" means a donation, of all or part of a human body, to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Division" means the Division of Occupational and Professional Licensing created in Section [~~58-1-3~~] 58-1-103.

(4) "Document of gift" means a card, a statement attached to or imprinted on any license to operate a motor vehicle, a will, or other writing used to make an anatomical gift.

(5) "Donor" means a person who makes an anatomical gift of all or part of his body.

(6) "Enucleator" means a person certified by the Utah Lions Eye Bank or American Eye Bank Association to remove eyes or parts of eyes for transplantation or therapy.

(7) "Hospital" means a facility that is licensed in accordance with Title 26, Chapter 21, or by the United States government.

(8) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(9) "Physician" means a person licensed to practice medicine under Sections 58-12-1 through 58-12-7 and Sections 58-12-26 through 58-12-43.

(10) "Procurement organization" means an organization designated by the United States Department of Health and Human Services in accordance with the provisions of 42 U.S.C. Sec 274.

(11) "Technician" means a person certified by the American Association of Tissue Banks to remove tissue for transplantation or therapy.

Section 5. Section Renumbered and Amended.

Section 58-1-101, Utah Code Annotated 1953, which is renumbered from Section 58-1-1, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-1~~] 58-1-101. Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

Section 6. Section Renumbered and Amended.

Section 58-1-102, Utah Code Annotated 1953, which is renumbered from Section 58-1-2, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

[~~58-1-2~~] 58-1-102. Definitions.

For purposes of this title:

(1) "Department" means the Department of Commerce.

(2) "Director" means the director of the Division of Occupational and Professional Licensing.

(3) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(4) "Executive director" means the executive director of the Department of Commerce.

(5) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.

(6) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).

[~~(6)~~] (7) "Unprofessional conduct" [~~means acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title~~] has the meaning given in Subsection 58-1-501(2).

Section 7. Section Renumbered and Amended.

Section 58-1-103, Utah Code Annotated 1953, which is renumbered from Section 58-1-3, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

[~~58-1-3~~] 58-1-103. Division created to administer licensing laws.

There is [~~established~~] created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58.

Section 8. Section Renumbered and Amended.

Section 58-1-104, Utah Code Annotated 1953, which is renumbered from Section 58-1-4, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990, is amended to read:

[~~58-1-4~~] 58-1-104. Director of division — Appointment — Duties.

(1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.

(2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

Section 9. Section Renumbered and Amended.

Section 58-1-105, Utah Code Annotated 1953, which is renumbered from Section 58-1-5, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-5~~] 58-1-105. Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division.

Section 10. Section Renumbered and Amended.

Section 58-1-106, Utah Code Annotated 1953, which is renumbered from Section 58-1-6, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990, is amended to read:

[~~58-1-6~~] 58-1-106. Division — Duties, functions, and responsibilities.

The duties, functions, and responsibilities of the division include[~~, but are not limited to,~~] the following:

(1) prescribing, adopting, and enforcing rules to administer this title;

(2) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;

(3) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding [a] of sufficient need by the director or by his designee;

(4) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including[~~, but not limited to,~~] the issuance of cease and desist orders;

(5) seeking injunctions and temporary restraining orders to restrain unauthorized activity;

(6) giving public notice of board meetings;

(7) keeping records of board meetings, proceedings, and actions and making those records available for public inspection upon request;

(8) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license [~~or licensee~~];

(9) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;

(10) preparing and submitting to the executive director [~~of the department~~] a budget of the expenses for the division;

(11) establishing the time and place for the administration of examinations; and

(12) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.

Section 11. Section Enacted.

Section 58-1-107, Utah Code Annotated 1953, is enacted to read:

58-1-107. Applicability — Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

Section 12. Section Enacted.

Section 58-1-108, Utah Code Annotated 1953, is enacted to read:

58-1-108. Adjudicative proceedings.

(1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63-46b-2(1).

(2) Before proceeding under Section 63-46b-20, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.

(3) Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

Section 13. Section Enacted.

Section 58-1-109, Utah Code Annotated 1953, is enacted to read:

58-1-109. Presiding officers — Content of orders — Recommended orders — Final orders — Appeal of orders.

(1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63, Chapter 46b, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.

(2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63-46b-1 (4), Sections 63-46b-6 through 63-46b-9, and 63-46b-11.

(3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.

(4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a recommended order based upon the record developed at the hearing determining all issues pending before the division.

(5)(a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.

(b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of

the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).

(6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.

(7) If the director or his designee does not issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or his designee.

(8) The final order of the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(9) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

Section 14. Section Renumbered and Amended.

Section 58-1-201, Utah Code Annotated 1953, which is renumbered from Section 58-1-7, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990, is amended to read:

[~~58-1-7~~] 58-1-201. Boards — Appointment — Membership — Terms — Vacancies — Quorum — Per diem and expenses — Chairman — Financial interest or faculty position in professional school teaching continuing education prohibited.

(1) (a) The executive director shall appoint the members of the boards established under this title. In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.

(b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.

(c) The names of all persons appointed to boards shall be submitted to the governor for confirmation or rejection. If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (a).

(d) The term of office of each board member appointed after June 30, 1985, shall be five years, except that in the case of boards established after June 30, 1985, the term of office of the first member appointed shall be one year, the term of office of the second member appointed shall be two years, the term of office of the third member appointed shall be three years, the term of office of the fourth member appointed shall be four years, and the term of office of the fifth member appointed, who shall be the member of the general public, shall be five years. If the board consists of more than five members, the executive director of the department shall establish a schedule of appointments to membership on the board as nearly consistent with the schedule established in this Subsection (d) as possible.

(e) [~~No~~] A board member may not serve more than two consecutive terms, and [~~no~~] a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.

(f) If a vacancy in the board occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling that term, the replacement member may be appointed for only one additional full term.

(g) If a board member fails or refuses to fulfill the responsibilities and duties of a board member, including the attendance at board meetings, the executive director with the approval of the board may remove the board member and replace the member in accordance with this section.

(2) A majority of the board members constitutes a quorum. A quorum is sufficient authority for the board to act.

(3) Each board member shall receive a per diem allowance for every day or portion of a day actually spent in the performance of board duties approved by the director and all necessary traveling and accommodation expenses actually incurred in the discharge of these approved duties.

(4) Each board shall annually designate one of its members to serve as chairman for a one-year period.

(5) [~~No~~] A board member may not be a member of the faculty of or have any financial interest in any vocational or professional college or school which provides continuing education to any licensee if that continuing education is required by statute or rule.

Section 15. Section Renumbered and Amended.

Section 58-1-202, Utah Code Annotated 1953, which is renumbered from Section 58-1-8, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990, is amended to read:

[~~58-1-8~~] 58-1-202. Boards — Duties, functions, and responsibilities.

The duties, functions, and responsibilities of each board include[~~, but are not limited to,~~] the following:

(1) recommending to the director appropriate rules;

(2) recommending to the director policy and budgetary matters;

(3) approving and establishing a passing score for applicant examinations;

(4) screening applicants and recommending licensing, renewal, reinstatement, and relicensure actions to the director in writing; [~~and~~]

(5) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents[.]; and

(6) acting as presiding officer in conducting hearings associated with adjudicative proceedings and in issuing recommended orders when so designated by the director.

Section 16. Section Renumbered and Amended.

Section 58-1-203, Utah Code Annotated 1953, which is renumbered from Section 58-1-9, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-9~~] 58-1-203. Duties, functions, and responsibilities of division in collaboration with board.

The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board:

(1) defining which schools, colleges, universities, departments of universities, or other institutions of learning are reputable and in good standing with the division;

(2) prescribing license qualifications;

(3) prescribing rules governing applications for licenses;

(4) providing for a fair and impartial method of examination of applicants;

(5) defining unprofessional conduct, by rule, to supplement the definitions under this chapter or other licensing chapters;

(6) establishing advisory peer committees to the board and prescribing their scope of authority; and

(7) establishing conditions for reinstatement and renewal of licenses.

Section 17. Section Renumbered and Amended.

Section 58-1-301, Utah Code Annotated 1953, which is renumbered from Section 58-1-11, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-11~~] 58-1-301. License application — Licensing procedure.

(1) Each license applicant shall apply to the division in writing upon forms [~~prepared and furnished by~~] available from the division. Each completed application shall contain [proof] documentation of the particular qualifications required of the applicant, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(2)(a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon his qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

[~~(2)~~] (3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

[~~(3)~~] (4) If all requirements are met for the specific license, the division shall issue the license.

Section 18. Section Renumbered and Amended.

Section 58-1-302, Utah Code Annotated 1953, which is renumbered from Section 58-1-12, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-12~~] 58-1-302. License by endorsement.

The division may issue a license without examination to a person who has been licensed in any state, district, or territory of the United States or in any foreign country, whose education, experience, and examination requirements are, or were at the time the license was issued, equal to those of this state. Before any person may be issued a license under this section, he shall produce satisfactory evidence of his qualifications, identity, and good standing in his occupation or profession.

Section 19. Section Renumbered and Amended.

Section 58-1-303, Utah Code Annotated 1953, which is renumbered from Section 58-1-13, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-13~~] 58-1-303. Temporary license.

(1)(a) The division may issue a temporary license to[~~:(a)~~] a person who has met all license requirements except the passing of an examination[~~; or~~]. In this case:

(i) the licensee shall take the next available examination; and

(ii) the temporary license automatically expires upon release of official examination results if the applicant fails the examination.

(b) The division may issue a temporary license to a person licensed in another state or country who is in

Utah temporarily to teach or assist a Utah resident licensed to practice an occupation or profession under this title.

(c) The division may issue a temporary license to a person licensed in another state who met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure of this state at the time the license was obtained in the other state, upon a finding by the division, in collaboration with the appropriate board, that the issuance of a temporary license is necessary to or justified by:

(i) a local or national emergency or any governmental action causing an unusual circumstance that might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued;

(ii) a lack of necessary available services in any community or area of the state from an occupation or profession licensed under this title, if the lack of services might be reasonably considered to materially jeopardize the public health, safety, or welfare if a temporary license is not issued; or

(iii) a need to first observe an applicant for licensure in this state in a monitored or supervised practice of the applicant's occupation or profession before a decision is made by the division either to grant or deny the applicant a regular license.

(2) The division may not issue a temporary license to a person who qualifies for one under Subsection (1)(a) more than three consecutive times within the three-year period immediately following the issuance of the first temporary license.

(3) The division may not issue a temporary license to a person solely because there is a competitive advantage enjoyed or a competitive disadvantage suffered by any party caused by the absence of a licensed person, unless in addition there is or will be a material risk presented to the public health, safety, or welfare.

Section 20. Section Enacted.

Section 58-1-304, Utah Code Annotated 1953, is enacted to read:

58-1-304. Restricted license.

(1) The division may issue a restricted license to an applicant for licensure, renewal, or reinstatement of licensure if:

(a) the applicant appears to meet the qualifications for licensure, but has engaged in unlawful, unprofessional, or other conduct bearing upon the applicant's qualifications; and

(b) the division determines the need to observe the applicant in a monitored or supervised practice of the applicant's occupation or profession or to attach other reasonable restrictions upon the applicant in order to accommodate licensure, while protecting the public health, safety, and welfare.

(2) Issuance of a restricted license is considered a partial denial of licensure that is subject to agency review.

Section 21. Section Enacted.

Section 58-1-305, Utah Code Annotated 1953, is enacted to read:

58-1-305. Inactive license.

(1) The division may adopt rules permitting inactive licensure. The rules shall specify the requirements and procedures for placing a license on inactive status, the length of time a license may remain on inactive status, and the requirements and procedures to activate an inactive license.

(2) Except as otherwise specified by rule, an inactive licensee has no right or privilege to engage in the practice of the licensed occupation or profession.

Section 22. Section Enacted.

Section 58-1-306, Utah Code Annotated 1953, is enacted to read:

58-1-306. Surrender of license.

(1) The division may, by written agreement, accept the voluntary surrender of a license.

(2) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license does not foreclose the division from pursuing additional disciplinary or other action authorized under this title or in rules adopted under this title.

(3) Unless otherwise stated in the written agreement, tender and acceptance of a voluntary surrender of a license terminates all rights and privileges associated with the license.

(4) Unless otherwise stated in the written agreement, the surrendered rights and privileges of licensure may be reacquired only by reapplying for licensure and meeting the requirements for a new or reinstated license set forth under this title or in rules adopted under this title.

(5) Unless otherwise stated in the written agreement, documentation of tender and acceptance of a voluntary surrender of a license is a public record.

(6) Unless otherwise stated in the written agreement, when a tender and acceptance of a voluntary surrender of a license occurs while adjudicative proceedings are pending against the licensee for unprofessional or unlawful conduct, the division may report the surrender of license to appropriate state and federal agencies and licensing data banks.

Section 23. Section Enacted.

Section 58-1-307, Utah Code Annotated 1953, is enacted to read:

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in ac-

tivities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state; and

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator.

(2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, the division in collaboration with the board may suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this subsection shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state.

Section 24. Section Renumbered and Amended.

Section 58-1-308, Utah Code Annotated 1953, which is renumbered from Section 58-1-14, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-14~~] 58-1-308. Term of license — Expiration of license — Renewal of license — Reinstatement of license — Application procedures.

(1) [~~Each licensee shall renew his license every two years and pay the required renewal fee within the time fixed by statute or rule.~~] Each license issued under this title shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) The expiration date of a license shall be shown on the license. A license that is not renewed prior to the expiration date shown on the license automatically expires.

(a) A license automatically expires prior to the expiration date shown on the license upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is a partnership, corporation, or other business entity.

(b) If the existence of a dissolved partnership, corporation, or other business entity is reinstated prior to the expiration date shown upon the entity's expired license issued by the division, the division shall, upon written application, reinstate the applicant's license, unless it finds that the applicant no longer meets the qualifications for licensure.

(c) Expiration of licensure is not an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act.

[~~(2)~~] (3) (a) The division shall notify each licensee [~~at least 30 days prior to the date of renewal by letter deposited in the post office with postage prepaid, addressed to the last address of the licensee known to the division,~~] in accordance with procedures established by rule that the licensee's license [~~should be renewed~~] is due for renewal and that [~~if the license is not renewed and the renewal fee is not paid within 30 days after the date of notice~~] unless an application for renewal is received by the division by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be [suspended] renewed.

(b) Examples of renewal qualifications which by statute or rule the division may require the licensee to document completion of or compliance with include:

(i) continuing education;

(ii) continuing competency;

(iii) quality assurance;

(iv) utilization plan and protocol;

(v) financial responsibility;

(vi) certification renewal; and

(vii) calibration of equipment.

(4) (a) An application for renewal that complies with Subsection (3) is complete. A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the division that the applicant no longer meets the qualifications for continued licensure.

(b) The division may evaluate or verify documentation showing completion of or compliance with renewal requirements on an entire population or a random sample basis, and may be assisted by advisory peer committees. If necessary, the division may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(c) The application procedures specified in Section 58-1-301 (2), apply to renewal applications to the extent they are not in conflict with this section.

(5) Any license [~~suspended for nonrenewal~~] that is not renewed may be reinstated at any time within two years after [~~suspension~~] nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with a reinstatement fee determined by the department under Subsection 63-38-3 (2), and upon submission of documentation showing completion of or compliance with renewal qualifications. The application procedures specified in Subsection 58-1-301(2) apply to the reinstatement applications to the extent they are not in conflict with this section.

(6)(a) If not reinstated within two years, the holder may obtain a license only if he meets requirements provided by the division by rule or by statute for a new license. [~~Persons who have been licensed by the division~~]

(b) Each licensee under this title [~~and have~~] who has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States[~~,~~] may reinstate [~~their~~] his license without taking an examination by submitting an application for reinstatement, paying the current annual renewal fee and the reinstatement fee, and submitting documentation showing completion of or compliance with any renewal qualifications at any time within six months after reestablishing domicile within Utah or terminating [their] full-time government service.

Section 25. Section Enacted.

Section 58-1-309, Utah Code Annotated 1953, is enacted to read:

58-1-309. Laws and rules examination.

In addition to qualifications for licensure or renewal of licensure enumerated in specific practice acts under this title, the division may by rule require an applicant to pass an examination of the laws and rules relevant to the occupation or profession to ensure familiarity with these laws and rules.

Section 26. Section Enacted.

Section 58-1-401, Utah Code Annotated 1953, is enacted to read:

58-1-401. Grounds for denial of license — Disciplinary proceedings — Sanctions.

(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title.

(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title;

(b) the applicant or licensee has engaged in unlawful conduct as defined by statute under this title;

(c) the applicant or licensee has been determined to be mentally incompetent for any reason by a court of competent jurisdiction; or

(d) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the licensee's condition demonstrates a threat or potential threat to the public health, safety, or welfare.

(3) Any licensee whose license to practice an occupation or profession regulated by this title has been suspended, revoked, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with any conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.

(4) The division may issue cease and desist orders:

(a) to a licensee or applicant who may be disciplined under Subsection (1) or (2);

(b) to any person who engages in or represents himself to be engaged in an occupation or profession regulated under this title; and

(c) to any person who otherwise violates this title or any rules adopted under this title.

Section 27. Section Enacted.

Section 58-1-402, Utah Code Annotated 1953, is enacted to read:

58-1-402. Administrative review — Special appeals boards.

(1) (a) Any applicant who has been denied a license to practice on the basis of credentials, character, or failure to pass a required examination, or who has been refused renewal or reinstatement of a license to practice on the basis that the applicant does not meet qualifications for continued licensure in any occupation or profession under the jurisdiction of the division may submit a request for agency review to the executive director within 30 days following notification of the denial of a license or refusal to renew or reinstate a license.

(b) The executive director shall determine whether the circumstances for denying an application for an initial license or for renewal or reinstatement of a license would justify calling a special appeals board under Subsection (2). The executive director's decision is not subject to agency review.

(2) A special appeals board shall consist of three members appointed by the executive director as follows:

(a) one member from the occupation or profession in question who is not on the board of that occupation or profession;

(b) one member from the general public who is neither an attorney nor a practitioner in an occupation or profession regulated by the division; and

(c) one member who is a resident lawyer currently licensed to practice law in this state who shall serve as chair of the special appeals board.

(3) The special appeals board shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its proceedings.

(4) (a) Within a reasonable amount of time following the conclusion of a hearing before a special appeals board, the board shall enter an order based upon the record developed at the hearing. The order shall state whether a legal basis exists for denying the application for an initial license or for renewal or reinstatement of a license that is the subject of the appeal. The order is not subject to further agency review.

(b) The division or the applicant may obtain judicial review of the decision of the special appeals board in accordance with Sections 63-46b-14 and 63-46b-16.

(5) The special appeals board shall be paid a per diem allowance at the same rate as the members of the respective boards pursuant to Section 58-1-201.

(6) If an applicant under Subsection (1) is not given a special appeals board, the applicant shall be given agency review under the ordinary agency review procedures specified by rule.

Section 28. Section Renumbered and Amended.

Section 58-1-403, Utah Code Annotated 1953, which is renumbered from Section 58-1-18, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

[~~58-1-18~~] 58-1-403. Minimum 90-day suspension.

[~~No~~] A license [~~or licensee~~] may not be reinstated subsequent to action taken under Section [~~58-1-15 or 58-1-16~~] 58-1-401 within 90 days after the action has been taken, unless the division in collaboration with the appropriate board imposes other conditions [~~agreed to by the appropriate board~~].

Section 29. Section Renumbered and Amended.

Section 58-1-404, Utah Code Annotated 1953, which is renumbered from Section 58-1-21, Utah Code Annotated 1953, as enacted by Chapter 209, Laws of Utah 1987, is amended to read:

[~~58-1-21~~] 58-1-404. Diversion — Procedure.

(1) As used in this section, "diversion" means suspending action to discipline a licensee charged with certain offenses within the category of unprofessional conduct on the condition that the licensee [~~agree~~] agrees to participate in an educational or rehabilitation program or fulfill some other condition.

(2) (a) The director may establish, as circumstances require, a diversion advisory committee for each occupation or profession licensed by the division. The committees shall assist [~~him~~] the director in the administration of this section.

(b) Each committee shall consist of three licensees from the same occupation or profession as the person whose conduct is the subject of the committee's consideration. The members of a diversion advisory committee shall be nominated by the corresponding board established for the same occupation or profession under Section [~~58-1-7~~] 58-1-201. Committee members may not serve [~~at the same time~~] concurrently as members of the corresponding board. Committee members shall serve voluntarily without remuneration. The director may dissolve any diversion advisory committee, remove or request the replacement of any member of a committee, and establish any procedure that is necessary and proper for a committee's administration.

(3) The director may, after consultation with the appropriate diversion advisory committee and by written agreement with the licensee, divert the licensee to a diversion program, at any time after receipt of a complaint, [~~or~~] prior to notifying a licensee that formal disciplinary action for unprofessional conduct is being considered against the licensee, or prior to the conclusion of a hearing under Section [~~58-1-16~~] 58-1-108.

(4) The division shall define by rule the particular offenses within the category of unprofessional conduct which may be subject to diversion. A licensee may be eligible for a diversion program only once for the same or similar offense and is not eligible if previously disciplined by the division, by a licensing

agency of another state, or by a federal government agency for the same or a similar offense. Diversion programs may not be longer than two years. A decision by the director not to divert a licensee is not subject to appeal or judicial review.

(5) A licensee may be represented by counsel during the negotiations for diversion, at the time of the execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

(6) Any diversion agreement entered into between the division and the licensee shall contain a full[,] detailed statement of the requirements agreed to by the licensee and the reasons for diversion.

(7) A diversion agreement may not be approved[,] unless the licensee in the agreement knowingly and intelligently waives the right to a hearing under Section [~~58-1-16~~] 58-1-108.

(8) The director shall dismiss the charges against a licensee who has completed the requirements of his diversion agreement. The licensee may not thereafter be subject to disciplinary action for the conduct involved.

(9) Diversion is not a determination that charges have been proven. If the charges are dismissed following diversion, the matter shall be treated as if the charge had never been filed, except the fact that a licensee has completed a diversion program and the terms and conditions of the diversion program may be considered by the division in determining appropriate disciplinary action to be taken in the event the licensee is charged in the future with the same or a similar offense. No reporting or release of information regarding the diversion program of an individual licensee or the fact that charges were filed may be made to anyone outside the division. The licensee may not be required to report to any person, agency, or corporation the fact that he has been subject to a diversion program if the licensee successfully completes the diversion program. Negotiations or hearings regarding diversion may not be subject to the requirements of Title 52, Chapter 4, Open and Public Meetings.

(10) If, during the course of the diversion of a licensee, information is brought to the attention of the director that the licensee has violated [~~his~~] the diversion agreement, and if it appears in the best interest of the public to proceed with the charges, the director after consultation with the diversion advisory committee, shall cause to be served on the licensee an order to show cause specifying the facts relied upon by the director to terminate diversion and [~~set~~] which sets a time and place for a hearing to determine whether or not the licensee has violated the diversion agreement. If, after the hearing, the director finds that the licensee has failed to comply with any terms or conditions of the diversion agreement, the director shall proceed with the charges against the licensee which resulted in the diversion agreement plus any additional charges of unprofessional conduct arising from a violation of the diversion agreement.

Section 30. Section Enacted.

Section 58-1-501, Utah Code Annotated 1953, is enacted to read:

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law; or

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission.

(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(c) engaging in conduct that results in conviction of, or a plea of nolo contendere to, a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same oc-

cupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

(h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;

(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license; or

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license.

Section 31. Section Enacted.

Section 58-1-502, Utah Code Annotated 1953, is enacted to read:

58-1-502. Unlawful conduct — Penalty.

Unless otherwise specified in this title, any person who violates the unlawful conduct provisions defined in this title is guilty of a class A misdemeanor.

Section 32. Section Renumbered and Amended.

Section 58-1-503, Utah Code Annotated 1953, which is renumbered from Section 58-1-20, Utah Code Annotated 1953, as enacted by Chapter 187, Laws of Utah 1985, is amended to read:

[~~58-1-20~~] 58-1-503. Maximum civil penalty for violation of court order.

(1) If any written order issued under this [chapter] title or if an injunction or temporary restraining order [~~granted under this chapter~~] issued by a court of competent jurisdiction relating to this title is violated, the court may impose a civil penalty of not more than $2,000 for each day [a] the written order, injunction, or temporary restraining order [~~or injunction issued under this chapter~~] is violated, if the [party] person in violation has received notice of the written order, injunction, or temporary restraining [~~or injunctive~~] order.

(2) All penalties ordered under this section shall be [~~paid to~~] deposited into the General Fund.

Section 33. Section Amended.

Section 58-3-2, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

~~58-3-2~~. Definitions.

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

(1) "Architect" means a person licensed under this chapter to conduct the practice of architecture in this state.

(2) "Board" means the Architects Licensing Board established under this chapter.

(3) "Buildings" means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for those buildings.

[~~(4) "Department" means the Department of Commerce.~~]

[~~(5) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(6) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(7)~~] (4) "Practice of architecture" or to "practice architecture" means the performance of or the offering to perform any or all of the professional services of planning and design of buildings, preparation of working drawings and specifications for the construction of buildings, observation of construction, and administration of construction contracts for the construction of buildings. It includes the performance of engineering work which is incidental to the practice of architecture.

[~~(8)~~] (5) "Principal" means an architect who is a partner in a partnership, a sole proprietor, or a director and officer in a corporation practicing architecture.

(6) "Unlawful conduct" as defined in Section 58-1-501 includes using the title "architect" or any other words, letters, or abbreviations indicating that the person using them is an architect if the person has not been licensed under this chapter.

[~~(9)~~] (7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes[~~, but is not limited to, any one or more of the following~~]:

(a) affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible charge of preparation; or

(b) having a pecuniary interest in the performance of the contract for the work designed, planned, or supervised by the architect without the knowledge and consent of the person employing the architect[;].

[~~(c) procuring any contract in the practice of architecture by fraud or misrepresentation;~~]

[~~(d) failing to exercise reasonable care and skill in the rendering of architectural services;~~]

[~~(e) dishonest acts done by an architect in the practice of architecture;~~]

[~~(f) conviction of a felony;~~]

[~~(g) fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license as an architect;~~]

[~~(h) fraud or deceit in the practice of architecture;~~]

[~~(i) violation of the provisions of this chapter or any rules promulgated by the division and the board; or~~]

[~~(j) suspension or revocation of the architect's license in another state or jurisdiction.~~]

Section 34. Section Amended.

Section 58-3-3, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1986, is amended to read:

58-3-3. Board — Members — Powers — Complaints screened by division.

(1) There is created an Architects Licensing Board consisting of four architects and one [~~public~~] member of the general public.

(2) The board [~~may:~~] shall be appointed and serve in accordance with Section 58-1-201.

[~~(a) recommend to the division the adoption and revision of rules necessary to administer this chapter and to protect the public;~~]

[~~(b) recommend to the division minimum standards of educational programs and experience required under this chapter;~~]

[~~(c) recommend policy and budgetary matters to the director;~~]

[~~(d) examine and recommend qualified applicants for licensure;~~]

[~~(e) recommend the renewal of an architect's license;~~]

[~~(f) recommend to the division, after a hearing, the revocation, suspension, denial, or reinstatement of an architect's license who:~~]

[~~(i) is guilty of unprofessional conduct, as defined by statute or rule;~~]

[~~(ii) is mentally incompetent;~~]

[~~(iii) fails to pay the renewal fee or secure a renewal of the license within the time fixed by statute or rule; or~~]

[~~(iv) has violated any provision of this chapter.~~]

(3) [~~All complaints relative to architects or architecture shall be screened by the division. Requests for investigations shall be carried out by the division, and the board shall be advised of the findings as considered appropriate by the division~~] The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 35. Section Amended.

Section 58-3-4, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1986, is amended to read:

58-3-4. Qualifications for licensure — Fee — Examination.

(1) An applicant for a license under this chapter shall:

(a) Submit a written application to the division, verified under oath, that the applicant is of good moral character as it relates to the functions and responsibilities of the practice of architecture.

(b) Submit evidence of graduation with a bachelor of architecture degree or a master of architecture degree from a program approved by the board. In the absence of such a degree, an applicant may submit evidence of his educational experience equivalent. The board shall evaluate this equivalency and may approve the applicant or require the applicant to complete additional education prior to being approved by the board.

(c) Complete a program of diversified practical experience in accordance with a schedule adopted by the board.

(2) The applicant shall pay a fee to the department as determined by it pursuant to Subsection 63-38-3 (2) for admission to the examination, for an initial license, for a reciprocal license, and for a renewal license. [~~Each license expires on April 30 of each even-numbered year unless sooner revoked or suspended.~~]

(3) The applicant shall pass an examination in subjects determined by the board. Upon determining that the applicant has satisfactorily completed all requirements, the board shall recommend to the division the issuance to the applicant of a license to practice as an architect.

Section 36. Section Enacted.

Section 58-3-5.5, Utah Code Annotated 1953, is enacted to read:

58-3-5.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 37. Section Repealed and Reenacted.

Section 58-3-7, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1986, is repealed and reenacted to read:

58-3-7. Penalty for unlawful conduct.

Any person who violates the unlawful conduct provisions specifically defined in this chapter is guilty of a class B misdemeanor.

Section 38. Section Enacted.

Section 58-3-8.5, Utah Code Annotated 1953, is enacted to read:

58-3-8.5. Grounds for denial of license — Disciplinary proceedings.

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

Section 39. Section Amended.

Section 58-3-10, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1986, is amended to read:

58-3-10. Plans and specifications to be stamped.

[~~(1)~~] All plans and specifications of buildings erected in this state shall bear the personal stamp of an architect licensed under this chapter except for the following buildings which are exempt from the requirements of this chapter:

[~~(a)~~] (1) one, two, three, or four family residences not exceeding two-stories in height, exclusive of basement;

[~~(b)~~] (2) farm buildings not for public use; and

[~~(c)~~] (3) generating plants, factories, mine buildings, mill processing plants, and refineries not for public use.

[~~(2) The activities of the following persons are not considered the practice of architecture and are exempt from the requirements of this chapter:~~]

[~~(a) a person employed and acting in the scope of any other profession, including a person licensed to practice engineering under Chapter 22 or the employment or utilization of the services of any other profession;~~]

[~~(b) draftsmen, clerks of the works, superintendents, and other employees of architects who act under the direct instructions, control, or supervision of their architect employer;~~]

[~~(c) any person who prepares plans or specifications for, or supervises the alteration of or repairs to an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed, such as foundations, beams, columns, and structural slabs, joists, bearing walls, trusses, etc.; and~~]

[~~(d) a person who personally prepares plans, specifications, and supervises the construction of a nonresidential building to be held in title by himself, if the building:~~]

[~~(i) is not for sale, rent, lease, or use by the public; and~~]

[~~(ii) where the total floor area does not exceed 2,000 square feet.~~]

Section 40. Section Enacted.

Section 58-3-10.5, Utah Code Annotated 1953, is enacted to read:

58-3-10.5. Exemptions from licensure.

In addition to the exemptions from licensure set forth in Section 58-1-307, the activities of the following persons are not considered the practice of architecture and are exempt from the requirements of this chapter:

(1) a person employed and acting in the scope of any other profession, including a person licensed to practice engineering under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, or the employment or utilization of the services of any other profession;

(2) draftsmen, clerks of the works, superintendents, and other employees of architects who act under the direct instructions, control, or supervision of their architect employer;

(3) any person who prepares plans or specifications for or supervises the alteration of or repairs to an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed, such as foundations, beams, columns, and structural slabs, joists, bearing walls, trusses; and

(4) a person who personally prepares plans or specifications for and supervises the construction of a nonresidential building to be held in title by himself if the building:

(a) is not for sale, rent, lease, or use by the public; and

(b) the total floor area does not exceed 2,000 square feet.

Section 41. Section Amended.

Section 58-5-1, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

58-5-1. Definitions.

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

(1) "Board" means the Podiatry Board established under [~~Sections 58-1-7 and 58-1-8~~] Section 58-5-2.5.

[~~(2) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(3)~~] (2) "Practice of podiatry" means the examination, diagnosis, or treatment, medically, mechanically, or surgically, of the ailments of the human foot.

(3) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) communicating without the consent of the patient information acquired in treating a patient necessary to enable one to act for the patient;

(b) unlawfully prescribing, selling, or giving away any substance or compound containing alcohol or narcotics;

(c) willfully and intentionally making a false statement or entry in hospital records, medical records, or reports;

(d) willfully making a false statement in reports or claim forms to governmental agencies or insurance companies with the intent to secure payment not rightfully due.

Section 42. Section Enacted.

Section 58-5-2.5, Utah Code Annotated 1953, is enacted to read:

58-5-2.5. Board.

(1) There is created a Podiatry Board consisting of four podiatrists and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 43. Section Repealed and Reenacted.

Section 58-5-7, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985, is repealed and reenacted to read:

58-5-7. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as may be required under this chapter.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 44. Section Amended.

Section 58-5-8, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-5-8. License by endorsement.

[~~(1)~~] The division shall issue a [~~reciprocal license~~] license by endorsement to a person who has a license to practice podiatry from a jurisdiction outside Utah if that person, in addition to the requirements of Section [~~58-1-12~~] 58-1-302:

[~~(a)~~] (1) demonstrates to the board that he has been a licensed podiatrist in the jurisdiction issuing his license for at least two years immediately prior to applying for a [~~reciprocal license~~] license by endorsement;

[~~(b)~~] (2) demonstrates to the board that he has not been convicted of a felony relating to his prior practice of podiatry, is not practicing under any license restrictions, and that there is not any current action or investigation being taken against that license;

[~~(c)~~] (3) demonstrates to the board clinical competency; and

[~~(d)~~] (4) pays a [~~reciprocal~~] license fee determined by the Department of Commerce under Subsection 63-38-3 (2).

[~~(2) A reciprocal license to practice podiatry expires on December 31 of each even-numbered year.~~]

Section 45. Section Amended.

Section 58-5-11, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985, is amended to read:

58-5-11. Grounds for denial of license — Disciplinary proceedings.

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

(2) A person whose license has been revoked for unprofessional conduct may, after the two-year period immediately following the revocation, apply to the division for another license.

Section 46. Section Amended.

Section 58-5-14, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985, is amended to read:

58-5-14. Exemption from chapter.

[~~This chapter does not apply to any of the following:~~] In addition to the exemptions from licensure under Section 58-1-307, the following persons may engage in the practice of podiatry subject to the stated circumstances and limitations without being licensed under this chapter:

(1) persons who fit, recommend, or sell corrective shoes, arch supports, or similar devices;

(2) commissioned surgeons of the hospital service of the United States Armed Forces in the performance of their official duties;

(3) physicians, surgeons, osteopathic physicians, and osteopathic surgeons licensed in this state; and

[~~(4) legal practitioners of podiatry from outside Utah called in for consultation; or~~]

[~~(5)~~] (4) persons performing foot massages.

Section 47. Section Amended.

Section 58-7-1.1, Utah Code Annotated 1953, as enacted by Chapter 50, Laws of Utah 1985, is amended to read:

58-7-1.1. Definitions.

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

(1) "Board" means the Dentists and Dental Hygienists Board created under Section 58-7-1.5.

[~~(2) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(3)~~] (2) "General supervision" means with the dentist available for consultation, whether or not the dentist is in the office, regarding work which the dentist has authorized.

[~~(4)~~] (3) "Indirect supervision" means with the dentist present in the office and available to provide immediate treatment or care to the patient and observe the work of the hygienist.

[~~(5)~~] (4) "Practice of dentistry" means:

(a) to offer, undertake, or indicate in any way that a person or his agent will undertake by any means or method, to diagnose, treat, operate, or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, jaws, or adjacent structures in the maxillofacial region, or to take impressions or registrations to supply artificial teeth as substitutes for natural teeth, or to take impressions of the teeth or jaws, or to remove stains or concretions from teeth, or to correct or attempt to correct malpositions of teeth;

(b) indicate or advertise by title, degree, or in any other way, that one is a dentist; or

(c) to act as a proprietor or operator of a place where dental operations are performed.

[~~(6)~~] (5) "Practice of dental hygiene" means:

(a) to remove calcific deposits or concretions from the surfaces of human teeth, make instrumental examination of patients' teeth, or take impressions of teeth or jaws except for impressions or registrations to supply artificial teeth as substitutes for natural teeth;

(b) to hold oneself out to the public in any manner whatsoever within the meaning of this chapter that one can, will, or does render services as a dental hygienist; or

(c) to use the title "Dental Hygienist" or the letter "D.H." in connection with one's name.

(6) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) (i) practicing dentistry under a false or assumed name, or under the name of a corporation, company, association, parlor or trade name, or under any name except his own proper name, which shall be the name used in the license as issued by the division;

(ii) this subsection does not prohibit a partnership under a firm name containing nothing but the true name of every member of the partnership from practicing dentistry, or a licensed dentist from practicing dentistry as the employee of a licensed dentist practicing under his own name or under a firm name containing only the true name of each member of the firm;

(b) practicing dentistry with others without causing to be displayed and kept in a conspicuous manner and place at the entrance of the place of dental business the name of the dentist and the name of every person employed there in the practice of dentistry;

(c) (i) failing to furnish the division within ten days after demand the name and current address of each person practicing or assisting in the practice of dentistry in the dental office at any time within 60 days prior to the demand, together with a sworn statement showing under and by what license or authority the person or employee has been practicing dentistry;

(ii) however, the statement made under Subsection (i) may not be used as evidence against the person making the statement in any prosecution for the violation of this section.

(7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

[~~(a) obtaining any fee by fraud or misrepresentation;~~]

[~~(b) employing any person to practice dentistry who is not licensed to do so under this chapter;~~]

[~~(c)~~] (a) communicating, without the consent of the patient, information acquired in treating a patient necessary to enable the dentist to act for that patient;

[~~(d) advertising by any form of communication in a false, misleading, deceptive, or fraudulent manner;~~]

[~~(e) making any misrepresentations or false promises directly or indirectly to influence, persuade, or induce dental patronage;~~]

[~~(f)~~] (b) sharing professional fees with an unlicensed person or paying any person for sending or referring patients;

[~~(g)~~] (c) making public claim of superiority, in training or skill as a dentist, or in the performance of professional services;

[~~(h) practicing with a suspended license;~~]

[~~(i) continuing to practice when unable to maintain standards of physical or mental competence;~~]

[~~(j) using intoxicants or drugs to such an extent as to render the dentist unfit to practice dentistry;~~]

[~~(k) maltreating patients by reason of gross ignorance, willfulness, or neglect;~~]

[~~(l) gross immorality, dishonorable or improper conduct, or conviction of a felony;~~]

[~~(m) violating or aiding others in violating this chapter;~~]

[~~(n) refusing the division or the State Board of Health, their officers, or employees access to one's office, instruments, laboratory, equipment, appliances, or supplies for the purpose of inspection;~~]

(d) refusing the division or the State Board of Health, their officers, or employees access to his office, instruments, laboratory, equipment, appliances, or supplies for the purpose of inspection;

[~~(o)~~] (e) keeping one's office, instruments, laboratory, equipment, appliances, or supplies in an unsanitary condition;

[~~(p)~~] (f) aiding, abetting, or encouraging any employee of a dentist to use an oral prophylaxis call list in any manner; and

[~~(q)~~] (g) violating the Utah Controlled Substances Act[~~; or~~].

[~~(r) other conduct defined as unprofessional by the board and the division under Chapter 1, Title 58.~~]

Section 48. Section Amended.

Section 58-7-1.5, Utah Code Annotated 1953, as last amended by Chapter 214, Laws of Utah 1988, is amended to read:

58-7-1.5. Dentists and Dental Hygienists Board — Membership — Qualifications.

(1) There is created a Dentists and Dental Hygienists Board [~~within the division which shall consist of seven persons. Five members shall be licensed to practice dentistry in Utah, one member shall be a dental hygienist licensed to practice in Utah, and one shall be from the general public. No member may be a full-time member of the faculty of a dental college or dental department of any medical college or have a financial interest in any such college~~] consisting of five dentists, one dental hygienist, and one member of the general public.

(2) The board shall be appointed to serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 49. Section Amended.

Section 58-7-2, Utah Code Annotated 1953, as last amended by Chapters 50 and 187, Laws of Utah 1985, is amended to read:

58-7-2. Examinations — Out-of-state applications — Lists.

(1) The board shall meet as often and at times and places as the division requires for examination of applicants to practice dentistry and dental hygiene in this state.

(2) The division [~~shall~~] may honor national and regional examinations for portions of the licensure requirement at the discretion of the [~~board and the division~~] division in collaboration with the board.

(3) Applicants who are or have been in the practice of dentistry or dental hygiene in another state shall present to the [~~board~~] division a notarized letter of recommendation from the [~~state~~] dental [~~licensing agency~~] or dental hygienists board of the state where they have been in practice, before they may practice [~~again~~] in [~~Utah~~] this state.

(4) (a) The division shall create and keep an active and inactive list of dentists and hygienists. Those dentists and hygienists who have been granted licensure but who have not been engaged in the practice of their respective professions in [~~Utah~~] this state constitute the inactive list. [~~Dentists or hygienists requesting an active status from an inactive status shall present to the board a notarized letter of recommendation from the dental board of the state where they have been in practice.~~] These lists shall include name, current address, and license number.

(b) Dentists or hygienists requesting an active status from an inactive status shall present to the division a notarized letter of recommendation from the dental or dental hygienists board of the state where they have been in practice.

[~~(5) All dental and dental related complaints shall be screened by the division. Requests for investigation coming from these complaints shall be carried out by the division investigators and the findings of these investigations reported to the board.~~]

[~~(6) The division, upon recommendation of the board, may suspend or revoke the license of a dentist or a dental hygienist for unprofessional conduct and may reinstate such license.~~]

Section 50. Section Repealed and Reenacted.

Section 58-7-5, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1985, is repealed and reenacted to read:

58-7-5. Persons exempted from chapter.

In addition to the exemptions from licensure set forth in Section 58-1-307, the following are exempt from the licensing provisions of this chapter, subject to the stated circumstances and conditions:

(1) Instructors and students of dentistry and dental auxiliaries may participate in clinical studies or other programs of their schools approved by the division in collaboration with the board.

(2) A dental hygienist or dental assistant may perform reversible procedures, as defined by the division in collaboration with the board, when a licensed dentist is in the dental office.

(3) A person is not required to be licensed under this chapter to perform mechanical work on inert matter in a laboratory, pursuant to a written prescription from a licensed dentist.

Section 51. Section Amended.

Section 58-7-7, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-7-7. License requirements — Examination, license, and renewal fees.

[~~(1)~~] Each applicant for a license to practice dentistry or dental hygiene shall:

[~~(a)~~] (1) produce satisfactory evidence of good moral character as it relates to the practice of dentistry or dental hygiene;

[~~(b)~~] (2) be a graduate of a dental college or dental hygiene school recognized by the division;

[~~(c)~~] (3) pass an examination consisting of practical demonstrations and written or oral tests, or both, in the theory and practice of dentistry or dental hygiene, as required by the division; and

[~~(d)~~] (4) pay a fee to the Department of Commerce determined by it pursuant to Subsection 63-38-3 (2) for admission to the examination, for an initial license, and for a renewal license.

[~~(2) Each license shall expire at midnight on December 31 of each even-numbered year.~~]

Section 52. Section Enacted.

Section 58-7-7.5, Utah Code Annotated 1953, is enacted to read:

58-7-7.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 53. Section Repealed and Reenacted.

Section 58-7-17, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is repealed and reenacted to read:

58-7-17. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1)(a), with regard to the practice of dentistry, is guilty of a third degree felony.

(2) Any person who violates the unlawful conduct provisions defined in Subsections 58-7-1.1(6)(a) and (b) or 58-1-501(3) through (e) is guilty of a class A misdemeanor.

(3) Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1)(a), with regard to the practice of dental hygiene, is guilty of a class B misdemeanor.

(4) A dentist who fails to properly display his dental license as required by this chapter shall forfeit the license and the license may not be reissued except upon payment to the division of a sum determined by the Department of Commerce under Subsection 63-38-3(2).

Section 54. Section Enacted.

Section 58-7-18, Utah Code Annotated 1953, is enacted to read:

58-7-18. Grounds for denial of license — Disciplinary proceedings.

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

(2)(a) The terms of revocation, suspension, or probation under this chapter may include the following:

(i) suspending, limiting, or restricting the license to practice as a dentist or dental hygienist for up to five years, including limiting the practice of the person to, or excluding from the practice of the person, one or more specific branches of dentistry or practice as a dental hygienist, including any limitation on practice as a dental hygienist;

(ii) requiring the license holder to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for licensure;

(iii) requiring the license holder to participate in a program of education prescribed by the board; or

(iv) requiring the license holder to practice under the direction of a dentist or dental hygienist designated by the board for a specified period of time.

(b) A dentist or dental hygienist whose license is suspended under Subsection 58-1-401(2) shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume competent practice as a dentist or as a dental hygienist with reasonable skill and safety to patients.

Section 55. Section Amended.

Section 58-9-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is amended to read:

58-9-2. Definitions.

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

(1) "Board" means the Board of Funeral Service created in Section 58-9-3.

(2) "Calcination" means a process whereby the dead human body is reduced by intense heat to a residue not as substantive as that which follows cremation.

(3) "Cremation" means the reduction of the dead human body by direct flame to residue which includes bone fragments.

(4) "Direct disposition" means the disposition of a dead human body as quickly as law will allow without its preparation by embalming and without any attendant funeral service or graveside service.

(5) "Disposition" means the final disposal of a dead human body by earth interment, above ground burial, cremation, calcination, burial at sea, delivery to a medical institution, or by other lawful means.

(6) "Embalming" means replacing certain body fluids in a dead human body with preserving and disinfecting chemicals by a licensed funeral service director.

(7) "Funeral establishment" means a place established for the purpose of custody, shelter, care, preparation, or disposition of a dead human body[:], or other services in connection with the human dead.

(8) "Funeral merchandise" means vaults, caskets, or other personal property into which a dead human

body is placed in connection with the transportation or disposition of that body, but does not include mausoleum crypts, interment receptacles preset in cemetery or columbarium niches.

(9) "Funeral service" means religious or other services, rites, or ceremonies performed with respect to the death of a human with the body of the deceased present.

(10) "Funeral service apprentice" means an individual licensed under this chapter who is permitted to:

(a) assist a funeral service director in the embalming or other preparation of the dead human body for deposition;

(b) assist a funeral service director in the cremation, calcification, or pulverization of the dead human body or its remains; and

(c) perform other funeral service activities under supervision of a funeral service director.

(11) "Funeral service director" means an individual licensed under this chapter who may engage in all lawful professional activities regulated and defined under the practice of funeral service.

(12) "Graveside service" means a funeral service held at the graveside.

(13) "Memorial service" means religious or other services, rites, or ceremonies performed with respect to the death of a human without the body of the deceased present.

(14) "Person" means any individual, sole proprietorship, partnership, corporation, joint venture, business, or entity of any type or form.

(15) "Practice of funeral service" means:

(a) supervising the receipt of custody and transportation of a dead human body for the purpose of preparing that body for disposition or for shipment to another location;

(b) entering into contracts with a third party for the providing of professional services regulated under this chapter;

(c) embalming or otherwise preparing a dead human body for disposition;

(d) supervising arrangement for or conduct of a funeral service, graveside service, or memorial service;

(e) cremation, calcification, or pulverization of the dead human body or its remains;

(f) supervising arrangement for or actually facilitating the disposition or direct disposition of a dead human body;

(g) supervising sales of funeral merchandise by a funeral establishment;

(h) managing or otherwise being responsible for the practice of funeral service in a licensed funeral establishment; and

(i) supervising sales or prearranged funeral plans or contracting with or employing individuals to sell prearranged funeral plans.

(16) "Pulverization" means the grinding process which reduces the bone fragments and other residue of a cremation or calcination into a powdery substance.

(17) "Unlawful conduct" as defined in Section 58-1-501 includes the following activities by a person who is not licensed as a funeral service director or a funeral service apprentice:

(a) embalming or otherwise using a method or technique that invades the dead human body to prepare that human body for burial or other disposition; and

(b) calcinating, pulverizing, or cremating a dead human body.

(18) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failure of a funeral service director to accurately document, report, and supervise the activities of a funeral service apprentice;

(b) failure of a funeral service director to comply with the requirements of Title 58, Chapter 58, Preneed Funeral Arrangement Act.

Section 56. Section Amended.

Section 58-9-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is amended to read:

58-9-3. Board.

(1) There is created [a] the Board of Funeral Service consisting of [~~five members which shall include:~~] three funeral service directors who own or have an ownership interest in a funeral establishment, one funeral service director who does not have an ownership interest in a funeral service establishment, and one member from the general public who has no association with the funeral service profession.

[~~(a) three persons licensed as funeral service directors who own or have an ownership interest in a funeral establishment;~~]

[~~(b) one person licensed as a funeral service director who does not have ownership interest in a funeral establishment; and~~]

[~~(c) one person who has no association with the funeral service profession who shall represent the general public interest.~~]

(2) The board shall be appointed and serve in accordance with Section [58-1-7] 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [58-1-9] 58-1-203.

Section 57. Section Repealed and Reenacted.

Section 58-9-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is repealed and reenacted to read:

58-9-4. License classifications.

(1) An individual may not engage in practice as a funeral service director, funeral service apprentice, or funeral service establishment unless licensed or exempted from licensure under this chapter.

(2) The division shall issue licenses to qualified persons in the following classifications:

(a) funeral service director;

(b) funeral service apprentice; and

(c) funeral service establishment.

Section 58. Section Repealed and Reenacted.

Section 58-9-5, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is repealed and reenacted to read:

58-9-5. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in practice in the following activities under this chapter without being licensed, subject to the stated circumstances and limitations:

(1) transportation of a dead human body in accordance with other applicable state and federal laws;

(2) ambulance or other emergency transportation of a dead human body;

(3) sale of funeral merchandise which is delivered to the purchaser or his designee within 90 days after sale;

(4) performing funeral, graveside, or memorial services by members of the clergy and other recognized individuals;

(5) assisting a Utah licensed funeral service director regarding disasters or special emergencies by individuals licensed in other states as funeral service directors;

(6) activities of an unlicensed individual employed by a funeral service establishment involving arrangement for a funeral service or the sale of funeral merchandise if the binding contract is reviewed, approved, and signed in behalf of the funeral service establishment by a licensed funeral service director; and

(7) nonprofessional tasks or activities which do not require independent professional judgment which are required of persons employed by a funeral service establishment under the supervision of a funeral service director.

Section 59. Section Repealed and Reenacted.

Section 58-9-7, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is repealed and reenacted to read:

58-9-7. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as required under this chapter.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 60. Section Repealed and Reenacted.

Section 58-9-13, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991, is repealed and reenacted to read:

58-9-13. Grounds for denial of license — Disciplinary proceedings.

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

Section 61. Section Amended.

Section 58-11-2, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1988, is amended to read:

58-11-2. Definitions.

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

(1) "Board" means the Board of Cosmetology/Barbering created in Section 58-11-3.

(2) "Cosmetology/barbering" means any one or a combination of any of the following practices when performed:

(a) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

(b) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(c) arching eyebrows, or tinting eyebrows or eyelashes, or both;

(d) removing superfluous hair from the face, neck, shoulders, or arms of a person by the use of depilatories or shaving equipment;

(e) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head;

(f) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

(3) "Cosmetology/barbering shop" means a place, shop, or establishment in which cosmetology, barbering, or both are practiced.

(4) "Cosmetologist/barber" means one who is licensed to practice cosmetology/barbering as defined in this section.

[~~(5) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(6)~~] (5) "Electrologist" means any person who engages for compensation in removing superfluous hair by the use of electricity from the face, arms, or legs or both arms and legs of a person.

[~~(7)~~] (6) "Graduate" means a person who has successfully completed the required course of study offered by a school of cosmetology/barbering.

[~~(8)~~] (7) "License" means the privilege to practice granted by this chapter and evidenced by a certificate issued by the division to an applicant who is entitled to receive it by complying with this chapter.

(8) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) practicing as a cosmetologist or barber or electrologist while having a contagious or infectious disease;

(b) keeping a shop or school, its furnishings, tools, utensils, linen, or appliances in an unsanitary condition; or

(c) failing to display cards and permits issued under this chapter.

Section 62. Section Amended.

Section 58-11-3, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1988, is amended to read:

58-11-3. Board of Cosmetology/Barbering.

(1) [~~The~~] There is created the Board of Cosmetology/Barbering [~~shall be appointed by the division in accordance with Chapter 1, Title 58~~] consisting of four cosmetologists/barbers and one member of the general public.

(2) The board shall be appointed and shall serve in accordance with Section 58-1-201.

[~~(2)~~] (3) The duties[~~, functions,~~] and responsibilities of the board shall be in accordance with [~~Chapter 1, Title 58~~] Sections 58-1-202 and 58-1-203.

Section 63. Section Enacted.

Section 58-11-5.5, Utah Code Annotated 1953, is enacted to read:

58-11-5.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 64. Section Repealed and Reenacted.

Section 58-11-9, Utah Code Annotated 1953, as enacted by Chapter 24, Laws of Utah 1981, is repealed and reenacted to read:

58-11-9. Grounds for denial of license — Disciplinary proceedings.

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

Section 65. Section Amended.

Section 58-11-12, Utah Code Annotated 1953, as last amended by Chapter 88, Laws of Utah 1988, is amended to read:

58-11-12. Persons exempted from chapter.

[~~The~~] In addition to the exemptions from licensure in Section 58-1-307, the following persons [~~are exempt from~~] may engage in the practice of cosmetology and barbering subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) persons licensed under the laws of this state to practice medicine, surgery, osteopathy, or chiropractic;

(2) commissioned physicians and surgeons serving in the armed forces of the United States or another federal agency; and

(3) registered nurses, undertakers, and morticians licensed under the laws of this state.

Section 66. Section Amended.

Section 58-12-2, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-12-2. Osteopathic Medicine Licensing Act — Definitions.

[~~As~~] In addition to the definitions in Section 58-1-102, as used in [~~this chapter~~] Sections 58-12-3 through 58-12-7:

(1) "Board" means the Osteopathic Licensing Board [~~of Osteopathic Medical Examiners as established in accordance with Chapter 1 of this title~~] created in Section 58-12-2.5.

[~~(2) "Division" means the Division of Occupational and Professional Licensing of the Department of Commerce.~~]

[~~(3)~~] (2) "Osteopathic physician" means a person who is licensed to practice osteopathic medicine in a state.

[~~(4)~~] (3) "Practice of osteopathic medicine" means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health.

(4) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes with regard to the practice of osteopathic medicine:

(a) performing, procuring, or agreeing to perform or procure, advising, aiding in, or abetting, or offering to perform, procure, advise, aid in, or abet a criminal abortion;

(b) willfully betraying or disclosing a professional secret or violating a privileged communication, except:

(i) as required by law; or

(ii) to assist the division in fully and freely exchanging information concerning applicants or licensees with the licensing or disciplinary boards of other states or foreign countries and professional associations;

(c) fraudulently representing that an incurable disease can be cured, or that a curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of osteopathic medicine, except as the making of the statement may be necessary for accepted therapeutic reasons;

(d) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;

(e) refusing to divulge to the division upon demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity;

(f) practicing osteopathic medicine as a partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state;

(g) using or administering to himself cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, chloralhydrate, or any of the salts, derivatives, or compounds of the foregoing substances or the using of paraldehyde or barbituric acid, or their salts, compounds or derivatives, or amphetamines, hallucinogens or related drugs, or controlled substances, or any narcotic or dangerous drug regulated by the statutes of this state or any alcoholic beverages to the extent, or in a manner, dangerous or injurious to the person holding the license under this chapter, or any other person or the public, or to the extent that its use impairs the ability of persons holding licenses to conduct with safety to the public the practice of acupuncture, or being convicted of a felony involving the use, consumption, or self-administration of any of the substances referred to in this section or any combination of them;

(h) knowingly prescribing, selling, furnishing, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds mentioned in Subsection (g) to a habitue, addict, or drug dependent person, as defined in Section 58-37-2, unless permitted by law;

(i) willfully and intentionally making any false statement or entry in any hospital record, medical record, or report; and

(j) willfully and intentionally making any false statement in a report or claim form to a governmental agency or insurance company with the intent to secure payment not rightfully due.

Section 67. Section Enacted.

Section 58-12-2.5, Utah Code Annotated 1953, is enacted to read:

58-12-2.5. Osteopathic Licensing Board created — Duties.

(1) There is created an Osteopathic Licensing Board, consisting of four osteopathic physicians and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 68. Section Repealed and Reenacted.

Section 58-12-3, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1981, is repealed and reenacted to read:

58-12-3. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, an individual rendering aid in an emergency, when no fee or other consideration for the service is contemplated, charged, or received may engage in the practice of osteopathic medicine without being licensed under this chapter.

Section 69. Section Enacted.

Section 58-12-5.5, Utah Code Annotated 1953, is enacted to read:

58-12-5.5. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 70. Section Repealed and Reenacted.

Section 58-12-6, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1981, is repealed and reenacted to read:

58-12-6. Grounds for denial of license — Disciplinary proceedings.

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

Section 71. Section Enacted.

Section 58-12-7.5, Utah Code Annotated 1953, is enacted to read:

58-12-7.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (1)(e) is guilty of a class A misdemeanor.

Section 72. Section Enacted.

Section 58-12-22.1, Utah Code Annotated 1953, is enacted to read:

58-12-22.1. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 73. Section Amended.

Section 58-12-28, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-12-28. Medical Practice Act — Definitions.

[As] In addition to the definitions in Section 58-1-102, as used in Sections 58-12-26 through 58-12-43:

(1) "Board" means the Physicians' Licensing Board created in Section 58-12-29.5.

(2) "Diagnose" means to examine in any manner another person, parts of a person's body, substance, fluids, or materials excreted, taken or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition, or to attempt to so examine or to determine, or to hold oneself out or represent that an examination or determination is being made or to make an examination or determination upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis.

[~~(3) "Division" means the Division of Occupational and Professional Licensing of the Department of Commerce.~~]

[~~(4)~~] (3) "Drugs or medicine" means articles, chemicals, compounds, or biological preparations intended for internal or external use by man or intended to be used for diagnosis, cure, mitigation, or prevention of diseases or abnormalities of man as recognized in any published United States Pharmacopoeia or National Formulary, or otherwise established as a drug or medicine.

[~~(5)~~] (4) "Practice of medicine" means:

(a) to diagnose, treat, correct, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so by any means or instrumentality;

(b) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (4)(a) whether or not for compensation;

(c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations, unless the designation additionally contains the description of the branch of the healing arts for which the person has a license.

(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) performing, procuring, or agreeing to procure or perform, or advising, aiding in or abetting, or offering or attempting to procure or aid or abet in the procuring of a criminal abortion;

(b) willful betrayal or disclosure of a professional secret, or violation of a privileged communication, except:

(i) as required by law; or

(ii) to assist the division in fully and freely exchanging information concerning applicants or licensees with the licensing or disciplinary boards of other states or foreign countries, or the Utah Medical Association, its component societies, or medical societies of other states, districts, territories, or foreign countries;

(c) fraudulent representations that an incurable disease can be cured, or that a curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of medicine, except as may be necessary for accepted therapeutic reasons;

(d) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;

(e) refusing to divulge to the division upon demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity;

(f) practicing medicine as a partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine in this state;

(g) using or administering to himself cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, chloralhydrate, or any of the salts, derivatives, or compounds of the foregoing substances or

the using of paraldehyde or barbituric acid, or their salts, compounds or derivatives, or amphetamines, hallucinogens or related drugs, or controlled substances, or any narcotic or dangerous drug regulated by the statutes of this state or any alcoholic beverages to the extent, or in a manner, dangerous or injurious to the person holding the license under this chapter, or any other person or the public, or to the extent that its use impairs the ability of persons holding licenses to conduct with safety to the public the practice of medicine, or being convicted of a felony involving the use, consumption, or self-administration of any of the substances referred to in this section or any combination of them;

(h) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds described in Subsection (g) to a habitue, addict, or drug dependent person, as defined in Section 58-37-2, unless permitted by law;

(i) willfully and intentionally making any false statement or entry in any hospital records, medical records, or reports; or

(j) willfully and intentionally making any false statement in reports or claim forms to governmental agencies or insurance companies with the intent to secure payment not rightfully due.

Section 74. Section Repealed and Reenacted.

Section 58-12-29.5, Utah Code Annotated 1953, as last amended by Chapter 125, Laws of Utah 1986, is repealed and reenacted to read:

58-12-29.5. Physicians Licensing Board created — Duties.

(1) There is created a Physicians Licensing Board consisting of six physicians and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 75. Section Amended.

Section 58-12-30, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is amended to read:

58-12-30. Exemptions from licensure.

[~~It is unlawful to engage in the practice of medicine in this state without first obtaining a license. Any person who engages in the practice of medicine without a license is guilty of a felony; except the following persons may engage in activities included in the practice of medicine subject to the circumstances and limitations stated:~~]

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

(1) a medical officer of the armed forces of the United States, of the United States public health service, or of the veterans administration, while engaged in the performance of his official duties;

[~~(2) an individual residing in another state or country and authorized to practice medicine there, who is called in consultation by an individual licensed in this state or who, for the purpose of furthering education in the healing arts, is invited by a professional school approved by the division or by a state professional association of medical practitioners or by one of their component societies, to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls within this state;~~]

[~~(3)~~] (2) an individual authorized to practice medicine in another state or country or a medical officer described in Subsection (1), or an individual who has received the degree of doctor of medicine, while rendering medical care in a time of disaster or while caring for an ill or injured individual at the scene of an emergency and while continuing to care for the individual;

[~~(4)~~] (3) any individual rendering aid in an emergency, when no fee or other consideration of value for the service is contemplated, charged or received;

[~~(5)~~] (4) any individual administering a domestic or family remedy including those persons engaged in the sale of vitamins, health food or health food supplements, herb or other products of nature, except drugs or medicines for which an authorized prescription is required by law;

[~~(6)~~] (5) a person engaged in good faith in the practice of the religious tenets of any church or religious belief without the use of any drugs or medicines for which an authorized prescription is required by law;

[~~(7)~~] (6) a person licensed under other laws of this state to practice dentistry or dental surgery, optometry, osteopathy, pharmacy, podiatry, chiropractic, naturopathy, physical therapy, nursing, psychology, or other licensed profession to the extent authorized by his license;

[~~(8) a student in training in a professional school approved by the division while performing the duties of an intern or similar function in a hospital under the supervision of its staff;~~]

[~~(9) an individual appointed as an intern or accepted for specialty or residency training in a hospital approved by the division to the extent required by the duties of his position or by his program of training for a period of two years and for any additional periods the division, upon application, deems necessary and proper;~~]

[~~(10)~~] (7) an individual who, after December 31, 1951, was licensed by another state or country to practice medicine in that state or country or who received the degree of doctor of medicine from a medical college in good standing in the United States, the District of Columbia, or Canada or from a foreign medical college recognized by the educational commission for foreign medical graduates, and has

passed an examination given by the commission, and who is regularly employed by the University of Utah Medical School upon its full-time teaching staff, and for purposes of teaching only and while engaged in the performance of his duties so long as he does not open an office or appoint a place to meet private patients or receive calls within this state; or

[~~(11)~~] (8) an individual authorized by the Department of Health under Section 26-1-30 for the purpose of withdrawing blood to determine the alcoholic or drug content pursuant to Section 41-6-44.10.

Section 76. Section Enacted.

Section 58-12-33.5, Utah Code Annotated 1953, is enacted to read:

58-12-33.5. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 77. Section Amended.

Section 58-12-35, Utah Code Annotated 1953, as last amended by Chapters 92 and 214, Laws of Utah 1987, is amended to read:

58-12-35. Medical Practice Act — Grounds for disciplinary action — Proceedings.

[~~(1) The director, upon the written recommendation of the board, shall deny an application for a license to practice medicine or shall discipline a physician licensed or otherwise lawfully practicing in this state in the following cases:~~]

[~~(a) if the applicant or licensee is not of good moral character or has been guilty of unprofessional conduct as defined in this act;~~]

[~~(b) if the applicant or licensee has been convicted of a felony or of a crime involving moral turpitude;~~]

[~~(c) if the applicant or licensee has obtained or attempted to obtain a license by fraud; or~~]

[~~(d) if the applicant or licensee has had a license to practice medicine suspended or revoked by any competent authority of any state, federal, or foreign jurisdiction for reasons which relate to his ability skillfully and safely to practice medicine.~~]

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401, except that grounds exist to deny an application for a license to practice medicine or to discipline a physician licensed or otherwise lawfully practicing in this state if the applicant or licensee is not of good moral character.

(2) If a court of competent jurisdiction determines that a physician is an "incapacitated person" as defined in Subsection 75-1-201 (18), or mentally ill, the director shall suspend the license of the physician upon the entry of the judgment, regardless of the pendency of an appeal.

(3) (a) If it appears to the board that there is reasonable cause to believe that a physician, even though he has not been judicially determined to be incompetent, mentally incompetent, or incapable, is unable to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon the physician for hearing on the sole issue of the capacity of the physician to conduct properly the practice of the physician.

(b) For purposes of this subsection, every physician licensed under the Utah Medical Practice Act who accepts the privilege of practicing medicine in this state is considered to have given consent to submit to a mental or physical examination when directed in writing by the board to do so and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that they constitute a privileged communication. Failure of a physician to submit to the examination when directed by the board constitutes grounds for immediate suspension of the physician's license, unless the failure was due to circumstances beyond the control of the physician. The director may enter an order of suspension of the license without the taking of testimony or the presentation of evidence.

(c) A physician whose license is suspended under this subsection shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients.

(4) The terms of revocation, suspension, or probation under this part may include the following:

(a) suspending, limiting, or restricting the license to practice medicine for up to five years, including limiting the practice of the person to, or excluding from the practice of the person, one or more specific branches of medicine, including any limitation on practice;

(b) requiring the license holder to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for licensure;

(c) requiring the license holder to participate in a program of education prescribed by the board; or

(d) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time.

[~~(4)~~] (5) Neither the proceedings of the board nor the action taken by it under Subsection (3) shall be used against a physician in any other proceeding.

Section 78. Section Enacted.

Section 58-12-36.5, Utah Code Annotated 1953, is enacted to read:

58-12-36.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (e) is guilty of a class A misdemeanor.

Section 79. Section Amended.

Section 58-12-41, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1981, is amended to read:

58-12-41. Rules and standards adopted by board.

The division, in collaboration with the board [~~shall have the power to~~], may adopt, amend, or rescind rules[~~, regulations~~] and standards [~~as it may find~~] determined to be necessary or desirable to carry out the provisions and purposes of the Utah Medical Practices Act and to enable the director and the division to administer and enforce the act. [~~Such~~] All rules[~~, regulations~~] and standards shall be [~~promulgated according to the~~] adopted, amended, or rescinded according to the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act. [~~Such rules, regulations and standards when so promulgated shall be part of the act and shall have the force and effect of law.~~]

Section 80. Section Amended.

Section 58-12-43, Utah Code Annotated 1953, as last amended by Chapter 240, Laws of Utah 1992, is amended to read:

58-12-43. Information relating to adequacy and quality of medical care — Immunity from liability.

(1) To enable it to perform the duties imposed upon it by the Utah Medical Practice Act, the board shall endeavor to obtain information concerning the quality and adequacy of medical care rendered to patients by physicians licensed under the act [~~and it shall be~~]. It is the duty of persons licensed under the act, persons licensed under Title 58, Chapter 31, Nurse Practice Act, and of employees or officials of hospitals licensed under the Public Health Code to furnish such information as the board may request during the course of the performance of its duties.

(2) A hospital board shall within 60 days report in writing to the board any formal disciplinary action concerning any physician taken by the hospital upon the recommendation of the medical staff relating to professional ethics, medical competence, moral turpitude, or drug or alcohol abuse. This subsection shall not apply to temporary suspensions for failure to attend meetings or to maintain records on a timely basis.

(3) Any professional society within this state comprised primarily of physicians which takes formal disciplinary action against a member relating to professional ethics, medical competence, moral turpitude, or drug or alcohol abuse shall, within 60 days of its action, report in writing to the board the name of the member together with pertinent information relating to the action.

(4) Nothing in this section shall preclude any action by a hospital, other health care facility, or professional society comprised primarily of physicians to suspend, restrict, or revoke the privileges or membership of a physician.

(5) The data and information obtained in accordance with this section shall remain confidential to the board and division until such time as the board may initiate formal action [~~based on the data or information as provided in~~] under Section [~~58-12-35.1~~] 58-12-35.

(6) Any person or organization furnishing information in accordance with the provisions of this section, in response to the request of the board or voluntarily, shall be immune from liability with respect to any information so furnished in good faith and without malice, and the members of the board shall be immune from liability for any decisions made or actions taken in response to information acquired by the board if those decisions or actions are made in good faith and without malice.

(7) A review undertaken by a hospital board, committee, department, medical staff, or professional organization of health care providers as defined in Section 78-14-3, for the purpose of evaluating any health care provider regarding: (a) professional ethics, (b) medical competence, (c) moral turpitude, or (d) substance abuse, and all information, interviews, statements, documents, testimony prepared in anticipation of, preparation for, or as a part of the review, and the results of the review, are confidential and are not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character, except as required by this section.

(8) An individual who is a member of a hospital administration, board, committee, department, medical staff, or professional organization of health care providers as defined in Section 78-14-3 is immune from liability arising from participation in a review of a health care provider's professional ethics, medical competence, moral turpitude, or substance abuse.

(9) Nothing in this section shall exempt a person licensed under Title 58, Chapter 12, Utah Medical Practice Act, from complying with Title 62A, Chapter 4, Part 5, Child Abuse Reporting.

Section 81. Section Enacted.

Section 58-12-51.2, Utah Code Annotated 1953, is enacted to read:

58-12-51.2. Definitions.

In addition to the definitions in Section 58-1-102, as used in Sections 58-12-50 through 58-12-56:

(1) "Board" means the Chiropractors Licensing Board created in Section 58-12-51.5.

(2) "Chiropractic" means a practice of the healing arts the purpose of which is to restore or maintain human health, in which patient care or first aid, hygienic, nutritional, or rehabilitative procedures are administered, and which places emphasis upon specific vertebral adjustment, manipulation, and treatment of the articulation and adjacent tissues of the spinal column, musculoskeletal structure of the body, and nervous system.

(3) "Chiropractor" means a person who has been licensed under this chapter to practice chiropractic.

(4) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) performing, procuring, or agreeing to procure or perform, or advising, aiding in or abetting, or offering or attempting to procure aid or abet in the procuring of a criminal abortion;

(b) willful betrayal or disclosure of a professional secret or violation of a privileged communication, except:

(i) as required by law; or

(ii) to assist the division fully and freely exchanging information concerning applicants or licensees with the licensing or disciplinary boards of other states or foreign countries, the Utah chiropractic associations, their component societies, or chiropractic societies of other states, counties, districts, territories, or foreign countries;

(c) fraudulent representations that curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of chiropractic;

(d) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity by a secret means, method, device, or instrumentality;

(e) refusing to divulge to the division upon demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity, unless that information is protected by the physician-patient privilege of this state and the patient has not waived that privilege;

(f) practicing chiropractic as a partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice chiropractic within this state;

(g) knowingly selling, giving away, or directly or indirectly administering, or offering to sell, furnish, give away, or administer any of the drugs or compounds referred to in Subsection 58-12-28(5)(g) to a habitue or addict unless permitted by law;

(h) willfully and intentionally making any false statement or entry in any chiropractic office records or other chiropractic records or reports;

(i) refusing the division or its officers or employees access to his office, instruments, laboratory equipment, appliances, or supplies at reasonable times for purposes of inspection;

(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(k)(i) directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually or personally rendered;

(ii) this subsection does not preclude the legal relationships within lawful professional partnerships, corporations, or associations; and

(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary of them to another physician when requested to do so by the subject patient or by his legally designated representative.

Section 82. Section Repealed and Reenacted.

Section 58-12-51.5, Utah Code Annotated 1953, as last amended by Chapter 125, Laws of Utah 1988, is repealed and reenacted to read:

58-12-51.5. Chiropractors Licensing Board.

(1) There is created a Chiropractors Licensing Board consisting of four chiropractors and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 83. Section Amended.

Section 58-12-51.6, Utah Code Annotated 1953, as last amended by Chapter 237, Laws of Utah 1991, is amended to read:

58-12-51.6. Scope of practice — Chiropractor responsibility — Practice of chiropractors and physical therapists — Treatment of spinal column — Exception.

[~~(1) As used in Sections 58-12-50 through 58-12-56, "chiropractic" means a practice of the healing arts, subject to the limitations in Subsection (2), the purpose of which is to restore or maintain human health, in which patient care, or first aid, hygienic, nutritional, or rehabilitative procedures are administered, and which places emphasis upon specific vertebral adjustment, manipulation, and treatment of the articulation and adjacent tissues of the spinal column and musculoskeletal structure of the body and nervous system.~~]

[~~(2)~~] (1) A chiropractor may examine, diagnose, and treat only within the scope of chiropractic as defined in Subsection [~~(1)~~] 58-12-51.2(2), and may not:

(a) perform major or minor surgery, or acupuncture;

(b) prescribe or administer drugs, or medicines for which an authorized prescription is required by law;

(c) treat cancer;

(d) practice obstetrics; or

(e) prescribe or administer x-ray therapy.

[~~(3)~~] (2) A chiropractor may use x-ray for diagnostic purposes only.

[~~(4)~~] (3) Chiropractors and physical therapists may:

(a) provide instruction in the use of physical measures, activities, and devices for preventive and therapeutic purposes;

(b) provide consulting, educational, and other advisory services for the purposes of reducing the incidence and severity of physical disability, movement disfunctions, bodily malfunction, and pain;

(c) treat a human being to assess, prevent, correct, alleviate, and limit physical disability, movement dysfunction, bodily malfunction, and pain resulting from disorders, congenital and aging conditions, injury, and disease;

(d) develop a physical therapy plan and the implementation of and modification of the treatment plan; and

(e) administer, interpret, and evaluate tests.

[~~(5)~~] (4) A chiropractor may:

(a) utilize the modes of treatment specified in Section 58-24a-104 of the Physical Therapist Practice Act to treat pain incident to major or minor surgery, cancer, obstetrics, or x-ray therapy;

(b) inform the patient of possible side effects of medication and recommend referral to the prescribing practitioner; and

(c) take postgraduate education courses approved by the division in collaboration with the board.

[~~(6)~~] (5) A chiropractor shall assume responsibility for his examinations, diagnoses, and treatment.

[~~(7)~~] (6) Only primary health care providers licensed in accordance with Sections 58-12-1 through [~~58-12-7~~] 58-12-6, Sections 58-12-22, 58-12-22.5, Sections 58-12-26 through 58-12-43, and Sections 58-12-50 through 58-12-56 may diagnose, adjust, manipulate, and therapeutically position the articulation of the spinal column.

[~~(8)~~] (7) Notwithstanding Subsection [~~(7)~~] (6), physical therapists and others who are licensed in the health care field may:

(a) perform therapy in the area of the neck and spine; and

(b) mobilize the joints of the extremities and spine.

[~~(9)~~] (8) This section does not expand the practice of physical therapists under Title 58, Chapter 24a, Part 1, Physical Therapist Practice Act, nor does it expand the practices that others are allowed who are licensed in the health care field.

Section 84. Section Enacted.

Section 58-12-51.12, Utah Code Annotated 1953, is enacted to read:

58-12-51.12. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 85. Section Amended.

Section 58-12-52, Utah Code Annotated 1953, as last amended by Chapter 125, Laws of Utah 1988, is amended to read:

58-12-52. Chiropractic Improvements Act — Suspension or revocation of license — Procedures — Resumption of practice.

[~~(1) The director of the division, upon the written recommendation of the board, may suspend, revoke, or refuse to renew any license to practice chiropractic in this state, or may place the licensee on probation in the following cases:~~]

[~~(a) if the applicant or licensee is not of good moral character or has been guilty of unprofessional conduct;~~]

[~~(b) if the applicant or licensee has been convicted of a felony or a crime involving moral turpitude;~~]

[~~(c) if the applicant or licensee has obtained or attempted to obtain a license by fraud;~~]

[~~(d) if the applicant or licensee has had a license to practice chiropractic suspended or revoked, or if he has been placed on probation by a competent authority of any state, federal, or foreign jurisdiction for reasons which relate to his ability to practice chiropractic skillfully and safely;~~ or]

[~~(e) if other cause for such action exists under Sections 58-12-50 through 58-12-56 or under Title 58, Chapter 1.~~]

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

(2) If a court of competent jurisdiction determines that a chiropractor is [~~"~~]incompetent,[~~" "~~]mentally incompetent,[~~" or "~~]incapable[~~" as defined in Section 75-13-20~~], or mentally ill, the director shall suspend the license of that chiropractor, even if an appeal is pending.

(3) (a) If it appears to the board that there is reasonable cause to believe that a chiropractor who has not been judicially determined to be [~~"~~]incompetent,[~~" "~~]mentally incompetent,[~~"~~] or [~~"~~]incapable,[~~"~~] is unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a re-

sult of any mental or physical condition, a petition shall be served upon that chiropractor for a hearing on the sole issue of the capacity of the chiropractor to conduct properly the practice of the chiropractor.

(b) For purposes of this Subsection (3), every chiropractor licensed by this state who accepts the privilege of practicing chiropractic in this state is deemed to have given consent to submit to a mental or physical examination when directed in writing by the division to do so and to have waived all objections to the admissibility of the examining chiropractor's or other practitioner's testimony or examination reports on the ground that they constitute a privileged communication.

(c) Failure of a chiropractor to submit to an examination under Subsection (b) when directed by the division constitutes grounds for immediate suspension of the chiropractor's license, unless the failure was due to circumstances beyond his control, and an order of suspension of the license may be entered by the division without the taking of testimony or the presentation of evidence.

(d) A chiropractor whose license is suspended under this section shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(e) Neither the proceedings of the board nor the action taken by it under this section shall be used against a chiropractor in any other proceeding.

(4) The terms of revocation, suspension, or probation under this part may include the following:

(a) suspending, limiting, or restricting the license to practice medicine for up to five years, including limiting the practice of the person to, or excluding from the practice of the person, one or more specific branches of medicine, including any limitation on practice;

(b) requiring the license holder to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for licensure;

(c) requiring the license holder to participate in a program of education prescribed by the board; or

(d) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time.

Section 86. Section Amended.

Section 58-12-55, Utah Code Annotated 1953, as last amended by Chapters 72 and 125, Laws of Utah 1988, is amended to read:

58-12-55. Chiropractic Improvements Act — Disciplinary hearings.

The division, before suspending, revoking, or refusing to renew any license, or placing the licensee on probation, shall conduct a hearing according to the requirements of Section [~~58-1-16~~] 58-1-108.

Section 87. Section Amended.

Section 58-12-58, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is amended to read:

58-12-58. Acupuncture licensing — Definitions.

[~~As~~] In addition to the definitions in Section 58-1-102, as used in Sections 58-12-57 through 58-12-69:

(1) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body, and includes the techniques of electroacupuncture, cupping, and moxibustion.

[~~(3) "Acupuncture practitioner"~~] (2) "Acupuncturist" means a person who has been licensed under this chapter to practice acupuncture.

[~~(2)~~] (3) "Board" means the Acupuncture Licensing Board created in Section 58-12-59.

[~~(4) "Division" means the Division of Occupational and Professional Licensing.~~]

(4) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) performing, procuring, or agreeing to perform or procure, or advising, aiding in or abetting, or offering to perform, procure, advise, aid in or abet a criminal abortion;

(b) willfully betraying or disclosing a professional secret, or violating a privileged communication, except:

(i) as required by law; or

(ii) to assist the division in fully and freely exchanging information concerning applicants or licenses with the licensing or disciplinary board of other states or foreign countries and professional associations;

(c) fraudulently representing that an incurable disease can be cured, or that a curable disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement in connection with the practice of acupuncture, except as the making of the statement may be necessary for accepted therapeutic reasons;

(d) refusing to divulge to the division upon demand the means, methods, device, or instrumentality used in the treatment of a disease, injury, ailment, or infirmity;

(e) practicing acupuncture as a partner, agent, or employee of, or in joint venture with any person who does not hold a license to practice acupuncture or medicine within this state;

(f) using or administering to himself cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, chloralhydrate, or any of the salts, deriva-

tives, or compounds of the foregoing substances or the using of paraldehyde or barbituric acid, or their salts, compounds or derivatives, or amphetamines, hallucinogens or related drugs, or controlled substances, or any narcotic or dangerous drug regulated by the statutes of this state or any alcoholic beverages to the extent, or in a manner, dangerous or injurious to the person holding the license under this chapter, or any other person or the public, or to the extent that its use impairs the ability of persons holding licenses to conduct with safety to the public the practice of acupuncture, or being convicted of a felony involving the use, consumption, or self-administration of any of the substances referred to in this section or any combination thereof;

(g) knowingly selling, furnishing, giving away or administering directly or indirectly, or offering to sell, furnish, give away, or administer any of the drugs or compounds mentioned in Subsection (f) to a habitue or addict unless permitted by law; or

(h) willfully and intentionally making any false statement in a report or claim form to a governmental agency or insurance company with the intent to secure payment not rightfully due.

Section 88. Section Repealed and Reenacted.

Section 58-12-59, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983, is repealed and reenacted to read:

58-12-59. Acupuncture Licensing Board.

(1) There is created an Acupuncture Licensing Board consisting of two acupuncturists, one physician with knowledge of and experience in acupuncture, one other licensed health care practitioner with knowledge of and experience in acupuncture, and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 89. Section Amended.

Section 58-12-60, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

58-12-60. Acupuncture license — Qualifications.

Every applicant for a license to practice acupuncture shall, as a condition of licensure:

(1) be at least 21 years of age;

(2) be a resident of the state;

(3) be a high school graduate;

(4) have completed at least two years of postsecondary education with emphasis in biology, human anatomy, and physiology;

(5) have completed a course in acupuncture at a school approved by the board, of at least two years, plus 500 hours of postgraduate training in the field under the direction and supervision of a licensed [~~acupuncture practitioner~~] acupuncturist, or have obtained a license or certificate from another state or country after at least two years of training at a school of acupuncture which the board deems equivalent which certifies that the applicant has met the requirements of that state or country to practice acupuncture;

(6) have passed an examination approved by the board;

(7) upon passing the examination pay the required license fee set by the division;

(8) have not been guilty of any act of unprofessional conduct or any other conduct which would constitute grounds for refusal, suspension, or revocation of license under the laws of the state; and

(9) not have had a license to practice acupuncture refused, revoked, or suspended by any other state, territory, district, or country for reasons which relate to the applicant's ability to skillfully or safely practice.

Section 90. Section Enacted.

Section 58-12-62.5, Utah Code Annotated 1953, is enacted to read:

58-12-62.5. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 91. Section Repealed and Reenacted.

Section 58-12-63, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is repealed and reenacted to read:

58-12-63. Grounds for denial of license — Disciplinary proceedings — Resumption of practice.

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

(2) The terms of revocation, suspension, or probation under this part may include the following:

(a) suspending, limiting, or restricting the license to practice acupuncture for up to five years, including limiting the practice of the person to, or excluding from the practice of the person, one or more specific branches or acupuncture practice, including any limitation on practice;

(b) requiring the licensee to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for licensure;

(c) requiring the licensee to participate in a program of education prescribed by the board; or

(d) requiring the licensee to practice under the direction of a physician or acupuncturist designated by the board for a specified period of time.

(3) An acupuncturist whose license is suspended under Subsection 58-1-401(2) shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent practice of acupuncture with reasonable skill and safety to patients.

Section 92. Section Amended.

Section 58-12-66, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983, is amended to read:

58-12-66. Acupuncture licensee — Supervision by physician.

Upon being licensed to practice acupuncture within this state, the holder of the license may practice that profession only under the direction, supervision, and responsibility of and in association with a physician licensed to practice medicine and surgery under [~~Title 58, Chapter 12,~~] this chapter or an [~~acupuncture practitioner~~] acupuncturist who has at least three years experience as determined by the board. [~~The number of new licensees that can be supervised by each~~] Each physician or experienced acupuncturist [~~shall be limited to~~] may supervise no more than five licensees at a time without board approval unless specific approval by the board is given to increase the number.

Section 93. Section Amended.

Section 58-12-67, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983, is amended to read:

58-12-67. Acupuncture licensee — Restriction on titles used.

(1) A person practicing as an [~~acupuncture practitioner~~] acupuncturist may not display or in any way use any title, words, or insignia in conjunction with his [~~or her~~] name or practice except the [~~words "acupuncture practitioner"~~] word "acupuncturist." When used in conjunction with the person's practice the term "[~~acupuncture practitioner~~] acupuncturist" shall be displayed next to the name of the [~~acupuncture practitioner~~] acupuncturist.

(2) An [~~acupuncture practitioner~~] acupuncturist may not use the term "physician," [~~or~~] "physician or surgeon," or "doctor" in conjunction with his [~~or her~~] name or practice[~~, except that the terms doctor~~]. "Doctor of acupuncture," "constitutional acupuncturist," or "oriental medical doctor" may be used if the term is commensurate with the degree in acupuncture received by the practitioner.

(3) Medical doctors who choose to practice acupuncture shall represent themselves as medical doctors practicing acupuncture and not as [~~acupuncture practitioners~~] acupuncturists.

Section 94. Section Enacted.

Section 58-12-67.5, Utah Code Annotated 1953, is enacted to read:

58-12-67.5. Exceptions from licensure.

In addition to the exemptions from licensure set forth at Section 58-1-307, the following persons may engage in the practice of acupuncture subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an individual licensed as a physician and surgeon under this chapter; and

(2) commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.

Section 95. Section Repealed and Reenacted.

Section 58-12-68, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983, is repealed and reenacted to read:

58-12-68. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (e) is guilty of a class A misdemeanor.

Section 96. Section Amended.

Section 58-12-69, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983, is amended to read:

58-12-69. Acupuncture license not authorizing medical practice — Insurance payments.

Nothing in this chapter [is] may be construed to permit the practice of medicine nor require direct payment from third party insurers directly to [~~acupuncture practitioners~~] acupuncturists.

Section 97. Section Amended.

Section 58-12-71, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990, is amended to read:

58-12-71. Definitions.

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

(1) "Approved physician assistant education program" means an education program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association.

(2) "Board" means the Physician Assistant Licensing Board created [~~under this chapter~~] in Section 58-12-72.

(3) "Direct supervision" means that the supervising physician is physically present on site at the point of patient treatment and immediately avail-

able for consultation with the person being supervised.

(4) "Physician assistant" means a person licensed as a physician assistant under this chapter.

(5) "Practice as a physician assistant" means the professional activities and conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, dependent upon and under the supervision of a supervising physician or substitute supervising physician in accordance with a utilization plan and protocol approved by the board and division. The physician assistant shall act as the agent of the supervising physician or substitute supervising physician when acting in accordance with an approved utilization plan and protocol.

[~~(10)~~] (6) "Protocol" means written criteria, jointly developed by a physician assistant's supervising physician and any substitute physicians, and the physician assistant that permits a physician assistant, working under the direction or review of the supervising physician, to assist in the management of common illnesses and injuries.

[~~(6)~~] (7) "Substitute supervising physician" means an individual who meets the requirements of a supervising physician and acts as the supervising physician in the absence of the primary supervising physician.

[~~(7)~~] (8) "Supervising physician" means an individual who is currently licensed as a physician and surgeon under the Utah Medical Practice Act or an individual who is currently licensed as an osteopathic physician under the Utah Osteopathic Medicine Licensing Act and who has been approved by the board and division to act as the primary supervisor of and be responsible for the professional practice and conduct of a physician assistant in accordance with this chapter.

[~~(8)~~] (9) "Supervision" means the supervising physician is available for consultation with the physician assistant, either personally or by other means permitting direct verbal communication between the physician and physician assistant, in accordance with a utilization plan approved by the board and division and a protocol.

(10) "Unlawful conduct" as defined in Section 58-1-501 includes engaging in practice as a licensed physician assistant while not under the supervision of a supervising physician approved by the division in collaboration with the board.

(11) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) violation of a patient confidence to any person who does not have a legal and professional need to know the information concerning the patient;

(b) making any false or misleading record with respect to practice as a physician assistant;

(c) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided; and

(d) prescribing prescription drugs for himself or administering prescription drugs to himself except those that have been legally prescribed for him by a licensed practitioner and that are used in accordance with the prescription order for the condition diagnosed.

[~~(9)~~] (12) "Utilization plan" means a written description that reasonably details the manner in which the supervising physician utilizes a physician assistant in his practice, the activities in which the physician assistant will typically be participating, and the duties the physician assistant will be expected to perform.

Section 98. Section Amended.

Section 58-12-72, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990, is amended to read:

58-12-72. Physician Assistant Licensing Board.

(1) There is established a Physician Assistant Licensing Board consisting of:

(a) four licensed physicians and surgeons, at least two of whom shall be individuals who are supervising or have supervised a physician assistant and one of whom may be a member of the Physicians Licensing Board;

(b) one physician assistant;

(c) one person who is involved in the administration of an approved physician assistant education program within the state of Utah; and

(d) one member from the general public.

(2) The board shall be appointed and serve in accordance with Section [58-1-7] 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections [58-1-8] 58-1-202 and [58-1-9] 58-1-203.

Section 99. Section Amended.

Section 58-12-73, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990, is amended to read:

58-12-73. License — Exceptions from licensure.

(1) The division shall issue a license as a physician assistant to any individual who meets the qualifications for licensure under this chapter.

[~~(2) It is unlawful for any person to:~~]

[~~(a) engage in practice as a physician assistant, whether supervised by a physician or not, when not currently licensed under this chapter as a physician assistant or when that person's license has been suspended;~~]

[~~(b) represent himself to be a licensed~~ physician assistant qualified to practice as a physician assistant in the state of Utah when not currently licensed under this chapter; and]

[~~(c) engage in practice as a~~ physician assistant, ~~while licensed under this chapter, while not under the supervision of a supervising~~ physician approved ~~by the division in collaboration with the board.~~]

[~~(3) Any person engaging in practice as a physician assistant in violation of Subsection (2)(a) is guilty of a third degree felony.~~]

[~~(4) Any person in violation of Subsections (2)(b) or (2)(c) is guilty of a class A misdemeanor.~~]

[~~(5) Nothing in this chapter precludes the lawful activities of any individual licensed under the laws of the state of Utah when acting within the scope of their license.~~]

[~~(6) The following are exempt from licensure under this act:~~]

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

(a) a student enrolled in an approved physician assistant education program while engaged in activities as a physician assistant that are a part of the education program under the direct supervision of a physician associated with the program and for which the program accepts in writing the responsibility for the student; and

(b) a person acting in the role typically defined as a "medical assistant" who is working under the direct supervision of a physician, and who does not diagnose, advise, independently treat, or prescribe to or in behalf of any person, and for whom the supervising physician accepts responsibility.

[~~(7)~~] (3) Any physician assistant who is also a pharmacist licensed under Title 58, Chapter 17, Pharmacy Practice Act, on January 1, 1990, may continue to fully practice as both a physician assistant and a pharmacist, except that as a pharmacist he may not fill any prescriptions that:

(a) he has written as a physician assistant;

(b) any of his supervising or substitute supervising physicians have written; or

(c) any other physician assistants in his practice have written.

Section 100. Section Repealed and Reenacted.

Section 58-12-76, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990, is repealed and reenacted to read:

58-12-76. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall submit a detailed utilization plan and evidence of protocol on forms provided by the division.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 101. Section Enacted.

Section 58-12-78.5, Utah Code Annotated 1953, is enacted to read:

58-12-78.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (1)(e) or Section 58-12-71(10) is guilty of a class A misdemeanor.

Section 102. Section Enacted.

Section 58-12-79, Utah Code Annotated 1953, is enacted to read:

58-12-79. Grounds for denial of license — Disciplinary proceedings.

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

Section 103. Section Amended.

Section 58-15-2, Utah Code Annotated 1953, as enacted by Chapter 49, Laws of Utah 1985, is amended to read:

58-15-2. Definitions.

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

(1) "Administrator" means a person who is charged with the general administration of a health facility, regardless of whether that person has an ownership interest in the facility and whether his functions and duties are shared with one or more persons.

(2) "Board" means the Health Facility Administrators Licensing Board [~~of Health Care Administrators established under this chapter~~] created in Section 58-15-3.

[~~(3) "Director" means the director of the Division of Occupational Licensing.~~]

[~~(4) "Division" means the Division of Occupational Licensing.~~]

[~~(5)~~] (3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an intermediate care facility for the mentally retarded.

[~~(6)~~] (4) "Intermediate care facility" means an institution which provides, on a regular basis, health

care and services to persons who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health care and services in addition to room and board.

[~~(7)~~] (5) "Intermediate care facility for the mentally retarded" means an institution which provides, on a regular basis, health-related care and service to mentally retarded individuals or persons with related conditions, who do not require the degree of care and treatment a hospital or skilled nursing facility provide, but who require health-related care and services above the need for room and board.

[~~(8)~~] (6) "Skilled nursing facility" means an institution primarily providing inpatients with skilled nursing care and related services on a continuing basis for patients who require mental, medical, or nursing care, or service for the rehabilitation of injured, disabled, or sick persons.

[~~(9)~~] (7) "Unprofessional conduct" [~~on the part of an administrator~~] as defined in Section 58-1-501 and as may be further defined by rule includes [~~but is not limited to~~]:

[~~(a) dishonesty, fraud, incompetency, or gross negligence in the performance of administrative duties;~~]

[~~(b) conviction of a crime involving moral turpitude in any jurisdiction, which crime relates to the practice of administration of a health facility;~~]

[~~(c)~~] (a) intentionally filing a false report or record, intentionally failing to file a report or record required by state or federal law, or wilfully [~~impending~~] impeding or obstructing [~~such~~] the filing of a required report. These reports or records only include those which are signed in the capacity of a licensed health facility administrator; and

[~~(d) violating any of the rules adopted under this chapter;~~]

[~~(e) practicing with a revoked, suspended, or inactive license;~~]

[~~(f)~~] (b) acting in a manner inconsistent with the health and safety of [~~patient~~] the patients of the health facility in which he is the administrator[~~; or~~].

[~~(g) continuing inability to practice as an administrator with reasonable skill and safety to patients because of illness, drunkenness, use of drugs, or other chemicals or substance affecting the administrator's mental or physical condition.~~]

Section 104. Section Repealed and Reenacted.

Section 58-15-3, Utah Code Annotated 1953, as enacted by Chapter 49, Laws of Utah 1985, is repealed and reenacted to read:

58-15-3. Health Facility Administrators Licensing Board.

(1) There is created a Health Facility Administrators Licensing Board consisting of one administrator from a skilled nursing facility, two administrators from intermediate care facilities, one administrator from an intermediate care facility for the mentally retarded, and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. The board, in collaboration with the division, may establish continuing education requirements by rule. Board members may not receive compensation for their involvement in continuing education programs.

Section 105. Section Amended.

Section 58-15-4, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-15-4. Licensure requirements.

(1) An applicant for a license under this chapter shall submit a written application to the division, verified under oath, that the applicant is of good moral character as it relates to the functions and responsibilities of the practice of administration of a health facility.

(2) After July 1, 1985, all new applicants are required to have, in addition to Subsection (1), the education or experience requirements as established by rule and as approved by the division.

(3) The applicant shall pay a fee to the Department of Commerce determined by it pursuant to Subsection 63-38-3(2) for admission to the examination, for an initial license, and for a renewal license. [~~Each license expires on December 31 of each odd-numbered year.~~]

(4) The applicant shall pass a written examination in subjects determined by the board. Upon passing the examination and payment of the license fee, the board shall recommend issuance to the applicant of a license to practice as a health facility administrator.

(5) A temporary license may be issued without examination to a person who meets the requirements established by statute and by rule for an administrator. The temporary license may be issued only to fill a position of administrator that unexpectedly becomes vacant and may be issued for only a single period not to exceed six months.

(6) A license may be granted to an applicant who is a licensed nursing home administrator in another state if the standards for licensure in the other state are equivalent to those criteria set forth in Subsections (1) and (2), and if the applicant is otherwise qualified.

Section 106. Section Enacted.

Section 58-15-4.5, Utah Code Annotated 1953, is enacted to read:

58-15-4.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to main-

tain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 107. Section Repealed and Reenacted.

Section 58-15-10, Utah Code Annotated 1953, as enacted by Chapter 49, Laws of Utah 1985, is repealed and reenacted to read:

58-15-10. Penalty for unlawful conduct.

Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1) is guilty of a class B misdemeanor.

Section 108. Section Amended.

Section 58-15-11, Utah Code Annotated 1953, as enacted by Chapter 49, Laws of Utah 1985, is amended to read:

58-15-11. Exceptions to chapter.

[~~This~~] In addition to the exemptions in Section 58-1-307, this chapter does not apply to facilities of any recognized church or denomination [~~which care~~] that cares for the sick and suffering by mental or spiritual means[~~, providing~~] if no drug or material remedy is used [~~and providing such~~] in the care provided. Any facilities exempted under this section shall comply with [~~the statutes~~] each statute and [~~rules~~] rule on sanitation and life safety.

Section 109. Section Enacted.

Section 58-15-12, Utah Code Annotated 1953, is enacted to read:

58-15-12. Grounds for denial of license — Disciplinary proceedings.

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

Section 110. Section Amended.

Section 58-16a-102, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is amended to read:

58-16a-102. Definitions.

[~~As~~] In addition to the definitions in Section 58-1-102, as used in this [~~part~~] chapter:

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-103.

(2) "Credentials" means the scope of practice and range of pharmaceutical utilization permitted an individual optometrist by the division in consultation with the board.

[~~(3) "Division" means the Division of Occupational and Professional Licensing in the Department of Commerce.~~]

[~~(4)~~] (3) "Ophthalmic lens" means any lens used to treat the eye that has a spherical, cylindrical, or prismatic power or value, or that is available only by prescription.

[~~(5)~~] (4) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

(a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;

(b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use of diagnostic instruments;

(c) prescription, administration, or adaptation of ophthalmic lenses, pharmaceutical agents, or ocular exercises to diagnose and treat diseases, defects, or other abnormal conditions of the human eye; or

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses;

(iii) adjust frames; or

(iv) duplicate, replace, or accept for duplication or replacement any ophthalmic lens.

[~~(6)~~] (5) "Pharmaceutical agents" means those drugs state law requires to be dispensed by prescription and the division, in consultation with the board, allows optometrists to use for diagnostic and therapeutic purposes in accordance with this part.

[~~(7)~~] (6) "Prescription drug" has the same definition as in Section 58-17-2.

[~~(8)~~] (7) "Protocol" means the written criteria jointly developed by the supervising physician and the optometrist that permits the optometrist to treat eye disease and injury.

[~~(9)~~] (8) "Supervising physician" means an individual who is:

(a) currently licensed as a physician and surgeon under the Utah Medical Practice Act;

(b) a board-certified ophthalmologist; and

(c) approved by the board and division.

[~~(10)~~] (9) "Supervision" means the supervising physician is available for consultation with the optometrist either personally or by other means permitting direct verbal communication between the physician and optometrist in accordance with a utilization plan approved by the board, the division, and the protocol.

(10) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failure to refer to an appropriate licensed practitioner any patients with conditions unresponsive to treatment, or whose treatment is not within the scope of the competence, licensure, or credentials of the licensee;

(b) providing confidential patient information to any third party who does not have a legal and professional ground for obtaining the information concerning the patient;

(c) making any false or misleading record in his practice as an optometrist;

(d) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate medical purpose and upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided;

(e) prescribing any prescription drug for himself or administering any prescription drug to himself except those drugs legally prescribed for him by a licensed practitioner and used in accordance with the prescription order for the condition diagnosed;

(f) giving or receiving directly or indirectly any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, except in a legal relationship within a lawful professional partnership, corporation, or association; or

(g) failure to transfer pertinent and necessary information from medical records to another optometrist or physician when requested by the patient or his representative designated in writing.

[~~(11)~~] (11) "Utilization plan" means a written description that reasonably details the scope of practice and permitted prescribing authorization for an optometrist.

Section 111. Section Amended.

Section 58-16a-103, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is amended to read:

58-16a-103. Creation of board — Board duties and functions.

(1) There is created an Optometrist Licensing Board [~~under this section~~] consisting of four optometrists, one physician who is a board-certified ophthalmologist recommended by the Utah Medical Association, one pharmacologist, and one member from the general public.

[~~(2) The board shall consist of the following seven members:~~]

[~~(a) four licensed optometrists;~~]

[~~(b) one physician who is a board-certified ophthalmologist recommended by the Utah Medical Association;~~]

[~~(c) one pharmacologist; and~~]

[~~(d) a member of the general public.~~]

[~~(3)~~] (2) The board shall be [~~selected,~~] appointed[~~;~~] and serve in accordance with Section [~~58-1-7~~] 58-1-201.

[~~(4)~~] (3) The board's duties and [~~functions are under~~] responsibilities shall be in accordance with Sections [~~58-1-8,~~] 58-1-202 [~~58-1-8.5,~~] and [~~58-1-9~~] 58-1-203.

Section 112. Section Amended.

Section 58-16a-105, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is amended to read:

58-16a-105. License — Exemptions.

(1) The division shall issue an optometrist license to any person who meets the qualifications for licensure under this chapter.

[~~(2) It is unlawful for any person to practice optometry or hold himself out to be an optometrist in this state unless he is licensed or exempted from licensure under this chapter by the division.~~]

[~~(a) Any person engaging in practice as an optometrist in violation of Subsection (2) is guilty of a third degree felony.~~]

[~~(b) Any person holding himself out to be an optometrist in violation of Subsection (2) is guilty of a class A misdemeanor.~~]

[~~(3) The~~] (2) In addition to the exemptions from licensure in Section 58-1-307, the following persons [~~are not subject to this part~~] may engage in the practice of optometry subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a person who sells eyeglasses on prescription of the person making the examination and authorized under state law to practice either optometry or medicine and surgery; and

(b) a person who sells eyeglasses or spectacles as articles of merchandise if:

(i) he does so in the ordinary course of trade from a permanently located and established place of business;

(ii) he does not traffic or attempt to traffic upon assumed skill in testing the eye and adapting lenses according to the test;

(iii) he does not duplicate, replace, or accept for replacement any lens or lenses unless he is an exclusive wholesale optical establishment;

(iv) he does not use in the testing of the eyes any lenses other than the lenses actually sold; and

(v) he does not give or offer eyeglasses or spectacles as premiums[~~;~~].

[~~(c) an optometrist in the Armed Forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of his employment with that federal agency if the person holds a valid license to practice optometry issued by any other state or jurisdiction recognized by the division;~~]

[~~(d) a student engaged in activities constituting the practice of optometry while in training in a recognized school approved by the division, if the activities are under the supervision of qualified faculty~~

~~or staff and the activities are a defined part of the training program;~~]

[~~(e) a person residing in another state and licensed to practice optometry there who is:~~]

[~~(i) called in for a consultation by a person licensed in this state and his services are limited to the consultation; or~~]

[~~(ii) invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of optometry if the person does not establish a place of business or regularly engage in the practice of optometry in the state; or~~]

[~~(f) an individual licensed under the laws of this state to practice or engage in any other occupation or profession, while the person is engaged in the lawful, professional, and competent practice of that occupation or profession.~~]

Section 113. Section Amended.

Section 58-16a-106, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is amended to read:

58-16a-106. Qualifications for licensure.

(1) An applicant for licensure as an optometrist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee as determined by the division under [~~Section~~] Subsection 63-38-3(2);

(c) be a doctoral graduate of a recognized school of optometry approved by the division;

(d) have successfully completed a course of study satisfactory to the division in general and ocular pharmacology and emergency medical care;

(e) have passed examinations approved by the division in consultation with the board that include:

(i) a standardized national optometry examination;

(ii) a standardized clinical examination;

(iii) a standardized national therapeutics examination; and

(iv) the Utah Optometry Jurisprudence Examination; and

(f) show evidence of membership in a peer review program approved by the division in collaboration with the board and agree in writing to maintain membership while licensed as an optometrist in this state.

(2) An applicant for licensure as an optometrist on or after July 1, 1991, shall meet the licensure requirements under this chapter and not requirements under any prior optometry licensure laws of this state.

(3) The division may issue [~~a reciprocal~~] an optometry license [~~under Section 58-1-12~~] by endorsement if the applicant [~~for licensure~~], based upon his licensure in another state, also shows proof of:

(a) holding a current optometry license in good standing in that state; and

(b) having practiced optometry full-time in that state for not less than the immediately preceding two years.

Section 114. Section Repealed and Reenacted.

Section 58-16a-107, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is repealed and reenacted to read:

58-16a-107. Term of license — Expiration — Renewal.

(1) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) current membership in a peer review organization; and

(b) completion of continuing education as required under this chapter.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 115. Section Repealed and Reenacted.

Section 58-16a-108, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is repealed and reenacted to read:

58-16a-108. Grounds for denial of license — Disciplinary proceedings.

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

Section 116. Section Enacted.

Section 58-16a-110.5, Utah Code Annotated 1953, is enacted to read:

58-16a-110.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (1)(e) and 58-16a-102(11) is guilty of a class A misdemeanor.

Section 117. Section Amended.

Section 58-16a-111, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991, is amended to read:

58-16a-111. Continuing education.

(1) Each person licensed under this chapter shall complete in each two-year licensing period [of licensure], 30 hours of qualified continuing professional education in [courses approved by the division in order to renew the license] accordance with standards defined by rule as a condition precedent to license renewal under Section 58-16a-107.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a prorata amount of the requirements of a two-year period.

Section 118. Section Amended.

Section 58-17-2, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990, is amended to read:

58-17-2. Definitions.

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

(1) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person; or the placement by a veterinarian with the owner or caretaker of an animal or group of animals of a prescription drug for the purpose of injection, inhalation, ingestion, or any other means directed to the body of the animal by the owner or caretaker in accordance with written directions of the veterinarian.

(2) "Board" means the State Board of Pharmacy created in Section 58-17-3.

(3) "Branch pharmacy" means a rural pharmacy as defined in this chapter.

(4) "Compound" means to mix, combine, or put together various ingredients or drugs for the purpose of dispensing a prescription.

(5) "Controlled substance" has the same definition as in Section 58-37-2.

(6) "Delivery" means the actual, constructive, or attempted transfer of a prescription drug or device from one person to another, whether or not for a consideration, but does not include administering the drug or device.

[~~(7) "Department" means the Department of Commerce.~~]

[~~(8)~~] (7) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

[~~(9) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(10)~~] (8) "Dispense" means to prepare and deliver a prescription drug or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient, research subject, an animal, or other individual entitled to receive the prescription drug or device.

[~~(11)~~] (9) "Distribute" means to deliver a drug or device other than by administering or dispensing.

[~~(12) "Division" means the Division of Occupational and Professional Licensing within the Department of Commerce.~~]

[~~(13)~~] (10) "Drug," "drugs," or "drug product" means:

(a) articles recognized as drugs in the official United States Pharmacopoeia/National Formulary, Homeopathic Pharmacopoeia, other drug compendia, or any supplement to any of them;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) articles intended for use as a component of any articles specified in Subsection (a), (b), or (c).

[~~(14)~~] (11) "Drug outlet" means all pharmacies, nursing homes, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, hospitals, family planning clinics, retail stores, wholesalers, distributors, manufacturers, mail order vendors, and facilities of any other kind which are located in this state which are engaged in the dispensing, delivery, distribution, or manufacture of prescription drugs or devices.

[~~(15)~~] (12) "Drug product equivalent" means a drug product that is designated the therapeutic equivalent of another drug product by the federal Food and Drug Administration in the Approved Prescription Drug Products list.

[~~(16)~~] (13) "Drug therapy" means the use of drugs in the mitigation, diagnosis, prevention, cure, or treatment of diseases or other conditions.

[~~(17)~~] (14) "Extern" means a college of pharmacy student enrolled in a college coordinated practical experience program in a licensed pharmacy under the supervision of a preceptor approved by the college of pharmacy.

[~~(18)~~] (15) "Filling" or "refilling" are synonymous with dispense.

[~~(19)~~] (16) "Hospital pharmacy" means a pharmacy providing institutional pharmaceutical service.

[~~(20)~~] (17) "Intern" means a pharmacy student or graduate licensed by this state to gain experience in the practice of pharmacy under the supervision of a preceptor pharmacist.

[~~(21)~~] (18) "Labeling" means the process of preparing and affixing a label to the container of any drug or device, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and state law or rule.

[~~(22)~~] (19) "Licensee" means any person to whom a license has been granted.

[~~(23)~~] (20) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a prescription drug or a device, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of a substance or labeling or relabeling of its container. This term does not include the preparation or compounding of a noncontrolled substance drug by an individual for that individual's own use or the preparation, compounding, packaging, or labeling of a drug:

(a) by a pharmacist or practitioner incident to administering or dispensing of a drug in the course of professional practice; or

(b) by a practitioner or by that practitioner's authorization under supervision for the purpose of or incident to research, teaching, or chemical analysis and not for sale.

[~~(24)~~] (21) "Manufacturer" means a person engaged in the manufacture of prescription drugs or devices.

[~~(25)~~] (22) "Medication profile" or "profile" means a record system maintained as to drugs or devices prescribed for a pharmacy patient to enable a pharmacist to analyze for potential harmful or dangerous interactions, or other factors, or other drugs or devices prescribed for the patient.

[~~(26)~~] (23) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and rules of this state and of the federal government.

[~~(27)~~] (24) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical service.

[~~(28)~~] (25) "Official compendium" means publications specified by the board and may include for illustration, but are not limited to, the current United States Pharmacopoeia/National Formulary, Homeopathic Pharmacopoeia, other drug compendium, or any supplement to any of them.

[~~(29)~~] (26) "Out-of-state mail service pharmacy" means a pharmacy located outside the state that:

(a) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(b) provides information to a resident of this state on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards, and uses; or

(c) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

[~~(30)~~] (27) "Person" means an individual, corporation, partnership, association, or any other legal entity, including a drug outlet.

[~~(31)~~] (28) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

[~~(32)~~] (29) "Pharmacy" means a facility or location including a licensed health-care facility where the practice of pharmacy is carried out.

[~~(33)~~] (30) "Pharmacy patient" or "patient" means an individual for whom a practitioner has prescribed a drug or device which is to be administered to or taken or used by that individual or an animal.

[~~(34)~~] (31) "Physician" means an individual licensed by this state to engage in the practice of medicine.

[~~(35)~~] (32) "Poison" means any substance having an inherent deleterious property which when internally or externally applied to the body of man or animal is capable of causing damage to the tissues, destroying the vital functions of the body, or causing death.

[~~(36)~~] (33) "Practice of pharmacy" includes any of the following:

(a) interpreting prescription orders;

(b) compounding, packaging, labeling, dispensing, and the coincident distribution of prescription drugs and devices;

(c) participation in drug utilization review;

(d) proper and safe storage of drugs and devices;

(e) maintaining proper records of drugs and devices;

(f) providing information on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards and uses;

(g) drug product substitution;

(h) supervision of pharmacist's supportive personnel;

(i) the counseling of pharmacy patients concerning adverse and therapeutic effects of drugs.

[~~(37)~~] (34) "Practitioner" means any person licensed by the state to prescribe drugs, medications, or devices dispensed by prescription only.

[~~(38)~~] (35) "Preceptor" means a licensed pharmacist certificated by the board to serve as a teacher and a role model for interns and externs in the professional practice of pharmacy.

[~~(39)~~] (36) "Prescribed drug or device" means any drug or device prescribed by a practitioner.

[~~(40)~~] (37) "Prescription" means a written or oral order issued by a licensed practitioner in the course of that practitioner's professional practice for a controlled substance, other drug, or device which it dispenses for use by a patient or an animal.

[~~(41)~~] (38) "Prescription drug" or "legend drug" means:

(a) a drug which, under federal law, is required to be labeled with either of the following statements or their equivalent:

(i) "CAUTION: Federal law prohibits dispensing without prescription"; or

(ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(b) a drug which is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

[~~(42)~~] (39) "Prescription drug or device order" means a lawful written or verbal order of a practitioner for a drug or device for use in humans or animals.

[~~(43)~~] (40) "Rural pharmacy" means a branch pharmacy established in a rural community to receive and store medications packaged in advance by a licensed pharmacist who is affiliated with a parent pharmacy.

[~~(44)~~] (41) "Technicians" or "supportive personnel" means individuals who may assist a pharmacist in nonjudgmental pharmaceutical duties. The training and supervision of those individuals shall be by a pharmacist under a protocol formulated by the division in collaboration with the board.

(42) "Unlawful conduct" as defined in this section or in Section 58-1-501 does not include the solicitation of participation in a program of third party payment for prescription drugs and the description of terms and conditions of coverage are not a violation of this section. "Unlawful conduct" does include:

(a) knowingly preventing or refusing to permit any authorized agent to enter a pharmacy or any other place where prescription drugs or devices are kept, manufactured, stored, dispensed, or distributed to a consumer, for the purpose of lawful inspection or any other purpose in accordance with this chapter and rules made under it;

(b) failing to deliver the license, permit, or certificate to the board upon demand, if it has been revoked, suspended, or refused;

(c) using the title "pharmacist," "druggist," "apothecary," or any term having similar meaning, except by a person licensed as a pharmacist, or conducting or transacting business under a name which contains, as part of that name, the words "drugstore," "pharmacy," "drugs," "medicine store," "medicines," "drug shop," "apothecary," "prescriptions," or any term having a similar meaning, or in any manner advertising, otherwise describing, or referring to the place of the conducted business or profession, unless the place is a pharmacy issued a license by the board, except that any establishment selling nonprescription drugs and supplies may display signs bearing the words "packaged drugs," "drug sundries," or "nonprescription drugs," and is not considered to be a pharmacy or drugstore by reason of the display;

(d) buying, selling, or causing to be sold, or offer for sale, any drug or device which bears, or the package of which bears or originally did bear, the inscription "sample," "not for resale," "for investigational or experimental use only," or other similar words, except where a cost is incurred in the bona fide acquisition of an investigational or experimental drug;

(e) using to his own advantage or revealing to anyone other than the board and its authorized representatives, or to the courts, when relevant to any judicial or administrative proceeding under this chapter, any information acquired under authority of this chapter or concerning any method or process which is a trade secret;

(f) procuring or attempting to procure any drug for himself or to have someone else procure or attempt to procure any drug:

(i) by fraud, deceit, misrepresentation, or subterfuge;

(ii) by forgery or alteration of a prescription or any written order;

(iii) by concealment of a material fact; or

(iv) by use of a false statement in any prescription, chart, order, or report;

(g) filling, refilling, or advertising the filling or refilling of prescriptions for any consumer or patient residing in this state if that person is not licensed under this chapter;

(h) requiring any employed pharmacist, intern, or authorized supportive personnel to engage in any conduct in violation of this chapter;

(i) being in possession of a prescription drug for any unlawful purpose; and

(j) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who he knows or should know is attempting to obtain drugs by fraud or misrepresentation.

(43) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) willfully deceiving or attempting to deceive the division, the board, or their agents as to any relevant matter;

(b) (i) paying rebates to practitioners or any other health care providers, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation or its economic equivalent for recommending of the professional services of either party;

(ii) however, price discounts that are conditional upon volume purchases are not prohibited under Subsection (i);

(c) misbranding or adulteration of any drug or device or the sale, distribution, or dispensing of any misbranded or adulterated drug or device;

(d) engaging in the sale or purchase of drugs or devices that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases;

(e) accepting back and redistribution of any unused drug, or a part of it, after it has left the prem-

ises of any pharmacy, unless the drug is in the original sealed unit dose package or manufacturer's sealed container;

(f) being employed as a pharmacist or intern or sharing or receiving compensation in any form arising out of an act incidental to the professional activities in which any person requires him to engage in any aspects of the practice of pharmacy in violation of this chapter; and

(g) violation of the federal Controlled Substances Act, the Utah Controlled Substances Act, or rules and regulations adopted under either of them.

[~~(45)~~] (44) "Wholesaler" or "distributor" means any individual or business entity engaged in the business of wholesale vending or selling of any prescription drug or device which the individual or business entity has not produced, manufactured, compounded, or dispensed.

Section 119. Section Amended.

Section 58-17-3, Utah Code Annotated 1953, as last amended by Chapter 124, Laws of Utah 1988, is amended to read:

58-17-3. Board — Membership — Qualifications — Terms.

(1) There is created the State Board of Pharmacy consisting of four pharmacists and a member of the general public. [~~The division, in collaboration with the board, shall enforce this chapter.~~]

[~~(2) The board shall be composed in accordance with Title 58, Chapter 1.~~]

[~~(3)~~] (a) The public member of the board shall be a Utah resident who has attained the age of 21 and may not be nor ever have been a member of the profession of pharmacy, [~~or~~] the spouse of a member of the profession of pharmacy, or a person who has ever had any material financial interest in providing pharmacy service or who has engaged in any activity directly related to the practice of pharmacy.

(b) The licensed pharmacist members of the board shall:

(i) be licensed under this chapter at the time of their appointment;

(ii) [~~be~~] have been Utah residents continuously for at least three years;

(iii) be licensed and in good standing to engage in the practice of pharmacy in Utah;

(iv) have at least five years of experience in the practice of pharmacy in Utah after licensure.

[~~(4) Any board member appointed initially for a term of less than two years is eligible to serve for two additional full terms.~~]

[~~(5) Members of any predecessor pharmacy board who are serving on June 30, 1985 shall continue as members of the board until the expiration of the term for which each was appointed.~~]

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 120. Section Amended.

Section 58-17-6, Utah Code Annotated 1953, as last amended by Chapter 124, Laws of Utah 1988, is amended to read:

58-17-6. Division duties.

The division shall, [~~with the collaboration of the board~~] in accordance with Sections 58-1-106 and 58-1-203:

(1) regulate the practice of pharmacy;

(2) examine, inspect, and investigate all applications and all applicants for licensure as pharmacists, pharmacies, out-of-state mail service pharmacies, drug outlets, and pharmacy interns, and grant certificates of licensure to all applicants whom it judges to be properly qualified;

(3) investigate or cause to be investigated any violation of this chapter, by any person, and to cause, where necessary, prosecutions to be instituted before the division or in the courts upon the advice and counsel of the attorney general;

(4) (a) make or order inspections of all pharmacies and other places in which prescription drugs or devices are manufactured, stored, held, compounded, dispensed, or sold to the consumer[~~,~~];

(b) take and analyze drugs or devices[~~,~~]; and

(c) seize and condemn drugs or devices which are adulterated, misbranded, or stored, held, dispensed, distributed, or compounded in violation of this chapter;

(5) [~~conduct~~] cause to be conducted hearings for the revocation or suspension of licenses, permits, or registrations, under the laws of the state and rules and procedures of the division and the department;

(6) assist the regularly constituted enforcement agencies of the state in enforcing all laws and rules pertaining to prescription drugs, devices, controlled substances, and the practice of pharmacy;

(7) specify minimum professional and technical equipment, supplies, environment, reference publications, and procedures for the compounding or dispensing of drugs, devices, and other materials related to the practice of pharmacy;

(8) in collaboration with the board, establishing standards for internship programs necessary to qualify an applicant for the licensure examination, and establishing standards for and the necessary qualifications of any preceptors;

[~~(8)~~] (9) issue and renew licenses of drug outlets for purposes of regulating those persons engaged in the manufacture and distribution of prescription drugs;

[~~(9)~~] (10) set appropriate standards for the filling, refilling, dispensing, and compounding of prescriptions;

[~~(10)~~] (11) specify additional information and notations required on the prescription order if necessary for public health purposes; and

[(11)] (12) specify the standards for the retention and documentation of prescription orders, but if a licensed pharmacy utilizes an automated or electronic data processing system for the management of prescription orders, the same equivalent records shall be maintained as for a manual record retention system, and as used in this subsection, "equivalent" means the maintenance of comparable information.

Section 121. Section Amended.

Section 58-17-7, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990, is amended to read:

58-17-7. Licensure qualifications — Examination — Reciprocity license.

(1) Each applicant for a license to practice pharmacy shall:

(a) file an application, under oath or affirmation, containing information required by the board;

(b) pay a fee as determined by the department under Subsection 63-38-3 (2);

(c) have graduated and received a professional entry degree from a school or college of pharmacy which has been approved by the board;

(d) have completed an internship, or completed another program approved by the board;

(e) have successfully passed examinations required by the board; and

(f) produce satisfactory evidence of good moral character as it relates to the applicant's ability to practice pharmacy.

(2) (a) The license examination shall be given by the board at least two times each calendar year. The division, in collaboration with the board, shall determine the content and subject matter of each examination, the place, time, and date of administration of the examination, and those persons who have passed the examination.

(b) Any applicant who fails the examination may take a subsequent examination when applied for and after payment of the appropriate fee.

(c) Each applicant for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance, or both, under terms and conditions determined by the board.

[~~(d) The division, in collaboration with the board, shall establish standards for internship programs necessary to qualify an applicant for the licensure examination and shall establish standards for and the necessary qualifications of any preceptors.~~]

(3) Each applicant for a license as a pharmacist by reciprocity shall:

(a) submit a written application in the form prescribed by the board;

(b) pay the fee specified for the issuance of a license as determined by the department under Subsection 63-38-3 (2);

(c) be licensed as a pharmacist in any other state, territory, or possession of the United States, if that state in which the applicant is licensed, under similar conditions, grants reciprocal licensure to a Utah licensed pharmacist in that other state;

(d) produce satisfactory evidence to the board of completing the required secondary and professional education and internship;

(e) be of good moral character as required of applicants for licensure as pharmacists under this chapter;

(f) satisfy only the requirements which existed in this state at the time he became licensed in the other state; and

(g) pass the jurisprudence examination prescribed by the board.

[~~(4) (a) The division, in collaboration with the board, shall provide for, regulate, and require each licensed pharmacist to renew his license at a time designated by the division. The board shall prescribe a form for renewal and information required to be submitted by each applicant.~~]

[~~(b) The department shall prescribe an appropriate fee for renewal in accordance with Subsection 63-38-3 (2).~~]

Section 122. Section Enacted.

Section 58-17-7.5, Utah Code Annotated 1953, is enacted to read:

58-17-7.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 123. Section Enacted.

Section 58-17-8.5, Utah Code Annotated 1953, is enacted to read:

58-17-8.5. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, a pharmacy intern may practice under the direct personal supervision of a pharmacist and supportive personnel may engage in duties according to protocols approved by the division in collaboration with the board without being licensed under this chapter.

Section 124. Section Repealed and Reenacted.

Section 58-17-9, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990, is repealed and reenacted to read:

58-17-9. Grounds for denial of license — Disciplinary proceedings.

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

(2) In addition, after a hearing conducted pursuant to Title 63, Chapter 46b, Administrative Procedures Act, the division may impose additional administrative penalties upon a drug outlet of up to $2,000 for each day in which the violation occurred and an assessment of costs associated with the investigation, hearing, and all litigation required to finally resolve the finding if it is determined that a drug outlet:

(a) engaged in the practice of pharmacy in this state without a license under this chapter;

(b) permitted any person to engage in the practice of pharmacy in this state in violation of this chapter; or

(c) conducted any out-of-state mail service pharmacy without a license under this chapter by having:

(i) shipped, mailed, or delivered by any means a dispensed legend drug to a resident in Utah;

(ii) provided information to a resident of this state on drugs or devices which may include advice relating to therapeutic values, potential hazards, and uses; or

(iii) counseled pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

Section 125. Section Amended.

Section 58-17-15, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990, is amended to read:

58-17-15. Drug outlet registration — Licensure — Rulemaking authority of division — Rural pharmacies.

(1) Upon a finding by the division that a drug outlet, out-of-state mail service pharmacy, pharmaceutical researcher, or pharmaceutical teaching organization meets the requirements for licensure under this chapter and related rules, and [~~have~~] has applied for a license, the division shall issue a license to an applicant for license in one or more of the following classifications:

(a) retail pharmacy;

(b) institutional pharmacy;

(c) out-of-state mail service pharmacy;

(d) pharmaceutical manufacturer;

(e) pharmaceutical wholesaler;

(f) nuclear pharmacy;

(g) pharmaceutical researcher;

(h) pharmaceutical teaching organization;

(i) veterinary pharmaceutical outlet; or

(j) hospital pharmacy.

(2) Any person who engages in any activity regulated under this chapter shall be licensed by the division as a condition precedent to engaging in that regulated activity.

(3) Each out-of-state mail service pharmacy shall be licensed by the division if the out-of-state mail service pharmacy:

(a) ships, mails, or delivers any legend drug to any resident within the state of Utah;

(b) provides information to a resident of this state on drugs or devices, including[~~, but not limited to,~~] advice relating to therapeutic values, potential hazards, and uses; or

(c) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

(4) Each out-of-state mail service pharmacy shall be licensed in good standing by the state in which its dispensing facilities are located and shall comply with all applicable laws, regulations, and standards of [~~such~~] the licensing state and the United States as a condition precedent to obtaining and maintaining a license under Subsection (2).

(5) Each pharmaceutical manufacturer or pharmaceutical wholesaler located outside of the state shall be licensed by the state in which they are located and comply with all applicable laws of their state or domicile and applicable federal laws as a condition precedent to the distribution of drugs in the state of Utah.

(6) Each applicant for a license under this section shall:

(a) submit an application in form and content as determined by the division, in collaboration with the board;

(b) pay a fee determined by the department under Subsection 63-38-3(2);

(c) if a drug outlet or out-of-state mail service pharmacy, submit evidence satisfactory to the division that the physical facilities, records, and operations of the drug outlet or out-of-state mail service pharmacy are in accordance with the laws and regulations of the state in which the facilities are located;

(d) if an out-of-state mail service pharmacy, submit evidence of licensure in good standing issued by the state in which the pharmacy is located;

(e) if an out-of-state mail service pharmacy, submit certification satisfactory to the division that it will cooperate with all lawful requests and directions from the regulatory board or licensing authority of its state of domicile relating to the shipment, mailing, or delivery of dispensed legend drugs to Utah residents;

(f) (i) if an out-of-state mail service pharmacy, submit to the division, at the beginning of each cal-

endar quarter, the following information acceptable to the division in form and substance, by the pharmacist-in-charge, concerning each prescription for a scheduled controlled substance shipped, mailed, or delivered to a Utah resident:

(A) name of patient;

(B) name of practitioner;

(C) number of prescription;

(D) date of prescription;

(E) name of drug; and

(F) strength and quantity of dosage; and

(ii) if the information required in Subsection (f)(i) cannot be provided to the division, submit to on-site inspection by the division of the out-of-state mail service pharmacy's prescription records.

(7) If the regulatory board or licensing authority of the state in which an out-of-state mail service pharmacy is domiciled, or, if the matter is within its jurisdiction, the Drug Enforcement Administration of the United States, fails or refuses to conduct an inspection of the out-of-state mail service pharmacy, after a reasonable request by the division or the board, that is substantially equivalent to the inspection that the division or the board would conduct in accordance with this chapter, or fails to obtain records or reports required under this chapter, the division or the board, upon notice to the out-of-state mail service pharmacy, shall conduct such inspection. The out-of-state mail service pharmacy shall submit to the inspection by making available all pertinent records, reports, documents, and other material or information necessary to complete the inspection.

(8)(a) Each license issued under this section shall be issued for a single, specific location, and it is not transferable or assignable.

(b) [~~The division shall provide for, regulate, and require each license issued under this section to be renewed at a time designated by the division. The division shall prescribe a form for renewal and information to be submitted by each applicant. The department shall prescribe an appropriate fee for renewal as determined under Subsection (6)(b)~~] Expiration and renewal of a license under this section shall be in accordance with Section 58-17-7.5.

(9) The division, in collaboration with the board, shall specify by rule minimum standards for operations and standards of responsibility and conduct of employees or personnel engaged in the practice of pharmacy in Utah. It may require that the portion of the facility to which the license applies be operated only under the direct supervision of not less than one pharmacist licensed to practice in Utah and to provide other special requirements [~~deemed~~] considered necessary.

(10) The division, in collaboration with the board, shall regulate the distribution of prescription drugs and devices in rural or branch pharmacies and other drug outlets where a licensed pharmacist is not required for the protection of the public health, safety, and welfare, and shall promulgate rules relating to this subsection.

(11) Each licensed drug outlet or out-of-state mail service pharmacy shall report to the division the occurrence of any of the following:

(a) permanent closing;

(b) change of management or pharmacist-in-charge;

(c) change of ownership, which change requires a new application for a license;

(d) disasters, accidents, and emergencies which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease; or

(e) any other matters and occurrences the board may require by rule.

(12)(a) A drug outlet, except a wholesaler or distributor, shall be under the supervision of not less than one pharmacist licensed to practice pharmacy in Utah. One pharmacist licensed in Utah shall be designated as the pharmacist-in-charge. The division shall be notified within ten working days of the change in designation of the Utah licensed pharmacist-in-charge. It is unlawful to engage in the practice of pharmacy in Utah without a pharmacist licensed in Utah actively employed in the drug outlet as the designated pharmacist-in-charge.

(b) Each out-of-state mail service pharmacy shall identify to the board a pharmacist duly licensed in good standing by the state in which the pharmacy is located who shall serve as the pharmacist-in-charge for all purposes under this chapter. The division shall be notified within ten working days of any change in designation of the Utah pharmacist-in-charge.

(13) Each drug outlet shall maintain its prescription files and other records in accordance with applicable state rules and federal regulations. Each out-of-state mail service pharmacy shall maintain its prescription files in accordance with applicable rules or regulations of the state in which its facilities are located, and federal regulations.

Section 126. Section Amended.

Section 58-17-18, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990, is amended to read:

58-17-18. Sale of food supplements and poisons.

(1) Dietary foods and dietary food supplements, including vitamins and minerals or combinations of them, sold only to supplement or fortify the diet, all packaged nonprescription drugs and medicines, medical supplies, bottled or nonbulk chemicals when identified by and sold under a trademark, trade name, or other trade symbol privately owned or registered in the United States patent office, or as provided by the laws of Utah, and labeled with directions for use and with the name and address of the manufacturer or distributor, if the articles meet with the requirements of the federal Food, Drug,

and Cosmetic Act and the food and drug laws of Utah, may be sold by grocers, dealers, and other vendors generally without restriction. No rule may be adopted by the division under this chapter which requires the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise apply to or interfere with the sale or distribution of such medicines.

(2) Grocers, dealers, and other vendors, generally without restriction, may sell insecticides, fungicides, and other poisons intended for use in the destruction of animal and vegetable pests, the sale of which is not otherwise prohibited by the laws of this state, the laws of the United States, or lawful regulation made under these laws.

(3) No store or shop selling any of those articles specified in this section may be prevented from advertising the drug articles it lawfully has for sale and is not deemed a pharmacy by reason of such advertising, if the designating words reserved to pharmacies and drugstores are not used except as provided in Subsection [~~58-17-10 (1)(f)~~] 58-17-2(42)(c).

Section 127. Section Amended.

Section 58-20-1, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1986, is amended to read:

58-20-1. Definitions.

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

(1) "Board" means the Registered Sanitarian Board created under Section 58-20-2.1.

[~~(2) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(3)~~] (2) "Registered sanitarian" means a person licensed under this chapter to carry out educational and inspectional activities, enforce the public health laws of this state, and promote a healthy environment.

(3) "Unlawful conduct" as defined in Section 58-1-501 includes using the title "registered sanitarian" or the abbreviation "R.S." by a person who has not been licensed under this chapter.

(4) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes[~~, but is not limited to: (a) dishonesty, fraud, or gross negligence in the performance of professional duties; (b) conviction of a crime involving moral turpitude in any jurisdiction, which crime relates to the practice of a sanitarian; (c) in the capacity of a registered sanitarian~~]:

[~~(i)~~] (a) intentionally filing a false report or record;

[~~(ii)~~] (b) intentionally failing to file a report or record required by state or federal law; or

[~~(iii)~~] (c) willfully impeding or obstructing [~~such a~~] the filing[~~;~~] of a report or record required by state or federal law.

[~~(d) violating any of the rules adopted under this chapter;~~]

[~~(e) obtaining or attempting to obtain a license by misrepresentation; or~~]

[~~(f) practicing with a revoked, suspended, or inactive license.~~]

Section 128. Section Repealed and Reenacted.

Section 58-20-2.1, Utah Code Annotated 1953, as last amended by Chapter 92, Laws of Utah 1987, is repealed and reenacted to read:

58-20-2.1. Board created — Duties.

(1) There is created a Registered Sanitarian Board consisting of four registered sanitarians and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 129. Section Amended.

Section 58-20-3, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-20-3. Application requirements for licensure — Examination required — License fee — Reciprocity of licensure.

(1) An applicant for a license under this chapter shall submit to the division a written application, verified under oath that the applicant:

(a) is of good moral character as it relates to the functions and responsibilities of the practice of a registered sanitarian; and

(b) has graduated with a baccalaureate or higher degree from a college or university recognized by the board, including at least 45 quarter hours or 30 semester hours of academic work in environmental health, the physical and biological sciences, or their equivalents.

(2) The applicant shall pass a written or oral examination as determined by the board.

(3) The applicant shall pay to the Department of Commerce fees determined pursuant to Subsection 63-38-3(2) for admittance to the examination[;] and for an initial license. [~~Each license shall expire on December 31 of each odd-numbered year, and may be renewed upon payment to the Department of Commerce of the fee determined pursuant to Subsection 63-38-3 (2).~~]

(4) Upon compliance with the requirements of this section the board shall recommend that the division issue to the applicant a license to practice as a registered sanitarian.

(5) A license may be granted to an applicant who is a licensed sanitarian in another state if the standards for licensure in the other state are equivalent to the criteria set forth in Subsections (1) and (2) and if the applicant is otherwise qualified.

Section 130. Section Enacted.

Section 58-20-3.5, Utah Code Annotated 1953, is enacted to read:

58-20-3.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 131. Section Repealed and Reenacted.

Section 58-20-4, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1986, is repealed and reenacted to read:

58-20-4. Penalty for unlawful conduct.

Any person who violates the unlawful conduct provisions defined in 58-1-501 or as defined in this chapter is guilty of a class B misdemeanor.

Section 132. Section Enacted.

Section 58-20-7, Utah Code Annotated 1953, is enacted to read:

58-20-7. Grounds for denial of license — Disciplinary proceedings.

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

Section 133. Section Amended.

Section 58-22-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992, is amended to read:

58-22-2. Definitions.

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

(1) "Board" means the Board of Professional Engineers and Land Surveyors [~~established under this chapter~~] created in Section 58-22-3.

(2) "Direct supervision" means that one or more licensed engineers or land surveyors are responsible for, and will competently, personally, and appropriately review and approve work performed by an employee, subordinate, or an associate.

[~~(3) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(4) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(5)~~] (3) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology.

[~~(6)~~] (4) "Land Surveyor" means a person licensed under this chapter who is qualified to practice land surveying by reason of his special knowledge of the technique of measuring land, the basic principles of mathematics, the related physical and applied sciences, the relevant requirements of law for adequate evidence, and the requisites to surveying of real property.

[~~(7)~~] (5) "NCEES" means the National Council of Examiners for Engineering and Surveying. The division shall at all times remain a member of the council and shall send a delegate to the regional and national meetings of that council when funding is available and approved by the director.

[~~(8)~~] (6) "Practice of Engineering" means the performance of any service or creative work requiring engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water, and the review and supervision of construction for the purpose of assuring compliance with drawings and specifications, in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, buildings, structures, works, utilities, or any combinations of them, employed in or devoted to, public or private enterprise or uses, insofar as they involve safeguarding life, health, property, or the public welfare. It includes the performance of architectural work which is incidental to the practice of engineering.

[~~(9)~~] (7) "Practice of Land Surveying" means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence, for measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, for the purpose of determining areas and volumes, for the documenting of property boundaries, and for the platting and laying out of lands and subdivisions including the topography and alignment of streets, for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent this work.

[~~(10)~~] (8) "Professional engineer" means a person who is licensed under this chapter, who is qualified to practice engineering by reason of his special knowledge of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and experience.

[~~(11)~~] (9) "Responsible charge" means direct control and management by the use of initiative, skill,

and independent judgment in the practice of engineering or land surveying.

[~~(12)~~] (10) "Rules" means administrative rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

[~~(13)~~] (11) "TAC/ABET" means the Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(12) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) stamping or sealing any document with the seal of a professional engineer or land surveyor whose license has expired or has been suspended or revoked;

(b) using, or attempting to use, a title, letterhead, seal, or other instrument which would represent or imply that a person, firm, partnership, or corporation is engaged in or attempting to engage in the practice of engineering or land surveying when the person or business entity is not licensed to do so under this chapter;

(c) using the title "professional engineer," "licensed engineer," "registered engineer," "land surveyor," "licensed land surveyor," or "registered land surveyor," or to use any other title, initial, abbreviation, or combination of title, initials, or abbreviations which may reasonably cause another person to believe that the individual using the title is a licensed professional engineer or licensed land surveyor;

(d) unless exempted from licensure under Section 58-22-4.5, engaging in, or representing itself as engaging in, the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless the business entity has a licensed Utah professional engineer or land surveyor who is:

(i) employed by the business entity and who provides direct supervision; or

(ii) an officer, owner, or general partner of the entity who provides direct supervision.

[~~(14)(a)~~] (13) "Unprofessional conduct" [~~means:~~] as defined in Section 58-1-501 and as may be further defined by rule includes [~~(i) violation of the rules of professional conduct adopted by the board and the division;~~] [~~(ii) gross negligence, incompetence, or misconduct in the practice of engineering or land surveying;~~] [~~(iii)~~] having a pecuniary interest in the performance of the contract for the work on which a professional engineer or land surveyor has rendered his professional services, without the knowledge and consent of the person employing him[~~;~~].

[~~(iv) practicing in an engineering or land surveying discipline for which the licensee is not competent or qualified by examination, education, or experience; or~~]

[~~(v) violation of the provisions of this chapter or any other rules adopted by the board and the division.~~]

[~~(b) The term may be defined further by rule.~~]

Section 134. Section Amended.

Section 58-22-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992, is amended to read:

58-22-3. Board.

(1) There is created a Professional Engineers and Land Surveyors Licensing Board. The board shall consist of five licensed engineers, one licensed land surveyor, and one member from the general public. The composition of the board shall be representative of the various engineering disciplines as defined in accordance with Subsection 58-22-4 [~~(2)~~] (3).

(2) The board shall be appointed and shall serve in accordance with Section [~~58-1-7~~] 58-1-201. The members of the board who are professional engineers shall be appointed from among nominees recommended by representative engineering societies in this state. The member of the board who is a land surveyor shall be appointed from among nominees recommended by representative land surveyor societies.

(3) The duties and responsibilities of the board shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 135. Section Repealed and Reenacted.

Section 58-22-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992, is repealed and reenacted to read:

58-22-4. License classifications.

(1) An individual may not engage in the practice of engineering or land surveying unless licensed or exempted from licensure under this chapter.

(2) The division shall issue licenses to individuals qualified under the provisions of this chapter in the following classifications:

(a) professional engineer; and

(b) land surveyor.

(3) The division may issue a license specialty certification in specific engineering disciplines as defined by rule by the division in collaboration with the board upon a finding that the certification is necessary to protect the public health, safety, or welfare.

Section 136. Section Enacted.

Section 58-22-4.5, Utah Code Annotated 1953, is enacted to read:

58-22-4.5. Exceptions from licensure.

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

(a) an employee or subordinate of a person holding a license under this chapter if the work does not include responsible charge and if the employee or sub-

ordinate is under the direct supervision of a person holding a license under this chapter;

(b) an employee of a communications, utility, railroad, mining, petroleum, manufacturing company, or an affiliate of such a company if the engineering work is done solely in connection with the products or systems of the entity and is not offered directly to the public;

(c) students enrolled in an approved engineering or land surveying curriculum if the work performed is part of the curriculum and if the engineering services offered or performed do not involve work or facilities which directly involve the public health, safety, or welfare; and

(d) agents, officers, or employees of the United States government while engaged in activities regulated under this chapter as a part of their employment with a federal agency.

(2) A person licensed to practice architecture under Title 58, Chapter 3, Architects Licensing Act, may engage in acts or practices of engineering if the engineering acts or practices do not exceed the scope of the education and training of the person performing engineering.

Section 137. Section Repealed and Reenacted.

Section 58-22-6, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992, is repealed and reenacted to read:

58-22-6. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as may be required by rules enacted pursuant to Section 58-22-11.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 138. Section Repealed and Reenacted.

Section 58-22-7, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992, is repealed and reenacted to read:

58-22-7. Grounds for denial of license and disciplinary proceedings.

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

Section 139. Section Enacted.

Section 58-22-8.5, Utah Code Annotated 1953, is enacted to read:

58-22-8.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provisions defined in Subsection 58-1-501(1)(a), (b), or (d) or the provisions defined in Subsection 58-22-2(12)(a) or (b) is guilty of a Class B misdemeanor.

(2) Any person who violates the unlawful conduct provisions of Subsections 58-1-501(1)(c) or (e) or the provisions of Subsections 58-22-2(12)(c) or (d) is guilty of a class A misdemeanor.

Section 140. Section Amended.

Section 58-24a-102, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

58-24a-102. Definitions.

[~~As~~] In addition to the definitions in 58-1-102, as used in this chapter:

(1) "Board" means the Physical Therapy Licensing Board.

[~~(2) "Department" means the Department of Commerce.~~]

[~~(3) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(4) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(5)~~] (2) "Immediate supervision" means the supervising physical therapist is:

(a) present in the area where the person supervised is performing services; and

(b) immediately available to assist the person being supervised in the services being performed.

[~~(6)~~] (3) "Physical therapist assistant or aide" means a person performing activities related to physical therapy under the immediate supervision of a physical therapist.

[~~(7)~~] (4) "Physical therapy" or "physiotherapy" means the:

(a) treatment of a human being to assess, prevent, correct, alleviate, and limit physical disability, movement dysfunction, bodily malfunction, and pain resulting from disorders, congenital and aging conditions, injury, and disease; and

(b) development of a physical therapy plan and the implementation of and modification of the treatment plan.

(5) "Unlawful conduct" as defined in Section 58-1-501 includes using in connection with his name or business activities the words "physical therapist," "physiotherapist," "licensed physical therapist," "registered physical therapist," or the letters "P.T.," "L.P.T.," "R.P.T.," or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that the person is au-

thorized to practice physical therapy, when the person is not licensed under this chapter.

(6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes failing to provide immediate supervision of a physical therapist assistant or aide whose activities are the licensee's responsibility under Section 58-24a-112.

Section141. Section Amended.

Section 58-24a-108, Utah Code Annotated 1953, as enacted by Chapter 237, Laws of Utah 1991, is amended to read:

58-24a-108. Licensing board.

(1) There is created the Physical Therapy Licensing Board consisting of four physical therapists and one member of the general public.

(2) [~~Members of the~~] The board shall be appointed and serve [~~under the provisions of~~] in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The duties[~~, functions,~~] and responsibilities of the board [~~are provided under~~] shall be in accordance with Sections [~~58-1-8, 58-1-8.5,~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 142. Section Amended.

Section 58-24a-110, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is amended to read:

58-24a-110. Exemption from licensure.

[~~This chapter does not prevent:~~]

[~~(1) a person licensed under state law from engaging in any activity authorized by his license;~~]

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

[~~(2)~~] (1) a person employed by an agency of the federal government from performing the duties and functions for which he is employed; or

[~~(3)~~] (2) a physical therapy student enrolled in an accredited physical therapy school from practicing physical therapy under the immediate supervision of a licensed physical therapist as part of the training and education included in the curriculum of the school.

Section 143. Section Repealed and Reenacted.

Section 58-24a-111, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is repealed and reenacted to read:

58-24a-111. Term of license — Renewal expiration.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 144. Section Repealed and Reenacted.

Section 58-24a-114, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992, is repealed and reenacted to read:

58-24a-114. Grounds for denial of license — Disciplinary proceedings.

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

Section 145. Section Amended.

Section 58-25a-2, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989, is amended to read:

58-25a-2. Definitions.

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

(1) "Board" means the Psychologists' Licensing Board created in Section 58-25a-4.

(2) "Institution of higher education" means any regionally accredited institution of higher education in the United States, including a professional school that offers a full-time residential, doctoral course of study in psychology that is acceptable to the board. For Canadian universities, it means an institution of higher education that holds recognized membership in the Association of Universities and Colleges of Canada. Foreign universities shall be assessed by the board on an individual basis.

(3) "Practice of psychology" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of established psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic or maladaptive behavior. The practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, marital counseling and therapy, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorder or disability, alcoholism and substance abuse disorder or habit or conduct, as well as the psychological aspects of physical illness, accident, injury, or disability; and psychoeducation evaluation, therapy, remediation, and consultation. Psychological services may be rendered to individuals, couples, families, groups, and the public.

(4) "Psychologist" is a person who holds a license under the provisions of this chapter.

(5) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) engaging in the practice of psychology or holding oneself out to be a psychologist by any title or by any description using the word "psychology," "psychologist," or "psychological," unless the person is licensed under this chapter;

(b) representing oneself as engaging in the practice of psychology by offering psychological services as a corporation, partnership, or association, unless the services rendered by the corporation, partnership, or association are, in fact, performed by a psychologist licensed under this act;

(c) referring to anyone in the licensee's employ, tutelage, or supervision as a psychologist, unless that person is licensed under this chapter.

(6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) any act or omission that is not in conformity with the ethical and professional standards of the profession, as defined in the current "Ethical Principles for Psychologists" published by the American Psychological Association, and as defined by the division by rule;

(b) the use of psychological techniques for entertainment or other purposes not consistent with the development of psychology as a profession, as a science, and as a means of promoting human welfare;

(c) practicing psychology in a manner that may endanger the welfare of clients or patients;

(d) engaging in sexual intercourse or other sexual contact with a client or patient;

(e) conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third party payor;

(f) exercising undue influence in such a manner as to exploit the client, patient, or supervisee for financial or other personal advantage to the practitioner or a third party; or

(g) inappropriate use of psychological assistants as defined by the division by rule.

Section 146. Section Amended.

Section 58-25a-3, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989, is amended to read:

58-25a-3. Requirements for licensure.

(1) Each applicant for licensure as a psychologist shall:

(a) complete an application for licensure as specified by the division in collaboration with the board;

(b) produce satisfactory evidence that [he] the applicant is of good moral character;

(c) produce certified transcripts of credit from an accredited institution of higher education recognized by the division verifying satisfactory completion of a doctoral degree in psychology. The applicant must have also successfully completed specific core course work as defined by rule;

(d) pass the examination requirement established by rule by the division in collaboration with the board;

(e) produce documented evidence that [he] the applicant has completed two years of supervised, professional experience, of which one year shall be postdoctoral in accordance with rules established by the division in collaboration with the board; and

(f) pay a fee to the department as determined by it in accordance with Subsection 63-38-3 (2).

(2) Each applicant for admission to the licensure examination shall:

(a) complete an application for admission as specified by the division in collaboration with the board;

(b) produce satisfactory evidence that [he] the applicant is of good moral character;

(c) produce certified transcripts of credit from an accredited institution of higher education recognized by the division verifying satisfactory completion of a doctoral degree in psychology. The applicant must have also completed specific core course work as defined by the division by rule;

(d) produce documented evidence that the applicant has completed two years of supervised, professional experience, of which one year shall be postdoctoral in accordance with rules established by the division in collaboration with the board; and

(e) pay a fee to the department as determined by it in accordance with Subsection 63-38-3 (2).

(3) The division may, in collaboration with the board, combine the application for licensure and the application for admission to the examination, permitting the applicant to make a single application and, upon meeting all other requirements, to be licensed.

[~~(4) Each license expires on December 31 of each odd-numbered year. License renewal shall be completed in accordance with the provisions of Section 58-1-14.~~]

Section 147. Section Enacted.

Section 58-25a-3.5, Utah Code Annotated 1953, is enacted to read:

58-25a-3.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of continued competency requirements as authorized under this chapter and as specified by rule.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 148. Section Repealed and Reenacted.

Section 58-25a-4, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989, is repealed and reenacted to read:

58-25a-4. Board created — Membership — Duties.

(1) There is created a Psychologists Licensing Board, consisting of four psychologists and one member from the general public.

(a) Psychologists appointed to serve on the board shall:

(i) have a minimum of five years postlicensure experience in the practice of psychology;

(ii) be selected to reflect a diversity of professional activities and practice settings; and

(iii) be free of any conflict of interest or the appearance of any conflict of interest which would affect their ability to serve as a board member.

(b) The public member may not:

(i) be a psychologist or an applicant or former applicant for licensure as a psychologist;

(ii) be a member of a household that includes a psychologist;

(iii) be a member of another health care profession; or

(iv) have any other conflict of interest or the appearance of any conflict of interest which would affect his ability to serve as a board member.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 149. Section Amended.

Section 58-25a-6, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989, is amended to read:

58-25a-6. Exceptions.

[~~It is unlawful to engage in the practice of psychology, hold oneself out to be a psychologist by any title or by any description using the word "psychology," "psychologist," or "psychological" or to offer or render psychological services unless licensed under this chapter or exempted under this section. No corporation, partnership, or association may represent itself as engaging in the practice of psychology by offering psychological services unless the services rendered by the corporation, partnership, or association are, in fact, performed by a psychologist licensed under this chapter. No psychologist may refer to anyone in his employ, tutelage, or supervision as a psychologist unless that person is licensed under this chapter. Whenever a person's license to practice as a psychologist in this state has been suspended or revoked it is unlawful for that person to practice psychology in this state. Any person who engages in the practice of psychology without a license is guilty of a class A misdemeanor; except the following may engage in activities included in the practice of psychology, subject to the applicable circumstances and limitations described in this section:~~]

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

(1) an employee of the armed forces of the United States, the United States Public Health Service, the Veterans Administration, or any other federal government agency, while engaged in the performance of official duties performed solely on behalf of the federal government;

(2) any person who was employed as a psychologist by a state, county, or municipal agency or other political subdivision of this state prior to July 1, 1981, and who, thereafter, has maintained employment as a psychologist in the same state, county, or municipal agency or other political subdivision while engaged in the performance of his official duties for that same state, county, or municipal agency or other political subdivision of the state;

(3) individuals who have been certified as a school psychologist under the provisions of Section 53A-6-101 shall be permitted to use the terms "school psychologist" or "certified school psychologist." Those persons shall be restricted in their practice to employment within settings under the purview of the State Board of Education;

(4) any person employed prior to July 1, 1989, the effective date of this act, as a psychologist by an accredited educational institution providing direct clinical services, as long as that person maintains employment in the same institution and performs the same functions;

(5) any person employed by an accredited educational institution of higher education whose delivery or supervision of delivery of direct clinical services are part of the duties of his salaried position within an accredited psychology training program and while engaged in those duties;

(6) any person conducting psychological research or providing psychological services or consultation to organizations or institutions, provided that such research or service does not involve the delivery or supervision of direct psychological services. Persons holding an earned doctoral degree in psychology from an institution of higher education may use the title "psychologist" in conjunction with the activities exempted from licensure under this subsection;

(7) other qualified persons while rendering services consistent with their professional training and code of ethics, as long as they do not represent themselves as psychologists;

(8) recognized members of the clergy while functioning in their ministerial capacity, as long as they do not represent themselves as psychologists;

(9) (a) students, interns, or residents in psychology provided that they do not use the title "psychologist" and provided further that they perform their activities under the supervision and responsibility of a licensed psychologist in accordance with rules promulgated by the board. These individuals may use the terms "psychological trainee," "psychological intern," or "psychological resident."

(b) Nothing in [~~this subsection~~] Subsection (a) may be construed to apply to any person other than:

[~~(a)~~] (i) a matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education; or

[~~(b)~~] (ii) an individual pursuing postdoctoral training or experience in psychology, including a person seeking to fulfill the requirements for licensure under the provisions of this chapter.

Section 150. Section Amended.

Section 58-25a-9, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989, is amended to read:

58-25a-9. Grounds for denial license — Disciplinary proceedings.

[~~(1) The director upon the written recommendation of the board may deny an application for a license to practice psychology or shall initiate an investigation which may result in disciplinary action leading to revocation, suspension, placement on probation, or public or private reprimand of the license of any psychologist licensed in this state or otherwise lawfully practicing in this state for the following:~~]

[~~(a) a determination that the applicant is not of good moral character or has been guilty of unprofessional conduct as defined in this chapter and in rules established by the division;~~]

[~~(b) conviction of a felony, a crime of moral turpitude, or a crime or offense indicating the practitioner is unable to practice psychology with due regard for the health and safety of clients or patients;~~]

[~~(c) determination that the applicant or licensee has obtained or attempted to obtain by fraud a license to practice psychology; or~~]

[~~(d) the applicant or licensee has had a license to practice psychology revoked, suspended, or has been placed on probation by any competent authority of any state, federal, or foreign jurisdiction for reasons which relate to his ability to skillfully and safely practice psychology.~~]

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

(2) Judicial commitment to a hospital for mental illness automatically suspends the license of a holder. Suspension shall continue until restoration or declaration of mental competence. A license may not be reinstated until the division determines that the licensee is competent to practice psychology. The division may require an examination or evaluation to make this determination.

Section 151. Section Amended.

Section 58-26-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-2. Definitions.

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

(1) "Accounting experience" means applying accounting and auditing skills and principles that are taught as a part of the professional education qualifying a person for licensure under this chapter and generally accepted by the profession, under the supervision of a licensed certified public accountant.

(2) "Board" means the Utah Board of Accountancy created in Section 58-26-3.

(3) "Certificate" means the certificate of a certified public accountant issued by the division pursuant to the terms and conditions of the prior Public Accountant Licensing Act of the state.

(4) "Certificate holder" means any person who has been issued a certificate but has never been issued a license.

(5) "Certified Public Accountant" or "CPA" means an individual currently licensed by this state or any other state to practice public accountancy or who has been granted a certificate as a certified public accountant under prior law or this chapter.

(6) "Client" means the person who retains a licensee for the performance of one or more of the services included in the definition of the practice of public accountancy. "Client" does not include a CPA's employer when the licensee works in a salaried or hourly rate position.

(7) "Compilation of financial statements" means the presentation in the form of financial statements of information that is the representation of management or owners accompanied by a report stating the compilation has been performed in accordance with standards established by the American Institute of Certified Public Accountants.

[~~(8) "Department" means the Department of Commerce.~~]

[~~(9) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(10) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(11)~~] (8) "Firm" means a sole proprietorship, corporation, or partnership engaged in the practice of public accountancy of which all proprietors, partners, officers, or shareholders are licensed under this chapter.

[~~(12)~~] (9) "Incidental to regular practice" means that an individual or a firm licensed in another state may perform services in this state for a client as long

as the services are incidental to primary services being performed outside of this state for that client.

[~~(13)~~] (10) "License" means a document issued by the division to a person who has demonstrated qualifications and competence in accordance with the provisions of this chapter to practice public accountancy and which authorizes that person to represent himself as a certified public accountant and engage in the practice of public accountancy in accordance with this chapter.

[~~(14)~~] (11) "Licensee" means the holder of a current valid license issued by the state authorizing that person to practice public accountancy.

[~~(15)~~] (12) "Practice of public accounting" means the offer to perform or the performance as a licensee by a person holding himself out as a certified public accountant of one or more kinds of services involving the use of auditing or accounting skills including the issuance of reports or opinions on financial statements, performing attestation engagements, the performance of one or more kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters for a client.

[~~(16)~~] (13) "Qualified continuing professional education" means a formal program of education that contributes directly to the professional competence of a certified public accountant.

[~~(17)~~] (14) "Qualifying examination" means the Uniform CPA Examination of the American Institute of Certified Public Accountants or any other examination approved by the board and adopted by the division by rule.

[~~(18)~~] (15) "Qualifying experience" means experience in the practice of public accountancy under the direction and supervision of a licensed certified public accountant performed for a client, which includes expression of assurance or opinion, for at least 300 hours collectively in the following areas:

(a) applying Generally Accepted Auditing Standards (GAAS) to the usual and customary financial transactions recorded in the accounting records;

(b) preparing audit working papers in accordance with GAAS covering the examination of the accounts usually found in accounting records;

(c) planning the audit scope in accordance with GAAS, including the audit program to be followed;

(d) preparing written explanations and comments on the findings of the examination and on the content of the accounting records; and

(e) preparing and analyzing financial statements in accordance with GAAS.

[~~(19)~~] (16) "Quality review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a licensee or any other qualified in accordance with rules adopted pursuant to this chapter and who are not affiliated with the person or firm being reviewed.

[~~(20)~~] (17) "Report" means:

(a) when used with reference to financial statements, an opinion, report or other form of language that:

(i) states or implies assurance as to the reliability of any financial statements; or

(ii) implies that the person or firm issuing it has special knowledge or competence in accounting or auditing and specifically includes compilations and reviews; such an implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is a public accountant or auditor, or from the language of the report itself;

(b) any disclaimer of opinion when it is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or language suggesting special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

[~~(21)~~] (18) "Review of financial statements" means performing inquiry and analytical procedures which provide a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and, the issuance of a report on the financial statements stating that a review was performed in accordance with the standards established by the American Institute of Certified Public Accountants.

(19) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) using "certified public accountant," "public accountant," "auditor," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless that person has:

(i) an unexpired certificate as a certified public accountant issued by the division pursuant to the terms and conditions of prior law still in effect;

(ii) a current license as a certified public accountant; or

(iii) (A) a current license or certificate as a certified public accountant issued by any state or jurisdiction of the United States;

(B) however a certificate holder who is not licensed may not use the title "Certified Public Accountant" in connection with his nonpublic accounting employment and activities unless the CPA title is accompanied by the employer's name and the employment status or job title is clearly indicated;

(b) a firm which is not currently registered under this chapter, assuming or using "certified public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants;

(c) a firm assuming or using "certified public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants unless:

(i) each office of the firm in this state is registered with the division; and

(ii) all partners, officers, and shareholders of the firm hold a valid license issued under this chapter;

(d) signing or affixing to any accounting or financial statement the person's name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an auditor or with any wording indicating that he has expert knowledge in accounting or auditing, unless he holds a license and all of his offices in the state for the practice of public accountancy are maintained and registered as provided in this chapter; and

(e) engaging in the following conduct if not licensed to practice public accountancy:

(i) issuing a report on financial statements of any other person, firm, organization, or governmental unit, except as provided in Section 58-26-9;

(ii) except as provided in Section 58-26-9, issuing a report using any form of language substantially similar to conventional language used by licensees respecting:

(A) a review of financial statements; or

(B) a compilation of financial statements.

(20) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) undertaking an engagement when the licensee knows or should know he could not reasonably expect to complete it with professional competence;

(b) making unauthorized disclosures of confidential information obtained in the practice of public accountancy;

(c) engaging in any business or activity that creates a conflict of interest with a licensee's practice in the profession when he knows or should know that it is a conflict of interest and does not fully disclose the conflict of interest in writing to all affected parties;

(d) failing to meet the requirements for continuing education or quality review required under this chapter;

(e) issuing a report on financial statements of a client, other than a report in which a lack of independence is disclosed, or performing an attest engagement subject to the attestation standards of the American Institute of Certified Public Accountants when the licensee is not independent, in fact and appearance, to the client;

(f) receiving compensation, including a commission, for referral or sale to a client of services or products of others during the period that the licensee or his firm is engaged to perform services listed in Subsection (f)(i) and during the period covered by any historical financial statements involved in those services:

(i) (A) an audit or review of a financial statement;

(B) a compilation of a financial statement when the licensee or his firm expects, or reasonably might expect, that a third party will use the financial statement and the compilation report and the report does not describe a lack of independence; or

(C) an examination of prospective financial information;

(ii) a licensee or his firm that is not prohibited by this section from receiving other compensation, including a commission, may receive or agree to receive that other compensation for referral or sale of services or products of others to another person if he discloses in writing the nature, source, and amount of all other compensation prior to making the referral or sale by the licensee or his firm;

(iii) this Subsection (f) does not apply to payments received from the sale of an accounting practice or to retirement payments to persons formerly engaged in the practice of public accountancy.

[~~(22)~~] (21) "Year of experience" means 2,000 hours of experience.

Section 152. Section Amended.

Section 58-26-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-3. Utah Board of Accountancy.

(1) There is created the Utah Board of Accountancy consisting of four licensed certified public accountants and one member of the general public.

(2) The [~~executive director shall appoint the~~] board shall be appointed and shall serve in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The [~~board has all the~~] duties[~~, functions,~~] and responsibilities [~~set forth in Sections 58-1-8, 58-1-8.5, and 58-1-9,~~] of the board shall be in accordance with Sections 58-1-202 and 58-1-203, except as otherwise provided in this chapter.

Section 153. Section Amended.

Section 58-26-7, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-7. Conditions for issuance and renewal of licenses — Quality review — Continuing professional education.

(1) The division shall issue an initial license as a certified public accountant to any person who meets the requirements of Section 58-26-4 or 58-26-6.

[~~(2) Initial licenses are effective for the period from the date of issue until the immediate succeeding August 31 of an even-numbered year.~~]

[~~(3) Each licensee and certificate holder is responsible for renewing his license or certificate, according to procedures that the board establishes in accordance with Section 58-1-14 concerning renew-~~

als and notification to licensee and certificate holders.]

[(4) All licenses expire on August 31 of each even-numbered year.]

(2) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(3) Each license expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

[(5)] (4) After July 1, 1994, the division, in collaboration with the board, shall require as a condition for renewal of licenses under this section, that a licensee who is engaged in the practice of public accountancy undergo, at his expense, quality reviews commensurate in scope with the licensee's practice. Licensees and firms that perform audits of historical or prospective financial statements shall have an on-site quality review not less frequently than every three years. Licensees and firms that perform compilation or review services, but no audits, shall have an off-site review not less frequently than every three years, unless the licensee or firm elects an on-site quality review. This quality review shall be conducted as the board may require by rule. However, any quality review requirement shall:

(a) be promulgated reasonably in advance of the time when it is first required to be met;

(b) include reasonable provision for compliance by an applicant's firm showing that the firm has undergone a satisfactory quality review performed for other purposes which review was substantially equivalent to quality reviews generally required pursuant to this subsection; and

(c) provide that all financial statements, working papers, or other documents obtained from applicants for quality review are confidential and not be subject to public inspection except pursuant to an order of a court; provided, however, that the documents may be introduced as evidence in any proceedings before the board.

[(6)] (5) To renew his license every two years, each person holding a license or certificate shall complete 80 hours of qualified continuing professional education, at least 20 hours of which is earned in one calendar year. The division in collaboration with the board shall establish the standards of the professional education and the reporting requirements for completed qualified continuing professional education by rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the following:

(a) [Each two-year period commences on January 1 of each even-numbered year and ends on December 31 of each odd-numbered year] If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a prorata amount of the requirements of a two-year period.

(b) Upon application on forms specified by the division, a licensee or certificate holder may request the board to waive the requirement for qualified continuing professional education for a period of up to three years on the basis that the licensee or certificate holder will be engaged in activities or be subject to circumstances which prevent the licensee or certificate holder from meeting the requirement. The board shall grant the waiver on a finding of good cause. After the period of waiver, the licensee or certificate holder must complete 30 hours of qualified continuing education within six months. Auditing shall comprise 16 of the 30 hours and approved accounting education the remaining 14 hours.

(c) The licensee bears the burden of establishing that any particular education component qualifies as "qualified continuing professional education." The division shall establish a peer advisory committee in accordance with the provisions of Subsection [58-1-9] 58-1-203 (6), to advise the board regarding continuing professional education, and rule whether a particular component qualifies. An applicant may appeal a denial to the board, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, except that the board's ruling is not subject to further appeal.

(d) Each licensee and certificate holder shall report the qualified continuing professional education completed [for the immediately preceding two calendar years by January 31 of each even-numbered year,] on a form required by the division including certification by the licensee or certificate holder that the information reported is correct.

(e) The board shall make procedures for reviewing reports of qualified continuing professional education.

Section 154. Section Amended.

Section 58-26-8, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-8. Reinstatement of license or certificate suspended for failure to renew or nonpayment of fees.

(1) The division shall reinstate any license for failure to renew or nonpayment of fees or from any person seeking reinstatement of his license from a CPA emeritus registration status, if the applicant:

(a) provides evidence that he has previously passed the uniform CPA examination; or

(b) was licensed under [Section 58-26-9] Sections 58-26-4 and 58-26-10;

(c) has completed continuing professional education requirements that the board has established for those seeking reinstatement of a license:

(d) pays renewal fees that the board establishes in accordance with Subsection 63-38-3 (2); and

(e) submits to an interview by the board, if requested, for the purpose of determining competence and qualification for licensure.

(2) Before July 1, 1994, the division shall reinstate any certificate issued under prior law that was not current because of failure to renew or of nonpayment of fees due upon proper application to the division if the applicant:

(a) provides evidence:

(i) that he has passed the uniform CPA examination; and

(ii) that he has completed continuing professional education requirements that the board establishes by rule for individuals seeking reinstatement of certificates; and

(b) pays renewal fees that the division establishes in accordance with Subsection 63-38-3 (2).

(3) No certificate shall be reinstated after July 1, 1994.

Section 155. Section Amended.

Section 58-26-9, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-9. Exemptions from licensure.

[~~A nonresident who is engaged in practice as a CPA need not apply for a license with the division if:~~]

(1) [~~he is~~] A person licensed by any other state, district, or territory of the United States or any foreign country as a certified public accountant or its equivalent under any other title[~~,~~] is exempt from licensure under this chapter while temporarily practicing in this state if:

(a) the practice is incidental to his regular practice outside of this state; and

[~~(2)~~] (b) if his temporary practice within this state is in conformity with this chapter and rules of the division.

(2) The following are exempt from licensure under this chapter subject to the stated circumstances and limitations, but may not represent themselves as certified public accountants:

(a) an officer, partner, or employee of any entity or organization who affixes his signature to any statement or report in reference to the financial affairs of the entity or organization with a designation of his position;

(b) a public official or employee while performing his official duties;

(c) a person using accounting or auditing skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports; and

(d) an employee of a firm registered under this chapter or an assistant to a person licensed under this chapter, except that neither the employee or assistant nor the licensed employer or registered firm may represent the unlicensed person to be a certified public accountant, and no accounting or financial statement may be issued over the unlicensed person's name.

(3) The exemptions from licensure in this section are in addition to the exemptions under Section 58-1-307.

Section 156. Section Amended.

Section 58-26-11, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-11. CPA emeritus status and registration.

(1) A person currently licensed as a certified public accountant may, on any renewal date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus registration if:

(a) the licensee is at least 60 years of age as of the date of renewal; or

(b) the licensee is disabled or the board finds other good cause for believing that the licensee will not return to the practice of public accountancy; and

(c) the licensee makes an application for transfer of status and registration and pays a licensure fee as established under Subsection 63-38-3 (2);

(d) the licensee, on application for transfer, or the registrant, on application for renewal, certifies that he will not engage in the practice of public accountancy while in the status of CPA emeritus registration; and

(e) the licensee is in good standing as a CPA and not subject to any order of revocation, suspension, or probation.

(2) Each CPA emeritus registration expires on August 31 of each even-numbered year.

(3) Registrants may not engage in the practice of public accountancy.

(4) Registrants are not required to fulfill the continuing professional education or quality review provisions of this chapter.

(5) A registrant may reinstate his CPA license by complying with the provisions of Section 58-26-8.

(6) Each registrant is responsible for renewing his registration, according to procedures that the board establishes in accordance with Section [~~58-1-14~~] 58-1-308 concerning renewals and notification to licensee and certificate holders.

Section 157. Section Amended.

Section 58-26-13, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is amended to read:

58-26-13. Certificates or licenses held on April 23, 1990 — Expiration of certificates.

(1) (a) Certificates current as of April 23, 1990, are valid evidence that the holder fulfilled the requirements of prior law. The board shall consider the certificates in reviewing qualifications for licensing under this chapter; however, the holder of a certificate may not practice as a certified public accountant if not otherwise allowed under this chapter.

(b) All certificates issued expire and are subject to renewal on August 31 of each even-numbered year beginning in 1990.

(c) Each certificate holder shall renew his certificate in accordance with Section [58-1-14] 58-1-308.

(d) The division may not issue new certificates after April 23, 1990, except for those persons who conditioned on the examination, before July 1, 1990, and who passed the examination before that conditioning expired as provided in this chapter.

(e) Any person holding a certificate as of April 23, 1990, or who obtains his certificate under this chapter shall be issued a license on July 1, 1994, if:

(i) he maintains his certificate in current status; and

(ii) he completes his continuing professional education requirements as required by this section.

(2) Licenses that are current on April 23, 1990, continue in effect and are subject to the provisions of this chapter.

Section 158. Section Repealed and Reenacted.

Section 58-26-15, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990, is repealed and reenacted to read:

58-26-15. Grounds for denial of license — Disciplinary proceedings.

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

Section 159. Section Amended.

Section 58-28-2, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1992, is amended to read:

58-28-2. Definitions.

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

(1) "Administer" means:

(a) the direct application by a person of a prescription drug or device by injection, inhalation, ingestion, or by any other means, to the body of an animal that is a patient or is a research subject; or

(b) a veterinarian providing to the owner or caretaker of an animal a prescription drug for application by injection, inhalation, ingestion, or any other means to the body of the animal by the owner or caretaker in accordance with the veterinarian's written directions.

(2) "Abandonment" means to forsake entirely or refuse to provide care and support for an animal placed in the custody of a licensed veterinarian.

(3) "Board" means the Veterinary Board established [under this chapter] in Section 58-28-3.

[~~(4) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(5) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(6)~~] (4) "Practice of veterinary medicine, surgery, and dentistry" means to:

(a) diagnose, prognose, or treat any disease, defect, deformity, wound, injury, or physical condition of any animal;

(b) administer or prescribe any drug, medicine, treatment, method, or practice, or perform any operation or manipulation, or apply any apparatus or appliance for the cure, relief, or correction of any animal disease, deformity, defect, wound, or injury, or otherwise practice any veterinary medicine, dentistry, or surgery on any animal;

(c) represent by verbal or written claim, sign, word, title, letterhead, card, or in any other manner that one is a licensed veterinarian, or one qualified to practice veterinary medicine, surgery, or dentistry, or hold oneself out as able to practice veterinary medicine, surgery, or dentistry;

(d) solicit, sell, or furnish any parenterally administered animal disease cures, preventions, or treatments, with or without the necessary instruments for the administration of them, or any and all worm and other internal parasitic remedies, upon any agreement, express or implied, to administer these cures, preventions, treatments, or remedies; or

(e) assume or use the title or designation, "veterinary," "veterinarian," "animal doctor," "animal surgeon," or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such person is qualified to practice veterinary medicine, surgery, or dentistry.

(5) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) fraudulently issuing or using any health certificate, inspection certificate, vaccination certificate, test chart, or any other certificate relating to the existence of animal diseases or the sale of animal products for human consumption;

(b) willfully misrepresenting any findings in the inspection of foodstuffs of animal origin; and

(c) fraudulently misapplying or reporting any intradermal, cutaneous, subcutaneous, serological, or chemical test.

[~~(7)~~] (6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

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

[~~(b) using intoxicants or drugs to such an extent as to render the user unfit to practice veterinary medicine, surgery, or dentistry;~~]

[~~(c)~~] (b) soliciting patronage by directly or indirectly employing [~~directly or indirectly~~] solicitors;

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

[~~(e) advertising in a manner which is false or misleading or which has as its object deception or fraud;~~]

[~~(f) lending one's name to be used as a veterinarian by another person who is not licensed to practice in this state;~~]

[~~(g)~~] (d) rendering professional service in association with a person who is not licensed and does not hold a temporary permit;

[~~(h)~~] (e) sharing fees with any person, except a licensed veterinarian, for services actually performed;

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

[~~(j)~~] (g) swearing falsely in any testimony or affidavit, relating to, or in the course of, the practice of veterinary medicine, surgery, or dentistry;

[~~(k)~~] (h) willful failure to report any dangerous, infectious, or contagious disease, as required by law;

[~~(l)~~] (i) willful failure to report the results of any medical tests, as required by law, or rule adopted pursuant to law; or

[~~(m)~~] (j) violating the Utah Controlled Substances Act.

Section 160. Section Repealed and Reenacted.

Section 58-28-3, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1985, is repealed and reenacted to read:

58-28-3. Veterinary board created — Duties.

(1) There is created a Veterinary Board consisting of four veterinarians who have practiced in the state for not less than five years and one member of the general public.

(2) The board shall be appointed and serve in accordance with the provisions of Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 161. Section Amended.

Section 58-28-5, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1985, is amended to read:

58-28-5. License — Display — Revocation for nondisplay or nonrenewal.

A licensed veterinarian shall display his license in a conspicuous place in his principal place of business. [All initial and renewal licenses issued under ~~this chapter shall expire on December 31 of each even-numbered year.~~] The division may revoke any license which is not displayed in accordance with this section [~~or which is not renewed on or before December 31 of each even-numbered year~~].

Section 162. Section Enacted.

Section 58-28-6.5, Utah Code Annotated 1953, is enacted to read:

58-28-6.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 163. Section Enacted.

Section 58-28-7.5, Utah Code Annotated 1953, is enacted to read:

58-28-7.5. Grounds for denial of license — Disciplinary proceedings.

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

Section 164. Section Amended.

Section 58-28-8, Utah Code Annotated 1953, as last amended by Chapter 180, Laws of Utah 1992, is amended to read:

58-28-8. Exemptions from chapter.

[~~This~~] In addition to the exemptions from licensure in Section 58-1-307 this chapter does not apply to:

(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except that this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter;

(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;

(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his

supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;

(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;

(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;

(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;

(8) except as otherwise provided in Subsection 58-28-2(5)(d), any person in this state engaged in the sale of veterinary supplies, instruments, and medicines, [{]except prescription drugs which must be sold in compliance with state and federal regulations[}], if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;

(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;

(10) any person performing or teaching nonsurgical bovine artificial insemination; and

(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah.

Section 165. Section Amended.

Section 58-31-2, Utah Code Annotated 1953, as enacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-2. Definitions.

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

(1) "Applicant" means a person who applies for licensure under this chapter by submitting a completed application for licensure and the required fees to the department.

(2) "Approved education program" means a nursing education program that meets the minimum standards established under this chapter or by division rule in collaboration with the board.

(3) "Board" means the Board of Nursing [established under this chapter] created in Section 58-31-3.

(4) "Consultation and referral plan" means a written plan:

(a) jointly developed by an advanced practice registered nurse who has or is applying for prescriptive authority and the consulting physician to that nurse;

(b) approved by the Prescriptive Practice Board; and

(c) that contains consultation and referral criteria by which that advanced practice registered nurse, working in collaboration with that consulting physician, may prescribe medicines in the treatment of common health problems.

(5) "Consulting physician" means a physician who:

(a) has agreed to practice consultation with an advanced practice registered nurse who has or is applying for prescriptive authority in accordance with an approved written consultation and referral plan; and

(b) is actively engaged in the same or a similar practice as is the advanced practice registered nurse.

[~~(6) "Department" means the Department of Commerce.~~]

[~~(7)~~] (6) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of health care.

[~~(8) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(9) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(10)~~] (7) "Examinee" means a person who applies to take or does take any examination required under this chapter for licensure.

[~~(11)~~] (8) "Licensee" means a person who is licensed under this chapter.

[~~(12)~~] (9) "Physician" means a person licensed and in good standing as a physician and surgeon or as an osteopathic physician under Title 58, Chapter 12, Practice of Medicine and Surgery and the Treatment of Human Ailments.

[~~(13)~~] (10) "Practice of nursing" means performance of acts by a person licensed under this chapter or Title 58, Chapter 44, Certified Nurse Midwifery Practice Act, based upon that person's knowledge, skill, preparation, education, and experience including:

(a) initiating and maintaining comfort measures;

(b) promoting and supporting human functions and responses;

(c) establishing an environment conducive to well-being;

(d) providing health counseling and teaching; and

(e) collaborating with health care professionals on aspects of the health care regimen.

[~~(14)~~] (11) "Practice of practical nursing" means a performance of nursing acts as provided in this subsection by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:

(a) contributing to the assessment of the health status of individuals and groups;

(b) participating in the development and modification of the strategy of care;

(c) implementing appropriate aspects of the strategy of care;

(d) maintaining safe and effective nursing care rendered to a patient directly or indirectly;

(e) participating in the evaluation of responses to interventions; and

(f) delegating nursing interventions that may be performed by others and that do not conflict with this chapter.

[~~(15)~~] (12) "Practice of registered nursing" means performing acts of nursing as provided in this subsection by a person licensed under this chapter as a registered nurse. The nursing acts require substantial specialized education, preparation, skill, judgment, and knowledge in the generally recognized scope of practice of registered nurses. Registered nursing acts include:

(a) assessing the health status of individuals and groups;

(b) identifying health care needs;

(c) establishing goals to meet identified health care needs;

(d) planning a strategy of care;

(e) prescribing nursing interventions to implement the strategy of care;

(f) implementing the strategy of care;

(g) delegating nursing interventions that may be performed by others and are not in conflict with this chapter;

(h) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;

(i) evaluating responses to interventions;

(j) teaching the theory and practice of nursing; and

(k) managing and supervising the practice of nursing.

[~~(16)~~] (13) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope of advanced practice registered nursing as defined by division rule consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:

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

(b) diagnosis, treatment, correction, consultation, or referral for common health problems; and

(c) prescription or administration of prescription drugs, including local anesthesia and prescription devices in conformance with an approved consultation and referral plan.

[~~(17)~~] (14) "Practice of nurse anesthesia" means the practice of nursing by a person licensed under this chapter as a certified registered nurse anesthetist and includes the administration of general, regional, or local anesthesia.

[~~(18)~~] (15) "Prescriptive Practice Board" means the Nurse Prescriptive Practice Board established in Section 58-31-3.

(16) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) using the following titles, names or initials, if the user is not properly licensed under this chapter:

(i) nurse;

(ii) licensed practical nurse, practical nurse, or L.P.N.;

(iii) registered nurse or R.N.;

(iv) registered nurse practitioner, N.P., or R.N.P.;

(v) registered nurse specialist, N.S., or R.N.S.;

(vi) registered psychiatric mental health nurse specialist;

(vii) advanced practice registered nurse;

(viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or

(ix) other generally recognized names or titles used in the profession of nursing; and

(b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter.

[~~(19)~~] (17) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

[~~(a) a demonstrated pattern of negligence or failure to utilize or exercise appropriate judgment in the practice of nursing which demonstrates a threat or potential threat to the patient or public health, safety, and welfare;~~]

[~~(b)~~] (a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's position or practice as a nurse;

[~~(c)~~] (b) failure to provide nursing service in a manner that demonstrates respect for the patient's

human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

[(d) verbally, physically, mentally, or sexually abusing a patient;]

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

(i) period when a generally recognized professional relationship exists between the nurse and patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the nurse and patient;

[(f)] (d) (i) as a result of any circumstance under Subsection [(e)] (c) a licensee exploits or uses information about a patient or exploits the licensee's professional relationship between the licensee and the patient; or

(ii) the licensee exploits the patient by the use of the licensee's knowledge of the patient obtained while acting as a nurse;

[(g) acting as a nurse beyond the scope of the license the individual holds;]

[(h) acting as a nurse beyond the scope of one's competency or education;]

[(i) acting as or performing the duties of a nurse while unfit to perform those duties for any reason, including physical or mental impairment or impairment due to the use of any substance, including alcohol or drugs;]

[(j)] (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

[(k)] (f) unauthorized taking or personal use of nursing supplies from an employer;

[(l)] (g) unauthorized taking or personal use of a patient's personal property;

[(m)] (h) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any other circumstance related to the patient and the medical or nursing care provided;

[(n)] (i) unlawful or inappropriate delegation of nursing care;

[(o)] (j) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

[(p) engaging in any act of fraud, misrepresentation, or deceit in taking the nurse licensure examination qualifying one for licensure as a nurse, or in obtaining a nursing license;]

[(q)] (k) employing or aiding and abetting the employing of an unqualified or unlicensed person to practice as a nurse; and

[(r) permitting another person to use the nursing license issued to a person;]

[(s)] (l) failure to report to the division known facts regarding unprofessional or unlawful conduct by any health care professional licensed under the laws of this state[; and].

[(t) any act or omission that results in the denial, revocation, suspension, probation, or other action against an individual's nursing or related health care license in any jurisdiction.]

Section 166. Section Amended.

Section 58-31-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-3. Boards created — Membership.

(1) There is created a Board of Nursing that consists of the following 13 members, whose appointments shall provide broad representation of the various interests and constituencies in the nursing profession:

(a) five persons licensed as registered nurses, three of whom are actively involved in approved nursing education programs;

(b) three persons licensed as licensed practical nurses;

(c) one person licensed as an advanced practice registered nurse and designated as a registered nurse practitioner;

(d) one person licensed as an advanced practice registered nurse and designated as a registered nurse specialist;

(e) one person licensed as a certified registered nurse anesthetist;

(f) one person licensed as a registered nurse employed in a nursing administrative position within a licensed health care facility; and

(g) one member of the public who is not a licensed health care provider.

(2) There is created a Nurse Prescriptive Practice Board that consists of the following seven members:

(a) three advanced practice registered nurses who have current prescriptive practice privileges:

(b) three physicians, of whom at least two act as consulting physicians to advanced practice registered nurses with prescriptive privileges: and

(c) one pharmacist.

(3) The boards created in this section shall be appointed and serve in accordance with Section [58-1-7] 58-1-201.

Section 167. Section Amended.

Section 58-31-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-4. The Board of Nursing and Prescriptive Practice Board functions.

(1) The Board of Nursing shall carry out the duties and responsibilities in Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203 and shall:

(a) recommend to the division minimum standards for educational programs qualifying a person for licensure under this chapter;

(b) recommend to the division those educational programs that meet the established minimum standards;

(c) establish by rule a survey of educational programs within the state; and

(d) recommend to the division denial or approval or withdrawal of approval regarding educational programs that fail to meet the established minimum standards.

(2) (a) The director shall appoint an individual to serve as the executive administrator of the Board of Nursing. The executive administrator shall serve as an ex officio member of the board and shall represent the position of the division in matters considered by the board.

(b) The executive administrator shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.

(3) The Prescriptive Practice Board shall:

(a) develop the standards and criteria to be adopted by division rule, by which the board shall consider and approve, modify, or disapprove consultation and referral plans;

(b) recommend to the division the prescriptive practice authority to be granted to applicants who hold an advanced practice registered nurse license;

(c) periodically review the current consultation and referral plan for each advanced practice registered nurse granted prescriptive practice authority and evaluate compliance with the approved plan; and

(d) recommend to the division denial or withdrawal of prescriptive authority in accordance with Section 58-31-13.

Section 168. Section Amended.

Section 58-31-5, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-5. Peer review committees created — Duties.

(1) There are created under Subsection [~~58-1-9(6)~~] 58-1-203(6) the following advisory peer committees to the Board of Nursing:

(a) education program peer review committee;

(b) nursing practice standards peer review committee; and

(c) probation peer review committee.

(2) Each advisory peer committee established under this section shall be composed of five members appointed by the director in collaboration with the board.

(3) The scope of authority for each of the advisory peer review committees established under Subsection (1) shall be established by division rule made in collaboration with the board.

(4) The committee members shall be appointed and serve under the same provisions as apply to board members under Subsections [~~58-1-7~~] 58-1-201(1)(d), (e), (f), and (g), and (2), (3), and (4).

(5) This section does not prohibit the appointment of other advisory peer committees to the Board of Nursing under Subsection [~~58-1-9~~] 58-1-203(6).

Section 169. Section Repealed and Reenacted.

Section 58-31-6, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is repealed and reenacted to read:

58-31-6. License required — License classifications.

(1) An individual may not engage in the practice of nursing unless licensed or exempted from licensure under this chapter.

(2) The division shall issue a license in the following classifications to individuals qualified under this chapter:

(a) licensed practical nurse;

(b) registered nurse;

(c) advanced practice registered nurse designated as:

(i) registered nurse practitioner;

(ii) registered nurse specialist;

(iii) registered psychiatric mental health nurse specialist; and

(d) certified registered nurse anesthetist.

Section 170. Section Enacted.

Section 58-31-6.5, Utah Code Annotated 1953, is enacted to read:

58-31-6.5. Exceptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons are exempt from licensure under this chapter and may, subject to the stated conditions and limitations, engage in practices that may constitute the practice of nursing:

(1) friends or family members of a patient performing gratuitous nursing care for the patient;

(2) persons providing care in a medical emergency; and

(3) persons engaged in the practice of the religious tenets of a church or religious denomination.

Section 171. Section Amended.

Section 58-31-10, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-10. Expiration of license — Renewal.

(1)(a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by division rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(b) The expiration date of a license shall be printed on the license when it is issued.

(2) Renewal of any license issued under this chapter is the responsibility of the licensee in accordance with Section [~~58-1-14~~] 58-1-308.

(3) To renew a license the licensee shall:

(a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63-38-3; and

(b) meet continuing competency requirements as established by division rule.

(4) In addition to the renewal requirements under Subsections (2) and (3), persons licensed as certified registered nurse anesthetists shall:

(a) actively participate on a continuing regular basis in an anesthesia quality assurance program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the participation; and

(b) be currently certified in anesthesia by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification.

(5) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-503.

[~~(5)~~] (6) A person whose license has [~~been suspended~~] expired for failure to renew under Section [~~58-1-14~~] 58-1-308 may reinstate that license in accordance with Section [~~58-1-14~~] 58-1-308 and division rules.

Section 172. Section Amended.

Section 58-31-11, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-11. Temporary license.

(1) The division may issue a temporary license under Subsection [~~58-1-13~~] 58-1-303(1)(a) to a person who meets all qualifications for a license under this chapter except the passing of the required examinations if that applicant:

(a) is a graduate of an approved nursing education program within the year immediately preceding application for a temporary license;

(b) has never before taken the examinations; and

(c) submits to the division evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct supervision of:

(i) a registered nurse if the applicant for the temporary license is applying for licensure as a licensed practical nurse or registered nurse;

(ii) an advanced practice registered nurse or physician if the applicant is applying for licensure as an advanced practice registered nurse, except a registered psychiatric mental health nurse specialist may be under the general and direct supervision, as established by division rule, of an approved supervisor; or

(iii)(A) an approved physician who is practicing in the specialty of anesthesiology if available in the area of employment or if such an anesthesiologist is not available, then an approved certified registered nurse anesthetist available in the area of employment if the applicant is applying for licensure as a certified registered nurse anesthetist;

(B) supervision under this subsection shall be on-site.

(2) A temporary license issued under Subsection (1) expires on the earlier of:

(a) 90 days after issuance if the temporary license is to an applicant for licensure as a registered nurse or licensed practical nurse;

(b) a date following a period established by division rule if the temporary license is to an applicant for licensure as an advanced practice registered nurse;

(c) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations; or

(d) the date upon which the division issues the individual a regular license in the same classification as the temporary license.

(3) The division may issue a temporary license under Subsection (1) only one time to any person.

[~~(4) The division may grant a temporary license to a qualified individual for a specified period of time upon a finding that a license is necessary due to:~~]

[~~(a) a local or national emergency;~~]

[~~(b) a lack of adequate licensed individuals to provide nursing care in any community of this state; or~~]

[~~(c) a circumstance in which the division and the board determine an applicant for regular license should first be observed by the division and the board in the supervised clinical practice of nursing before a permanent license is issued.~~]

Section 173. Section Amended.

Section 58-31-13, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-13. Grounds for denial of licensure and disciplinary proceedings.

[~~(1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, or place on probation the license of a licensee who:~~]

[~~(a) does not meet the qualifications for licensure under this chapter; or~~]

[~~(b) is guilty of a criminal offense which, when considered with the functions and duties of a licensee under this chapter, demonstrates a threat or potential threat to the public health, safety, or welfare.~~]

[~~(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, or place on probation the license of a licensee who:~~]

[~~(a) is guilty of unlawful or unprofessional conduct related to practice under this chapter;~~]

[~~(b) has obtained or attempted to obtain a license by fraud, deceit, or willful misrepresentation;~~]

[~~(c) is unfit or incompetent to practice nursing by reason of abuse of drugs or alcohol or a physical or mental condition; or~~]

[~~(d) has had a license or certification to practice in any profession or occupation subjected to discipline as a result of the licensee's action or omissions which, when considered with the activities regulated under this chapter, demonstrates a threat or potential threat to the public health, safety, or welfare.~~]

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

[~~(3)~~] (2) (a) If a court of competent jurisdiction determines that a nurse is an "incapacitated person" as defined in Subsection 75-1-201(18) or is mentally ill, the director shall suspend the license of the nurse upon entry of the judgment, regardless of the pendency of an appeal.

(b) If it appears to the board that there is reasonable cause to believe that a nurse, even though he has not been judicially determined to be incompetent, mentally incompetent, or incapable, is unable to practice nursing with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon the nurse for hearing on the sole issue of the capacity of the nurse to conduct properly the practice of nursing.

(c) For purposes of this subsection, every nurse licensed under this chapter who accepts the privilege of practicing nursing in this state is considered to have:

(i) given consent to submit to a mental or physical examination when directed in writing by the board to do so; and

(ii) waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that they constitute a privileged communication.

(d) (i) Failure of a nurse to submit to the examination when directed by the board constitutes grounds for immediate suspension of the nurse's license, unless the failure was due to circumstances beyond the control of the nurse.

(ii) The director may enter an order of suspension of the license without the taking of testimony or the presentation of evidence upon a finding of reasonable cause to believe that an order of suspension is necessary to protect the public health, safety, or welfare.

(e) A nurse whose license is suspended under this subsection shall, at reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent practice of nursing with reasonable skill and safety to patients.

[~~(4) The proceedings of the board and any action taken by it under Subsection (3) are not admissible against a nurse in any other proceedings.~~]

Section 174. Section Enacted.

Section 58-31-13.5, Utah Code Annotated 1953, is enacted to read:

58-31-13.5. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions defined in Subsections 58-1-501(1)(b) through (e) is guilty of a class A misdemeanor.

(3) Any person who violates any of the unlawful conduct provisions defined in Section 58-31-2(16) is guilty of a class B misdemeanor.

Section 175. Section Amended.

Section 58-31-15, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-15. Prescriptive authority.

(1) An advanced practice registered nurse may apply for and obtain prescriptive authority to administer local anesthesia and administer and prescribe certain drugs:

(a) as authorized by this section and rules made under this section; and

(b) in collaboration with a consulting physician as provided in Subsection (3).

(2) To obtain prescriptive authority under this section, an advanced practice registered nurse shall present to the division evidence satisfactory to the division and Prescriptive Practice Board of successful completion of coursework in patient assessment and diagnosis, and pharmacotherapeutics as required by division rule.

(3) (a) A licensee may exercise prescriptive authority obtained under this section only in accor-

dance with a written consultation and referral plan approved by the Prescriptive Practice Board and the division.

(b) The consultation and referral plan shall reflect a planned program for the use of prescription drugs and controlled substances compatible with the licensee's competence and the scope of practice in which the licensee is engaged.

(4) (a) Subject to Subsection (b), the division may revoke, suspend, or place on probation the prescribing authority of any person granted prescriptive authority under this section upon a finding of unprofessional or unlawful conduct.

(b) Before taking any action under this subsection, the division shall comply with the provisions of Section [~~58-1-16~~] 58-1-108 regarding disciplinary action and Title 63, Chapter 46b, Administrative Procedures Act.

(5) The division shall grant prescriptive authority under this chapter to any advanced practice registered nurse holding prescriptive authority under any predecessor act on July 1, 1992, the effective date of this chapter if an approved consultation and referral plan for that nurse is current and on file with the division.

(6) The division may issue a temporary prescriptive authority to a licensed advanced practice registered nurse who has completed the requirements of Subsection (2) during the time the nurse is completing approved clinical training for which the nurse is required to have prescriptive practice authority.

(7) The division in collaboration with the Prescriptive Practice Board shall adopt rules to appropriately regulate the administering and prescribing of drugs by an advanced practice registered nurse. The rules shall provide:

(a) an advanced practice registered nurse may not:

(i) prescribe any Schedule II controlled substance as defined under Title 58, Chapter 37, Utah Controlled Substances Act; or

(ii) administer any Schedule II controlled substance as defined under Title 58, Chapter 37, Utah Controlled Substances Act, except in a clinical emergency and:

(A) in accordance with an approved consultation and referral plan; or

(B) upon the order of a practitioner licensed to prescribe that controlled substance;

(b) an advanced practice registered nurse may:

(i) prescribe and administer a Schedule III, IV, or V controlled substance as defined by Title 58, Chapter 37, Utah Controlled Substances Act, for a period up to and including seven days, and for more than seven days only with the specific concurrence of the consulting physician; or

(ii) administer an appropriate controlled substance in a clinical emergency in accordance with an approved consultation and referral plan or upon the order of a practitioner licensed to prescribe that controlled substance.

Section 176. Section Amended.

Section 58-31-17, Utah Code Annotated 1953, as enacted by Chapter 82, Laws of Utah 1992, is amended to read:

58-31-17. Administration of anesthesia.

(1) A certified registered nurse anesthetist may administer general, regional, or local anesthesia in accordance with:

(a) recognized standards of practice;

(b) this chapter and division rules relating to the administration of anesthesia; and

(c) and in collaboration with, a qualified consulting licensed physician, oral surgeon, or other licensed professional identified by rule.

(2) (a) Subject to Subsection (b), the division may revoke, suspend, or place on probation the authority of any person to administer anesthesia upon a finding he has engaged in unprofessional or unlawful conduct.

(b) Before taking any action under this subsection, the division shall comply with the provisions of Section [~~58-1-16~~] 58-1-108 regarding disciplinary action and Title 63, Chapter 46b, Administrative Procedures Act.

(3) The division shall grant authority to administer anesthesia under this chapter to any registered nurse anesthetist who is currently certified under any predecessor act on July 1, 1992, the effective date of this chapter.

Section 177. Section Amended.

Section 58-35-2, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is amended to read:

58-35-2. Definitions.

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

(1) "Approved" means having received the approval of the division in collaboration with the board.

(2) "Board" means the Social Work Licensing Board created in Section 58-35-3.

(3) "Mental illness" means an abnormal mental or emotional condition defined in an approved, recognized diagnostic and statistical manual for mental disorders.

(4) "Psychotherapy" includes:

(a) conducting a professional evaluation to diagnose mental health, mental illness, or an emotional disorder;

(b) formulating a service plan for the treatment of mental or emotional health of those diagnosed; and

(c) conducting clinical intervention for the specific purpose of treating the mental or emotional condition of individuals, couples, families, and other

groups using methods and procedures that are generally accepted and recognized in the social work profession.

(5) "Social work" means the professional activity of a licensee under this chapter to:

(a) enhance the well-being, general functioning, and problem solving capacity of people;

(b) enhance the ability of people to form relationships with others, as couples, and within families and other groups;

(c) promote the effective development and operation of social service systems that provide resources and services to people;

(d) refer people to systems, resources, and other individuals that provide beneficial service to clients; and

(e) contribute to the development of improved social policy.

(6) "Unlawful conduct" as defined in Section 58-1-501 includes a person:

(a) representing himself as being licensed to practice as a clinical social worker, certified social worker, social service worker, or social service aide if he is not currently licensed in the relevant classification;

(b) using any title, abbreviation, initials, sign, or other device to convey that he is a clinical social worker, certified social worker, social service worker, or social service aide if he is not currently licensed in the relevant classification; and

(c) practicing as a clinical social worker or certified social worker without having the appropriate license.

(7) "Unprofessional conduct" as defined in Section 58-1-2(7) and as may be further defined by rule includes:

(a) possessing or using illegal or unprescribed prescription drugs or medications;

(b) performing or representing the ability to perform psychotherapy for pay if not licensed to do so;

(c) making sexual advances to a client, or requesting of a client sexual favors, sexual intercourse, or other verbal or physical conduct of a sexual nature;

(d) failing to provide adequate supervision when required under this chapter or by rule to supervise a licensee;

(e) practicing without appropriate supervision when required to be supervised under this chapter or by rule; and

(f) violating the confidentiality requirement under Section 58-35-12.

Section 178. Section Amended.

Section 58-35-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is amended to read:

58-35-3. Board created — Duties.

(1) There is created a Social Work Licensing Board. The board shall consist of two clinical social workers, two certified social workers, one social service worker, one social service aide, and one member chosen from the general public.

(2) The board shall be appointed in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The board shall comply with the duties, functions, and responsibilities outlined in Sections [~~58-1-8~~] 58-1-202 through [~~58-1-9~~] 58-1-203.

Section 179. Section Amended.

Section 58-35-7, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is amended to read:

58-35-7. Exemptions from licensure.

[~~The~~] In addition to the exemptions from licensure in Section 58-1-307, the following may engage in the practice of social work subject to the stated circumstances and limitations without being licensed under this chapter:

(1) any employee, agent, or representative of the United States government while engaged in the performance of authorized duties or functions;

[~~(2) any individual engaged in activities constituting the practice of social work while in training at a recognized college or university or in an approved training program if the activities are supervised by a qualified person and are a defined part of the training program;~~]

[~~(3) any individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, or other approved professional training while being supervised by a qualified person;~~]

[~~(4) any individual licensed to practice as a clinical or certified social worker in another state who:~~]

[~~(a) (i) consults with a licensee under this chapter and performs services in this state limited to the consultation; or~~]

[~~(ii) at the invitation of a recognized college or university, association, society, or other approved training or professional body, conducts a lecture, clinic, or demonstration on the practice of clinical or certified social work; and~~]

[~~(b) does not establish a social work practice or regularly engage in clinical or certified social work in this state;~~]

[~~(5) any individual licensed under another chapter of Title 58 while acting within the scope of that licensed profession;~~]

[~~(6)~~] (2) any qualified individual engaged in a profession not licensed under Title 58 while rendering service consistent with the training and ethics of the profession so long as he does not represent himself to be a clinical social worker, certified social worker, social service worker, or social service aide;

[~~(7)~~] (3) any member of the clergy while performing clerical functions and duties so long as he does not represent himself to be a clinical social worker, certified social worker, social service worker, or social service aide; and

[(8)] (4) any individual who offers or provides service, advice, counsel, or encouragement, helps another solve problems, or engages in other activities within the definition of social work so long as he does not represent himself to be a clinical social worker, certified social worker, social service worker, or social service aide.

Section 180. Section Repealed and Reenacted.

Section 58-35-8, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is repealed and reenacted to read:

58-35-8. Grounds for denial of license — Disciplinary proceedings.

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

Section 181. Section Repealed and Reenacted.

Section 58-35-9, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is repealed and reenacted to read:

58-35-9. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 182. Section Repealed and Reenacted.

Section 58-35-11, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992, is repealed and reenacted to read:

58-35-11. Penalty for Unlawful Conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsection 58-35-2(6)(c) is guilty of a third degree felony.

(2) Any person who violates any of the remaining unlawful conduct provisions defined in Subsection 58-35-2(6)(a) or (b) is guilty of a class B misdemeanor.

Section 183. Section Amended.

Section 58-37c-3, Utah Code Annotated 1953, as repealed and reenacted by Chapter 155, Laws of Utah 1992, is amended to read:

58-37c-3. Definitions.

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

(1) "Board" means the Controlled Substance Precursor Advisory Board [established] created in Section 58-37c-4.

(2) "Controlled substance precursor" means any of the following:

(a) Phenyl-2-propanone;

(b) Methylamine;

(c) Ethylamine;

(d) D-lysergic acid;

(e) Ergotamine and its salts;

(f) Diethyl malonate;

(g) Malonic acid;

(h) Ethyl malonate;

(i) Barbituric acid;

(j) Piperidine and its salts;

(k) N-acetylanthranilic acid and its salts;

(l) Pyrrolidine;

(m) Phenylacetic acid and its salts;

(n) Anthranilic acid and its salts;

(o) Morpholine;

(p) Ephedrine, its salts, optical isomers, and salts of optical isomers;

(q) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;

(r) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;

(s) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;

(t) Benzyl cyanide;

(u) Ergonovine and its salts;

(v) 3,4-Methylenedioxyphenyl-2-propanone;

(w) propionic anhydride;

(x) Insosafrole;

(y) Safrole;

(z) Piperonal;

(aa) N-Methylephedrine;

(bb) N-ethylephedrine;

(cc) N-methylpseudoephedrine;

(dd) N-ethylpseudoephedrine;

(ee) Hydriotic acid;

(ff) any salt, optical isomer, or salt of an optical isomer of the chemicals listed in Subsections (a) through (ee) of this section;

(gg) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-13; and

(hh) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-13.

(3) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.

[~~(4) "Department" means the Department of Commerce.~~]

[~~(5) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(6) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(7) "Executive director" means the executive director of the Department of Commerce.~~]

[~~(8)~~] (4) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.

[~~(9)~~] (5) "Practitioner" means a physician, dentist, podiatrist, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching, or chemical analysis a controlled substance in the course of professional practice or research in this state.

[~~(10)~~] (6) (a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated distributor" does not include any person excluded from regulation under this chapter.

[~~(11)~~] (7) (a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.

[~~(12)~~] (8) "Regulated transaction" means any actual, constructive or attempted:

(a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or

(b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

[~~(13)~~] (9) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor; however, the division may exempt from the provisions of this chapter a specific controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(10) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:

(a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;

(b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;

(c) acting as a regulated purchaser and purchasing or in any other way obtaining a controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;

(d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;

(e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;

(f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;

(g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;

(h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical,

(i) creating a chemical mixture for the purpose of evading any licensure, reporting or recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;

(j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and

(k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the con-

trolled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

[(14)] (11) "Unprofessional conduct" as [generally] defined in Section [58-1-2] 58-1-102 and as may be further defined by rule[,] includes [any one or more of] the following:

(a) violation of any provision of this chapter, the Controlled Substance Act of [the] this state [of Utah] or any other state, or the Federal Controlled Substance Act; and

(b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

Section 184. Section Amended.

Section 58-37c-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 155, Laws of Utah 1992, is amended to read:

58-37c-4. Board.

(1) There is hereby established a Controlled Substance Precursor Advisory Board which shall consist of four individuals representing distributors and purchasers of controlled substance precursors and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section [58-1-7] 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections [58-1-8] 58-1-202 and [58-1-9] 58-1-203.

Section 185. Section Repealed and Reenacted.

Section 58-37c-9, Utah Code Annotated 1953, as repealed and reenacted by Chapter 155, Laws of Utah 1992, is repealed and reenacted to read:

58-37c-9. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 186. Section Repealed and Reenacted.

Section 58-37c-11, Utah Code Annotated 1953, as enacted by Chapter 155, Laws of Utah 1992, is repealed and reenacted to read:

58-37c-11. Penalty for unlawful conduct.

(1) Any person who violates the unlawful conduct provision defined in Subsections 58-37c-3(10)(a) through (j) is guilty of a class A misdemeanor.

(2) Any person who violates the unlawful conduct provisions defined in Subsection 58-37c-3(10)(k) is guilty of a second degree felony.

Section 187. Section Repealed and Reenacted.

Section 58-37c-12, Utah Code Annotated 1953, as enacted by Chapter 155, Laws of Utah 1992, is repealed and reenacted to read:

58-37c-12. Grounds for denial of license — Disciplinary proceedings.

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

Section 188. Section Amended.

Section 58-39-3, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1987, is amended to read:

58-39-3. Definitions.

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

[(2)] (1) "Advertise" includes, but is not limited to, causing or permitting the issuance, distribution, exhibition, or transmission, orally or visually, of any card, sign, message, or device or any other action designed to secure public attention.

(2) "Board" means the Marriage and Family Therapist Licensing Board created in Section 58-39-3.5.

[(1)] (3) "Marriage and family therapy" means the process of providing professional psychotherapy to individuals, married couples, and family groups, either singly or in groups. The practice of marriage and family therapy utilizes established principles that recognize the interrelated nature of individual problems and dysfunctions in family members to assess, understand, and treat emotional and mental disorders. Marriage and family therapy includes individual, premarital, relationship, marital, divorce, and family therapy, and is a specialized mode of treatment for the purpose of resolving emotional disorders, modifying intrapersonal and interpersonal dysfunction, and promoting mental health.

[(3)] (4) "Marriage counselor," "marital therapist," "family counselor," or "family therapist" includes any person engaged in the act of marriage and family therapy.

[~~(4) "Committee" means the Committee of Marriage and Family Therapists.~~]

[~~(5) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(6) "Division" means the Division of Occupational and Professional Licensing.~~]

Section 189. Section Enacted.

Section 58-39-3.5, Utah Code Annotated 1953, is enacted to read:

58-39-3.5. Board created — Duties.

(1) There is created a Marriage and Family Therapist Licensing Board consisting of four marriage and family therapists and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 190. Section Amended.

Section 58-39-5, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1987, is amended to read:

58-39-5. Exceptions to licensing requirement.

[~~The~~] In addition to the exemptions from licensure in Section 58-1-307, the following persons who do marriage or family therapy as part of their professional practice and within the discipline of their profession [~~shall not be required to be~~] may engage in the practice of marriage and family therapy subject to the stated circumstances and limitations without being licensed under this chapter:

(1) attorneys, physicians, surgeons, nurse specialists, clinical or counseling psychologists, or clinical social workers who are licensed under the laws of Utah;

(2) any priest, rabbi, clergyman, or minister of the gospel of any religious denomination, when performing counseling services as a part of his religious duties and in connection with a specific church or synagogue of any religious denomination;

(3) any person in the course of continuous employment commencing prior to July 1, 1987, with a governmental or bona fide social service agency which regularly provides counseling or psychotherapy services; and

(4) a student of counseling, a marriage therapy intern, or a person preparing for the practice of marriage and family therapy, while under the supervision of a licensed marriage or family therapist previously approved by the [~~committee~~] board, or while in a training institution or facility recognized by the [~~committee~~] board. All persons operating under this exemption must be designated by the title of "marriage therapy intern," "family therapy intern," or by other similar title clearly indicating a training status.

Section 191. Section Amended.

Section 58-39-6, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1987, is amended to read:

58-39-6. Requirements for licensure.

The director shall issue a marriage and family therapy license to any person upon receipt of a written application, together with the appropriate fees and proof satisfactory to the [~~committee~~] board that he is of good moral character, that he has satisfactorily passed an examination in marriage and family therapy under the rules of the division, and has proper educational and experience qualifications, demonstrated by:

(1) a doctorate in marriage and family therapy, or its equivalent, from an accredited institution, together with three years of professional experience, including one year of marriage or family therapy in consultation with a therapist whose own education and experience, at the time of the consultation, would meet the requirements of this subsection;

(2) a master's degree in marriage and family therapy, or an equivalent master's degree in a field of study where there has been an emphasis in human behavioral studies and skill in working with people in therapy or counseling, from an institution acceptable to the [~~committee~~] board, together with three years of clinical experience, two years of which are equivalent to marriage or family therapy, and one year of marriage or family therapy in consultation with a therapist whose own education and experience, at the time of the consultation, would meet the requirements of this subsection; or

(3) a graduate degree in a field of religious study which includes instruction and supervision in marriage and family therapy, from an institution acceptable to the [~~committee~~] board, together with three years of marriage and family therapy experience on a regular and continuous basis as the chief executive of his religious group, or as an associate to the chief executive, with the major responsibility of counseling with families on marital problems.

Section 192. Section Enacted.

Section 58-39-6.5, Utah Code Annotated 1953, is enacted to read:

58-39-6.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 193. Section Amended.

Section 58-39-7, Utah Code Annotated 1953, as enacted by Chapter 31, Laws of Utah 1981, is amended to read:

58-39-7. Examination of license applicants.

Examination of an applicant for a license as a marriage and family therapist shall be held according to the methods, and in [~~such~~] the subject fields, [~~as may be deemed~~] determined by the [~~representative committee~~] board to be the most practical and expeditious in testing the applicant's qualifications.

Section 194. Section Amended.

Section 58-39-7.5, Utah Code Annotated 1953, as enacted by Chapter 31, Laws of Utah 1981, is amended to read:

58-39-7.5. Standards for designation of supervising therapists — Rules and regulations.

The [committee] board shall promulgate standards for approval and designation of supervising therapists referred to in [section] Subsection 58-39-5[(4)] (5) [and shall adopt other rules and regulations as may be necessary to carry out the provisions of this chapter].

Section 195. Section Repealed and Reenacted.

Section 58-39-8, Utah Code Annotated 1953, as last amended by Chapter 28, Laws of Utah 1987, is repealed and reenacted to read:

58-39-8. Grounds for denial of license — Disciplinary proceedings.

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

Section 196. Section Amended.

Section 58-39a-2, Utah Code Annotated 1953, as enacted by Chapter 279, Laws of Utah 1991, is amended to read:

58-39a-2. Definitions.

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

(1) (a) "Alternative dispute resolution" or "ADR" means the provision of an alternative system for settling conflicts between two or more parties, which operates both independent of or as an adjunct to the judicial-litigation system, through the intervention of a qualified neutral person or persons who are trained to intercede in and coordinate the interaction of the disputants in a settlement process.

(b) "Alternative dispute resolution" or "ADR" includes arbitration, mediation, conciliation, negotiation, mini-trial, moderated settlement conference, neutral expert fact-finding, summary jury trial, and use of special masters and related processes in civil disputes.

(2) "Board" means the Alternative Dispute Resolution Providers Certification Board [established under this chapter] created in Section 58-39a-3.

(3) (a) "Certified dispute resolution provider" or "certified ADR provider" means a person providing services as a mediator, negotiator, conciliator, or arbitrator who has voluntarily qualified for certification and is certified under this act or whose certification by another state is recognized by the division in collaboration with the board.

(b) Only Subsection [58-1-10(f)] 58-1-501 (1)(e) applies to a certified dispute resolution provider or a certified ADR provider.

[(4) "Department" means the Department of Commerce.]

[(5) "Director" means the director of the Division of Occupational and Professional Licensing.]

[(6)] (4) "Dispute resolution provider" means a person, other than a judge acting in his official capacity, who holds himself out to the public as a qualified neutral person trained to function in the conflict-solving process using the techniques and procedures of negotiation, conciliation, mediation, arbitration, mini-trial, moderated settlement conference, neutral expert fact-finding, summary jury trial, special masters, and related processes.

[(7) "Division" means the Division of Occupational and Professional Licensing.]

[(8)] (5) "Unprofessional conduct" [is] as defined [as follows:] in Section 58-1-501 and as may be further defined [further] by rule includes any one or more of the following:

[(a) business practices determined by the division in consultation with the board to be deceptive, misleading, or unethical;]

[(b)] (a) providing alternative dispute resolution services if there are reasonable grounds to believe any parties to the procedure might affect the impartiality of the ADR provider; and

[(c) violations of any professional code of ethics to which the ADR provider is required to adhere as determined by the division in consultation with the board; and]

[(d)] (b) failure to clearly define the services to be provided, the rules of conduct to govern, the criteria to be applied, or the applicable fees charged.

Section 197. Section Amended.

Section 58-39a-3, Utah Code Annotated 1953, as enacted by Chapter 279, Laws of Utah 1991, is amended to read:

58-39a-3. Board — Composition — Duties.

(1) There is [established] created an Alternative Dispute Resolution Providers Certification Board[. The board shall consist] consisting of seven members who have a demonstrated interest in ADR. The board shall be established by August 1, 1991.

(a) No more than three members may represent any one profession.

(b) The board shall include one attorney, two judges, and four members of the general public who have a demonstrated interest in ADR.

(2) The board shall be appointed and serve in accordance with Section [58-1-7] 58-1-201 except number of members and qualifications are governed by this section.

(3) The duties and responsibilities of the board [are governed by Section 58-1-8 and Section 58-1-9] shall be in accordance with Sections

58-1-202 and 58-1-203 as applicable to certification.

Section 198. Section Enacted.

Section 58-39a-5.5, Utah Code Annotated 1953, is enacted to read:

58-39a-5.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 199. Section Repealed and Reenacted.

Section 58-39a-6, Utah Code Annotated 1953, as enacted by Chapter 279, Laws of Utah 1991, is repealed and reenacted to read:

58-39a-6. Grounds for denial of license — Disciplinary proceedings.

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

Section 200. Section Amended.

Section 58-40-2, Utah Code Annotated 1953, as enacted by Chapter 108, Laws of Utah 1992, is amended to read:

58-40-2. Definitions.

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

(1) "Approved," when used to refer to a course of education, training, experience, examination, or other licensing requirement, means with approval by the division in collaboration with the board.

(2) "Board" means the Board of Recreational Therapy.

(3) "Practice recreational therapy" means to engage in the paid performance of services directing, initiating, or prescribing procedures and activities according to a treatment plan to improve, maintain, prevent, or retard the development of emotional, social, intellectual, or physical pathology in others by utilizing sports, games, or other recreational or leisure activities.

(4) "Treatment plan" means a written record containing the information required by Section 58-40-7, which is composed for each patient by a person licensed under this chapter.

(5) "Unlawful conduct" as defined in Section 58-1-501 includes the following conduct by any individual who is not licensed under this chapter:

(a) advertising or representing himself as being able to teach or conduct a recreational therapy program; or

(b) using in connection with his name the initials MTRS, TRS, or TRT, or any term, title, abbreviation, sign, or device relating to the practice of recreational therapy or the licenses under this chapter.

(6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to supervise a therapeutic recreational technician when required to do so;

(b) failing to keep or maintain a recreational therapy treatment plan;

(c) making sexual advances to a patient or requesting of a patient sexual favors, sexual intercourse, or other verbal or physical conduct of a sexual nature;

(d) possessing or using illegal or unprescribed prescription drugs or medications;

(e) using or being under the influence of intoxicating beverages while performing recreational therapy; or

(f) violating Sections 58-40-6 through 58-40-7.

Section 201. Section Amended.

Section 58-40-4, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992, is amended to read:

58-40-4. Board composition — Duties — Responsibilities.

(1) There is created a Board of Recreational Therapy. It shall be appointed in accordance with Section [58-1-7] 58-1-201.

(2) The board shall consist of two master therapeutic recreational specialists, one therapeutic recreational specialist, one therapeutic recreational technician, and one member appointed from the general public.

(3) The board's duties, functions, and responsibilities shall comply with Sections [58-1-8] 58-1-202 through [58-1-9] 58-1-203.

Section 202. Section Repealed and Reenacted.

Section 58-40-8, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992, is repealed and reenacted to read:

58-40-8. Grounds for denial of license and disciplinary proceedings.

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

Section 203. Section Repealed and Reenacted.

Section 58-40-11, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992, is repealed and reenacted to read:

58-40-11. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 204. Section Repealed and Reenacted.

Section 58-40-12, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992, is repealed and reenacted to read:

58-40-12. Exemptions.

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

(1) any individual performing volunteer work without compensation; and

(2) any employee, agent, or representative of the United States government while engaged in the performance of authorized duties or functions.

Section 205. Section Amended.

Section 58-41-2, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is amended to read:

58-41-2. Definitions.

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

(1) "ASHA" means the American Speech and Hearing Association.

(2) "Association" means the Utah Speech and Hearing Association.

(3) "Audiologist" means a person who practices audiology or who holds himself out to the public directly or indirectly by any means, act, title, identification, performance, method, or procedure as one who nonmedically examines, measures, tests, interprets, evaluates, assesses, diagnoses, directs, instructs, treats, counsels, prescribes, and recommends for persons affected by or suspected of having disorders of or conditions of impaired hearing, or assists persons in achieving the reception, communication, and perception of sound and determines the range, nature, and degree of hearing function related to communication needs, or provides audiology services and uses audio electronic equipment and provides audiology services and consultation regarding noise control and hearing conservation, conducts tests and interpretation of vestibular function and nystagmus, prepares ear impressions and provides ear molds, aids, accessories, prescriptions, and prostheses for hearing, evaluates sound environment and equipment, and calibrates instruments used in testing and supplementing auditory function. A person is deemed to be an audiologist if he directly or indirectly provides or offers to provide these services or functions set forth in Subsection (4) or any related function.

(4) "Audiology" means the application of principles, methods, and procedures, and measuring, testing, examining, interpreting, diagnosing, predicting, evaluating, prescribing, consulting, treating, instructing, and researching, which is related to hearing, vestibular function, and the disorders of hearing, to related language and speech disorders and to aberrant behavior related to loss of hearing or vestibular function, for the purpose of preventing and modifying disorders related to loss of hearing or vestibular function, and planning, directing, managing, conducting, and participating in hearing conservation, evoked potentials evaluation, nonmedical tinnitus evaluation or treatment, noise control, habilitation, and rehabilitation programs, including hearing aid evaluation, assistive listening device evaluation, prescription, preparation, and dispensing, and auditory training and lip reading.

(5) "Audiology aide" means an individual who:

(a) meets the minimum qualifications established by the board for audiology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing an audiologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed audiologist who accepts responsibility for the acts and performance of that audiology aide under this chapter.

(6) "Board" means the Speech-language Pathology and Audiology Licensing Board [~~established in accordance with~~] created under Section 58-41-6.

(7) "CCC" means the certificate of clinical competence awarded by the American Speech and Hearing Association.

(8) "CFY" means the clinical fellowship year prescribed by ASHA.

(9) "Disorder" means the condition of decreased, absent, or impaired auditory, speech, voice, or language function.

(10) "Hearing aid dealer" means one who sells, repairs, and adjusts hearing aids.

(11) "Licensed audiologist" means any individual to whom a license has been issued under this chapter if that license is in force and has not been suspended or revoked.

(12) "Licensed speech-language pathologist" means any individual licensed under this chapter whose license is in force and has not been suspended or revoked.

(13) "Person" means any individual, group, organization, partnership, or corporate body, except

that only an individual may be licensed under this chapter.

(14) "Practice of audiology" means rendering or offering to render to individuals, groups, agencies, organizations, industries, or the public any performance or service in audiology.

(15) "Practice of speech-language pathology" means rendering, prescribing, or offering to render to individuals, groups, agencies, organizations, industries or the public any service in speech-language pathology.

(16) "Prescribe" means to:

(a) determine, specify, and give the directions, procedures, or rules for a person to follow in determining and ordering the preparation, delivery, and use of specific mechanical, acoustic, or electronic aids to hearing or speech; and

(b) determine or designate a remedy for a person.

(17) "Prescription" means a written or oral order for the delivery or execution of that which has been prescribed.

(18) "Speech-language pathologist" means:

(a) a person who practices speech-language pathology or who holds himself out to the public by any means, or by any service or function he performs, directly or indirectly, or by using the terms "speech-language pathologist," "speech-language therapist," "language disability specialist," or any variation, derivation, synonym, coinage, or whatever expresses, employs, or implies these terms, names, or functions; or

(b) a person who performs any of the functions described in Subsection (19) or any related functions.

(19) "Speech-language pathology" means the application of principles, methods, and procedures for the examination, measurement, prevention, testing, identification, evaluation, diagnosis, treatment, instruction, modification, prescription, restoration, counseling, habilitation, prediction, management, and research related to the development and the disorders or disabilities of human communication, speech, voice, language, cognitive communication, or oral, pharyngeal, or laryngeal sensorimotor competencies, for the purpose of identifying, evaluating, diagnosing, prescribing, preventing, managing, correcting, ameliorating, or modifying those disorders and their effects in individuals or groups of individuals.

(20) "Speech-language pathology aide" means an individual who:

(a) meets the minimum qualifications established by the board for speech-language pathology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing a speech-language pathologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed speech-language pathologist who accepts the responsibility for the acts and performances of that speech-language pathology aide while working under this chapter.

(21) "Treatment" means the services of a speech-language pathologist or audiologist to examine, diagnose, correct, or ameliorate speech or hearing disorders, abnormalities, behavior, or their effects.

(22) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which a license is achieved or maintained under this chapter;

(b) utilizing substandard or inappropriate facilities or equipment; or

(c) treating any disorder for which the licensee has not had the necessary training and experience.

Section 206. Section Amended.

Section 58-41-4, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is amended to read:

58-41-4. Exemptions from chapter.

(1) [~~Nothing in this chapter may be construed as preventing~~] In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of speech-language pathology and audiology subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a qualified person licensed in this state under any law existing in this state prior to May 13, 1975, from engaging in the profession for which he is licensed;

(b) a medical doctor, physician, or surgeon licensed in this state, from engaging in his specialty in the practice of medicine;

(c) a hearing aid dealer or salesman from selling, fitting, adjusting, and repairing hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may not conduct audiologic testing on persons under the age of 18 years except under the direct supervision of an audiologist licensed under this chapter;

(d) a person who has obtained a valid and current credential issued by the Utah State Office of Education while performing specifically the functions of a speech-language pathologist or audiologist, in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and only in the academic interest of the schools by which employed in this state;

(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services in no way in his own interest, solely within the confines of and under the

direction and jurisdiction of and in the specific interest of that agency or subdivision;

(f) a person identified in Subsections (d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed; however, such person may elect to be subject to the requirements of this chapter;

(g) a person employed by accredited colleges or universities as a speech-language pathologist or audiologist from performing the services or functions described in this chapter when they are:

(i) performed solely as an assigned teaching function of employment;

(ii) solely in academic interest and pursuit as a function of that employment;

(iii) in no way for their own interest; and

(iv) provided for no fee, monetary or otherwise, other than their agreed institutional salary;

(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided those activities constitute an assigned, directed, and supervised part of his curricular study, and in no other interest, and that all examinations, tests, histories, charts, progress notes, reports, correspondence, and all documents and records which he produces be identified clearly as having been conducted and prepared by a student in training and that such a person is obviously identified and designated by appropriate title clearly indicating the training status and provided that he does not hold himself out directly or indirectly as being qualified to practice independently;

(i) a person trained in elementary audiometry and qualified to perform basic audiometric tests while employed by a licensed medical doctor to perform solely for him while under his direct supervision, the elementary conventional audiometric tests of air conduction screening, air conduction threshold testing, and tympanometry;

(j) a person while performing as a speech-language pathologist or audiologist for the purpose of obtaining required professional experience under the provisions of this chapter, if he meets all training requirements and is professionally responsible to and under the supervision of a speech-language pathologist or audiologist who holds the CCC or a state license in speech-language pathology or audiology. This provision is applicable only during the time that person is obtaining the required professional experience;

(k) a corporation, partnership, trust, association, group practice, or like organization engaging in speech-language pathology or audiology services without certification or license, if it acts only through employees or consists only of persons who are licensed under this chapter;

(l) performance of speech-language pathology or audiology services in this state by a speech-language pathologist or audiologist who is not a resident of this state and is not licensed under this chapter if those services are performed for no more than one month in any calendar year in association with a speech-language pathologist or audiologist licensed under this chapter, and if that person meets the qualifications and requirements for application for licensure described in Section 58-41-5; and

(m) a person certified under Title 53A as a teacher of the deaf, from providing the services or performing the functions he is certified to perform.

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

Section 207. Section Amended.

Section 58-41-6, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is amended to read:

58-41-6. Board.

(1) There is [~~hereby~~] created [~~a~~] the Speech-language Pathologist and Audiologist Licensing Board, [~~which shall be the representative body~~] consisting of four speech-language pathologists [~~and~~] or audiologists [~~in this state~~] and one member of the general public.

[~~(2) The board shall consist of four speech-language pathologists or audiologists and one lay member, all but one of whom shall be licensed to provide and engaged in providing speech-language pathology or audiology services to the public as a major interest. One member of the board shall be in private practice as a primary professional interest and activity or shall be a provider of speech-language pathology or audiology services at large, one shall be from a nonschool clinic setting which provides ongoing speech-language pathology or audiology services, one shall be a provider of speech-language pathology or audiology services in the elementary or secondary schools, one shall be from a speech-language pathology and audiology college or university training program, and one shall be a lay member. At no time may the board consist of more than two members who represent speech-language pathology or more than two members who represent audiology.~~]

(a) The nonpublic members of the board shall be licensed to provide and shall be engaged in providing speech-language pathology or audiology services to the public as a major interest as follows:

(i) one member shall be in private practice as a primary professional interest and activity or shall be a provider or speech-language pathology or audiology services at large;

(ii) one member shall be from a nonschool clinic setting which provides ongoing speech-language pathology or audiology services;

(iii) one member shall be a provider of speech-language pathology and audiology services in the elementary or secondary schools; and

(iv) one member shall be a provider of a speech-language pathology and audiology college or university training program.

(b) At no time may the board consist of more than two members who represent speech-language pathology or more than two members who represent audiology.

[~~(3)~~] (2) The board shall be appointed and serve in accordance with Section [~~58-1-7~~] 58-1-201.

[~~(4)~~] (3) The duties[~~, functions,~~] and responsibilities of the board shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 208. Section Amended.

Section 58-41-8, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is amended to read:

58-41-8. Issuance of license.

Upon the recommendation of the board the division shall issue licenses in accordance with Section [~~58-1-11~~] 58-1-301.

Section 209. Section Repealed and Reenacted.

Section 58-41-9, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is repealed and reenacted to read:

58-41-9. Grounds for denial of license — Resumption of practice.

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

(2) After one year from the date of revocation of a license, application may be made to the board for relicensing.

Section 210. Section Repealed and Reenacted.

Section 58-41-12, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989, is repealed and reenacted to read:

58-41-12. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of scheduled graduate level professional training, related clinically to the profession of speech-language pathology or audiology, as may be established by the division by rule, in cooperation with the board.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 211. Section Amended.

Section 58-42-3, Utah Code Annotated 1953, as enacted by Chapter 218, Laws of Utah 1985, is amended to read:

58-42-3. Definitions.

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

(1) "Board" means the Board of Occupational Therapy [~~established~~] created in Section 58-42-14.

[~~(2) "Director" means the director of the Division of Occupational Licensing.~~]

[~~(3) "Division" means the Division of Occupational Licensing.~~]

[~~(4)~~] (2) "Individual treatment programs" means, but is not limited to, programs designed for:

(a) planning and directing specific exercises and programs to improve sensory integration and motor functioning at the level of performance neurologically appropriate for the individual's stage of development;

(b) teaching persons in skills, behaviors, and attitudes necessary for their independent, productive, emotional, and social functioning;

(c) analyzing, selecting, and adapting functional exercises to achieve and maintain the individual's optimal functioning in daily living tasks and to prevent further disability; and

(d) planning and directing specific programs to evaluate and enhance perceptual motor and cognitive skills.

[~~(5)~~] (3) "Occupational therapist" means a person who is licensed to practice occupational therapy and whose license is in good standing.

[~~(6)~~] (4) "Occupational therapy" means the functional evaluation of learning and performance skills, the implementation of individual treatment programs, and the analysis, selection, and adaption of exercises or equipment, for an individual whose abilities to perform the requirements of daily living are threatened or impaired by physical injury or disease, mental illness, developmental deficits, the aging process, or learning disabilities.

[~~(7)~~] (5) "Occupational therapy assistant" means a person who is licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist and whose license is in good standing.

[~~(8)~~] (6) "Practice of occupational therapy" means rendering or offering to render to individuals,

groups, agencies, organizations, industries, or the public any service of occupational therapy.

Section 212. Section Amended.

Section 58-42-5, Utah Code Annotated 1953, as last amended by Chapter 218, Laws of Utah 1985, is amended to read:

58-42-5. Exemptions from chapter.

[~~This chapter does not prevent or restrict the practice, services, or activities of any person~~] In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of occupational therapy subject to the stated circumstances and limitations without being licensed under this chapter:

[~~(1) licensed in this state by any other law from engaging in the profession or occupation for which he is licensed;~~]

[~~(2)~~] (1) any person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if the person provides occupational therapy solely for the federal organization by which they are employed;

[~~(3) pursuing a course of study leading to a degree or certificate in occupational therapy at a board approved educational program if the activities and services constitute a part of a supervised course of study, and if the person is designated by a title which clearly indicates a status of student or trainee;~~]

[~~(4)~~] (2) any person fulfilling the field work experience requirements of Section 58-42-6 under the supervision of an occupational therapist; and

[~~(5)~~] (3) any person employed by or working under the supervision of an occupational therapist as an occupational therapy assistant[~~;~~].

[~~(6) teaching or demonstrating the practice of occupational therapy in an educational program or seminar sponsored by a licensed occupational therapist.~~]

Section 213. Section Amended.

Section 58-42-6, Utah Code Annotated 1953, as last amended by Chapter 218, Laws of Utah 1985, is amended to read:

58-42-6. Application for license — Contents — Examination.

(1) An applicant for a license as an occupational therapist or occupational therapist assistant shall file a written application on forms provided by the division, showing to the satisfaction of the division that the applicant:

(a) for occupational therapist:

(i) is of good moral character as it relates to the functions and responsibilities of the practice of occupational therapy;

(ii) has successfully completed a bachelor's degree or master's degree program in occupational therapy as approved by the board;

(iii) has successfully completed six months of supervised field work at an educational institution or in a training program approved by the board;

(iv) has passed an examination approved by the board which demonstrates his knowledge of kinesiology, anatomy, psychology, neurology, physiology, occupational therapy theory and practice, professional judgment and treatment implementation, and other subjects the board considers useful in determining the applicant's fitness to practice occupational therapy; and

(v) has paid the fee prescribed in Section 58-42-13.

(b) for occupational therapist assistant:

(i) is of good moral character as it relates to the functions and responsibilities of the practice of occupational therapy;

(ii) has successfully completed the academic requirements of an educational program in occupational therapy approved by the board;

(iii) has successfully completed two months of supervised field work at an educational institution or in a training program approved by the board;

(iv) has passed an examination approved by the board in subjects the board considers useful in determining the applicant's fitness to practice as an occupational therapy assistant; and

(v) has paid the fee prescribed in Section 58-42-13.

(2) An applicant who meets the requirements for certification as an occupational therapist by the board, without meeting the educational requirements required by the chapter may take the examination to be licensed as an occupational therapist.

[~~(3) The board may provide for the issuance of a temporary license for a period not to exceed 18 months to otherwise qualified persons who make application for a license under this chapter.~~]

Section 214. Section Repealed and Reenacted.

Section 58-42-10, Utah Code Annotated 1953, as last amended by Chapter 218, Laws of Utah 1985, is repealed and reenacted to read:

58-42-10. Grounds for denial of license — Disciplinary proceedings.

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

Section 215. Section Amended.

Section 58-42-13, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-42-13. Fees — Collection.

(1) The Department of Commerce shall set fees pursuant to Subsection 63-38-3 (2) for the following:

(a) examination;

(b) reciprocity;

(c) initial license;

(d) license renewal; and

(e) late filing of the renewal fee.

(2) Fees shall be collected by the Department of Commerce.

[~~(3) Each license issued under this chapter expires on December 31 of each odd-numbered year.~~]

Section 216. Section Enacted.

Section 58-42-13.5, Utah Code Annotated 1953, is enacted to read:

58-42-13.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 217. Section Amended.

Section 58-42-14, Utah Code Annotated 1953, as last amended by Chapter 218, Laws of Utah 1985, is amended to read:

58-42-14. Board qualifications.

(1) There is [~~established a Board of~~] created the Occupational Therapy Board consisting of four licensed occupational therapists and one public member. Each occupational therapist board member appointed after July 1, 1985, shall represent a different occupational therapist specialty from the following categories: physical disabilities, mental health, geriatrics, pediatrics, or community health.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 218. Section Amended.

Section 58-44-4, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is amended to read:

58-44-4. Definitions.

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

[~~(1) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(2) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(3) "Committee" means the committee of certified nurse midwifery.~~]

[~~(6)~~] (1) "Approved certified nurse midwifery education program" means a certified nurse midwifery education program recommended for approval by the [~~committee~~] board and certified by the director.

(2) "Board" means the Certified Nurse Midwifery Licensing Board created in Section 58-44-5.

[~~(5)~~] (3) "Certified nurse midwife" means a person licensed to practice certified nurse midwifery under this chapter.

(4) (a) "Certified nurse midwifery" means [~~(a)~~]:

(i) the care and management of essentially normal newborns and women before, during, and after pregnancy and childbirth[~~,~~]; and [~~includes (b) the provision of~~]

(ii) providing normal obstetrical and gynecological services and the rendering, undertaking, or providing of such care, management, or services, regardless of whether compensation or profit is received.

(b) The practice of midwifery is not considered the practice of medicine.

Section 219. Section Amended.

Section 58-44-5, Utah Code Annotated 1953, as enacted by Chapter 21, Laws of Utah 1979, is amended to read:

58-44-5. Board established members — Qualifications — Oath — Terms — Removal — Vacancy — Expenses.

(1) There is created a [~~committee of~~] Certified Nurse Midwifery [~~which shall be composed~~] Licensing Board consisting of two [~~persons licensed under the provisions of this act~~] certified nurse midwives and one member of the general public. The board shall be appointed and shall serve in accordance with Section 58-1-201.

(a) The board member [~~who (a) shall~~] from the general public:

(i) may not be a member of any other board [~~or committee~~] established [~~pursuant to~~] under Title 58[~~, (b) shall~~]:

(ii) may not be or have been licensed by any other board [~~or committee~~] qualified to license any health-related occupation or profession[~~, (c) is~~]:

(iii) may not be an employee of any health care facility, including [~~but not limited to~~] hospitals, nursing homes, outpatient or extended care facilities or clinics[~~, (d) is~~]:

(iv) may not be an employee of a person or of a professional corporation or partnership of persons, any of whom would be disqualified [~~pursuant to (b) above,~~] under Subsection (ii); and [~~(e) does~~]

(v) may not derive more than 10% of his [~~or her~~] livelihood from [~~the provision of~~] providing health-related services.

(b) At least one of the persons licensed under [~~the provisions of~~] this [act] chapter who is appointed to the [~~committee~~] board shall be engaged in the clinical practice of certified nurse midwifery and [shall]

may not receive more than 25% of his [~~or her~~] livelihood from employment as an instructor or director of any educational program.

(2) Members of the [~~committee~~] board shall be designated by the director from [~~those~~] names recommended by the American College of Nurse Midwives or other interested individuals or groups [~~and~~]. Board members shall be appointed by the governor.

(3) Before entering upon his [~~or her~~] duties, each [~~committee~~] board member shall file with the director an oath of office.

[~~(2)~~] (4)(a) The term of office of [~~committee~~] board members shall be three years[~~; provided, however, that of~~]. Of those board members first appointed, one of the members of the [~~committee~~] board who is licensed [~~pursuant to~~] under this [~~act~~] chapter shall be appointed for an initial term of one year [~~and the~~]. The public member shall be appointed for an initial term of two years.

(b) The governor may remove from office any [~~committee~~] board member for neglect of duty, incompetence, or unprofessional conduct.

(c) In the event that a vacancy occurs due to any cause other than the expiration of the vacating member's term of office, a successor shall be appointed from that category vacated for the remaining portion of the unexpired term.

[~~(3)~~] (5) Each [~~committee~~] board member shall receive a per diem allowance, a mileage allowance, and reimbursement of other travel expenses [~~but the~~]. The amounts expended for such allowances and expenses [~~shall~~] may not exceed the amount of the fees collected under this [~~act~~] chapter.

(6) The board shall meet annually to elect from its members a chairperson. It may hold any other special meetings as it considers necessary. A majority of the board constitutes a quorum at any meeting.

(7) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 220. Section Amended.

Section 58-44-7, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-44-7. License — Application — Requirements — Examination — Issuance — Temporary permit — Fees — Use of title "certified nurse midwife" or "C.N.M." — Existing licenses or certificates — Renewal.

(1) Each applicant for a license to practice midwifery shall submit to the division a written, verified statement and other evidence required by the division or the [~~committee~~] board that the applicant has been licensed as a registered nurse by the state and has successfully completed an approved certified nurse midwifery education program.

(2) Upon the applicant successfully passing a written examination approved by the [~~committee~~] board and meeting other licensing requirements of the [committee] board, and upon recommendation by the [~~committee~~] board, the division shall issue to the applicant a license to practice certified nurse midwifery. This license shall be in lieu of all other licenses authorized by Title 58 and no person licensed under this chapter is required to obtain any other license in order to practice certified nurse midwifery or nursing.

(3) A temporary permit to practice certified nurse midwifery within the state may be granted for a period not exceeding six months to a graduate of an approved certified nurse midwifery education program who in the opinion of the [~~committee~~] board meets all requirements for licensure except the passing of the examination required by this chapter.

(4) The [~~Department of Commerce~~] department shall collect fees for the following:

(a) applications for licensure;

(b) reexaminations;

(c) letters of certification or other forms issued to meet written requests;

(d) applications for temporary permits;

(e) biennial renewals;

(f) applications for reinstatement after revocation, suspension, or expiration of licensure; and

(g) such other programs, documents, or actions as necessary.

[~~(5) Each license issued under this section shall expire on December 31 of each odd-numbered year.~~]

[~~(6)~~] (5) The department shall require fees sufficient to pay the expense of the [~~committee~~] board, including allowances for per diem expenses, mileage reimbursement, and other travel expenses authorized under this chapter. The fees may not exceed an amount necessary to meet the cost of providing the services, programs, and regulatory activities of the [~~committee~~] board as established by the [~~Department of Commerce~~] department pursuant to Subsection 63-38-3 (2).

[~~(7)~~] (6) Upon recommendation of the [~~committee~~] board, the division may waive the requirement of a written examination for any applicant licensed to practice certified nurse midwifery by any state which itself permits waiver of examination requirements for persons licensed pursuant to this chapter.

[~~(8)~~] (7) Any person who holds a license to practice certified nurse midwifery in this state may use the title "certified nurse midwife" and the abbreviation "C.N.M." No other person may assume any title, or use any abbreviation, words, letters, signs, or devices to indicate that the person using them is licensed under this chapter.

[~~(9) The license of each person licensed under this chapter shall be renewed biennially.~~]

(8) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be ex-

tended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(9) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 221. Section Repealed and Reenacted.

Section 58-44-8, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is repealed and reenacted to read:

58-44-8. Grounds for denial of license — Disciplinary proceedings.

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

Section 222. Section Repealed and Reenacted.

Section 58-44-9, Utah Code Annotated 1953, as enacted by Chapter 21, Laws of Utah 1979, is repealed and reenacted to read:

58-44-9. Exemptions.

Persons exempted from licensure under Section 58-1-307 may engage in the practice of certified nurse midwifery subject to the stated circumstances and limitations without being licensed under this chapter.

Section 223. Section Amended.

Section 58-46-2, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is amended to read:

58-46-2. Definitions.

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

(1) [~~"Committee"~~] "Board" means the [~~advisory committee of hearing aid dealers established under Chapters 1 and 46 of this title, which shall consist of one physician specializing in diseases of the ear, two licensed hearing aid specialists who are certified members of the National Hearing Aid Society or who are approved by the Utah Hearing Aid Society, and two persons either utilizing a hearing aid or a parent or guardian of a child utilizing a hearing aid~~] Hearing Aid Specialist Licensing Board created in Section 58-46-3.5.

[~~(2) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(3)~~] (2) "Dispensing or fitting hearing aids" means the commercial or noncommercial selection, adaptation, or sale of hearing aids, including the testing of hearing for those purposes and to determine hearing aid candidacy, the making of impressions for earmolds, and counseling and instruction pertaining to that selection, adaptation, or sale.

[~~(4)~~] (3) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing, and any of its parts, attachments, or accessories, excluding batteries and cords.

[~~(5)~~] (4) "Hearing aid specialist" means a person who engages in the practice of dispensing or fitting hearing aids.

[~~(6)~~] (5) "License" means a license issued under this chapter for a hearing aid specialist.

[~~(7)~~] (6) "Sale" includes any transfer of title or of the right of use by lease, bailment, or any other means, excluding wholesale transactions with dealers and distributors.

[~~(8)~~] (7) "Temporary license" means a permit issued while an applicant for a license is in training or awaiting examination to become a licensed hearing aid specialist.

(8) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) selling, bartering, procuring, counterfeiting, or altering a license with the intent that the license may be fraudulently used for an otherwise lawful purpose of this chapter;

(b) using or attempting to use any license referred to in Subsection (a); and

(c) selling a hearing aid to a minor, or any person in a mental institution, hospital, nursing home, convalescent home, or similar institution unless there is also present an adult person who has no business relationship to the licensee.

(9) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;

(b) representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that representation is not true, or using the words "doctor," "clinic," or similar words, abbreviations or symbols that tend to connote the medical profession when the connotation is not accurate;

(c) advertising a manufacturer's product, or using a manufacturer's name or trademark in a manner that implies a relationship with the manufacturer when no relationship exists;

(d) directly or indirectly offering, or permitting or causing to be offered, anything of value to any person who advises another in a professional capacity as an inducement to influence that person, or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid specialist, or influencing persons to refrain from dealing in the products of competitors;

(e) selling a hearing aid to a person who has not been given tests utilizing appropriate established

procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids; and

(f) failing to supervise a trainee as required in this chapter or to accept responsibility for the actions of a trainee relating to the fitting and selling of hearing aids.

Section 224. Section Amended.

Section 58-46-3, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is amended to read:

58-46-3. Persons exempt from chapter.

[~~This chapter does not prevent or restrict the practice, services, or activities of the following persons~~] In addition to the exemptions from licensure in Section 58-1-307, the following may engage in practice under this chapter subject to the stated circumstances and limitations without being licensed so long as they are not involved in the direct sale of hearing aids:

(1) any person licensed in this state by any other law, to engage in practice as a physician, surgeon, nurse, audiologist, or other profession which includes such services as part of that practice;

(2) any person engaged in acts as part of, and in connection with, his duties on behalf of any local, state, or federal governmental agency or subdivision, or any educational institution, which regularly provides such services;

(3) any person engaged in the practice of measuring human hearing and the selection of hearing aids if [~~that person~~] he or the organization employing [~~that person~~] him does not dispense hearing aids or accessories relative to that practice, other than earmolds; or

(4) any organization engaged in the practice of dispensing or fitting hearing aids at retail, without a license, so long as:

(a) it maintains an established business address[~~,~~];

(b) any actual dispensing or fitting of hearing aids is conducted by individuals who are licensed under this chapter[~~,~~]; and [~~that person~~]

(c) the organization annually files a list with the division of all licensed individuals [~~so~~] employed by the organization together with a statement that [~~it~~] the organization submits itself to the rules of the division and to this chapter as [~~deemed applicable by~~] the board or the division determines this chapter or the rules to apply to the organization.

Section 225. Section Enacted.

Section 58-46-3.5, Utah Code Annotated 1953, is enacted to read:

58-46-3.5. Board.

(1) There is created the Hearing Aid Specialist Licensing Board consisting of one physician, two hearing aid specialists, and two hearing aid consumers.

(a) The physician member of the board shall be a physician specializing in diseases of the ear;

(b) The two hearing aid specialists members of the board shall be either certified members of the National Hearing Aid Society or approved by the Utah Hearing Aid Society.

(c) The two hearing aid consumer members of the board shall be persons either utilizing a hearing aid or a parent or guardian of a person utilizing a hearing aid.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 226. Section Amended.

Section 58-46-4, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is amended to read:

58-46-4. Licensing requirements — Application — Examination — Temporary license — Fees.

(1) Each applicant for license under this chapter shall make written application to the division, on forms prepared and furnished by the [~~committee~~] division, together with the initial license fee and any other information the [~~committee requires, including, but not limited to~~] division in collaboration with the board requires including:

(a) satisfactory evidence that the applicant is at least 18 years of age, of good physical and mental health, and of good moral character;

(b) the residence and business addresses of the applicant, the name under which business shall be conducted and, if the business is a partnership, the name and residence addresses of each of the partners; and

(c) satisfactory evidence that the applicant is a resident of this state.

(2) A license shall be granted to any applicant satisfactorily complying with Subsection (1), upon providing satisfactory evidence of completion of a high school education, or its equivalent, and upon providing satisfactory completion of an examination prepared by or pursuant to the direction of the [~~committee~~] division in collaboration with the board.

(3) A temporary license to engage in dispensing or fitting hearing aids for one year, under the supervision of a licensed hearing aid specialist, shall be issued to any applicant satisfactorily complying with Subsection (1) and providing a written agreement, on a form provided by the board, whereby a licensee agrees to be responsible for the supervision and training of the applicant at the licensee's place of business. The temporary license may be renewed once for an additional one-year period for an applicant who has not successfully completed the required examination within that initial one-year period.

(4) A temporary license to engage in dispensing or fitting hearing aids for one year shall be issued to

any applicant satisfactorily complying with Subsection (1), who intends to enter into a hearing aid dealership as a proprietor, partner, or manager of a corporation, if he has been principally engaged in dispensing or fitting hearing aids for a total period of two years within the three years immediately preceding that application.

[~~(5) All applications for renewal shall be accompanied by the appropriate fees determined by the Department of Commerce pursuant to Subsection 63-38-3(2) and by a certificate of calibration of the applicant's audiometers.~~]

Section 227. Section Enacted.

Section 58-46-4.5, Utah Code Annotated 1953, is enacted to read:

58-46-4.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) completion of continuing education which may be required under this chapter; and

(b) calibration of the applicant's audiometers.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 228. Section Amended.

Section 58-46-5, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985, is amended to read:

58-46-5. Rules.

In addition to those duties provided under Title 58, Chapter 1, the [~~committee~~] division in collaboration with the board shall establish rules relative to the following:

(1) areas of competency to be examined, and practical tests of proficiency to be given;

(2) administration of funds and hearing aids from, and the operation of, the hearing aid bank established under Section 58-46-7;

(3) other areas relative to the licensing and regulation of hearing aid specialists which the [committee may deem] division in collaboration with the board determines to be appropriate; and

(4) continuing education programs required as a prerequisite to the renewal of any license after December 31, 1980, including any one of the following:

(a) educational programs conducted by the [committee] board;

(b) [~~committee~~] approved training schools conducted by hearing aid manufacturers or their representatives;

(c) [~~committee~~] approved training sessions conducted by the National Hearing Aid Society or similar organizations; or

(d) other educational means approved by the board.

Section 229. Section Repealed and Reenacted.

Section 58-46-6, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is repealed and reenacted to read:

58-46-6. Grounds for denial of license — Disciplinary proceedings.

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

Section 230. Section Repealed and Reenacted.

Section 58-46-9, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1979, is repealed and reenacted to read:

58-46-9. Penalty for unlawful conduct.

Any person who violates the unlawful conduct provisions defined in Section 58-1-501 and Subsection 58-46-2(8) is guilty of a class B misdemeanor.

Section 231. Section Amended.

Section 58-46-10, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1979, is amended to read:

58-46-10. Receipt to accompany every hearing aid sold — Contents.

Every hearing aid sold in this state shall be accompanied by a written receipt including the following information:

(1) A statement that the hearing aid is either "new," "used," or "reconditioned";

(2) The following statement in type no smaller than the largest type used in the body of the receipt: "The purchaser has been advised that any examinations or representations made by a licensed hearing aid specialist in connection with the dispensing or fitting of this hearing aid is not an examination, diagnosis or prescription by a person licensed to practice medicine in this state and should not be regarded as a medical opinion";

(3) A statement setting forth the rights of hearing aid consumers as set forth in Section [58-46-9 of this act] 58-46-11; and

(4) Such other information as the [committee] board may, by [regulation] rule, prescribe.

Section 232. Section Amended.

Section 58–47a–2, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990, is amended to read:

58–47a–2. Definitions.

[As] In addition to the definitions in Section 58–1–102, as used in this chapter:

(1) "Board" means the Utah Board of Massage created in Section 58–46a–3.

[~~(2) "Department" means the Department of Commerce.~~]

[~~(3) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(4) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(5)~~] (2) "Massage" means the practice whereby a person either by the hands or with a mechanical or electrical apparatus administers to another person effleurage (stroking), friction (rubbing), petrissage (kneading), tapotement (percussion), and vibration (shaking or trembling), or variations of these, and the use of rehabilitative procedures involving the muscles by nonintrusive means and without spinal manipulation. The practice of massage may include the use of oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, or cabinet baths.

[~~(6)~~] (3) "Massage technician" means a person who is licensed under this chapter to engage in or to teach the practice of massage for a fee, for a gratuity, or for a free demonstration.

(4) "Unprofessional conduct" as defined in Section 58–1–501 and as may be further defined by rule includes:

(a) establishing, maintaining, operating, or assisting in the establishment or operation of any place of business for the purpose of performing massage without first obtaining a business license where required by the political subdivision in which the place of business is located;

(b) failing to comply with the local ordinances of the political subdivision where the licensee is practicing massage relating to the regulation of massage establishments;

(c) failing to comply with the health or sanitation codes of the state or its political subdivisions;

(d) failing to properly supervise an apprentice;

(e) failing to maintain mechanical or electrical equipment in a safe operating condition;

(f) failing to adequately monitor patrons utilizing steam rooms, dry heat cabinets, or water baths; and

(g) illegally prescribing medicine or drugs.

Section 233. Section Amended.

Section 58–47a–3, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990, is amended to read:

58–47a–3. Board composition, duties, and responsibilities.

(1) There is created [a] the Board of Massage consisting of four massage technicians and one member of the general public. [It]

(2) The board shall be appointed and serve in accordance with Section [58–1–7] 58–2–201.

[~~(2)~~] (3) The [~~board~~] duties[~~, functions,~~] and responsibilities of the board shall be in accordance with Sections [~~58–1–8~~] 58–1–202 and [~~58–1–9~~] 58–1–203.

Section 234. Section Repealed and Reenacted.

Section 58–47a–8, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990, is repealed and reenacted to read:

58–47a–8. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two–year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58–1–308.

Section 235. Section Amended.

Section 58–47a–9, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990, is amended to read:

58–47a–9. Exemptions.

(1) [~~The~~] In addition to the exemptions from licensure in Section 58–1–307, the following persons [~~are exempt from~~] may engage in practice under this chapter subject to the stated circumstances and limitations without being licensed:

(a) physicians licensed under [~~the~~] Title 58, Chapter 12, Part 5, Medical Practice Act;

(b) nurses licensed under [~~the~~] Title 58, Chapter 31, Nurse Practice Act;

(c) physical therapists licensed under [~~the~~] Title 58, Chapter 24a, Physical Therapy Practice Act;

(d) osteopaths licensed under [~~the Medical Practice Act~~] Title 58, Chapter 12, Part 1, Osteopathic Medicine Licensing Act;

(e) chiropractors licensed under [~~the~~] Title 58, Chapter 12, Part 7, Chiropractic Improvements Act;

(f) hospital staff members employed by a hospital who practice massage as part of their responsibilities;

(g) school athletic trainers employed by an educational institution who practice massage as part of their responsibilities;

(h) students in training enrolled in a massage therapy school approved by the division; and

(i) aestheticians, as defined by the division, who are members of or affiliated with an association, organization, or other similar entity approved by the division and who meet training standards approved by the division.

(2) Nothing in this chapter may be construed as authorizing any person licensed as a massage technician to engage in any manner in the practice of medicine as defined by the laws of this state.

(3) Nothing in this chapter may be construed to:

(a) create or require insurance coverage or reimbursement for massage from third party payors if any such coverage did not exist on or before February 15, 1990; or

(b) prevent any insurance carrier from offering coverage for massage.

Section 236. Section Repealed and Reenacted.

Section 58-47a-10, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990, is repealed and reenacted to read:

58-47a-10. Grounds for denial of license — Disciplinary proceedings.

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

Section 237. Section Amended.

Section 58-49-2, Utah Code Annotated 1953, as enacted by Chapter 192, Laws of Utah 1986, is amended to read:

58-49-2. Definitions.

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

(1) "Board" means the Dietitian Board [~~established under this chapter~~] created in Section 58-49-3.

(2) "Certified dietitian" means a person who is certified by the division as meeting the certification requirements provided in this chapter.

(3) "Commission on Dietetic Registration" means the credentialing component of the American Dietetic Association.

(4) "Dietetics" means the integration and application of principles derived from the sciences of food for the development, management, and provision of dietary services for individuals and groups for meeting their health care needs. "Dietetics" includes[; but ~~is not limited to~~]:

(a) the evaluation of a person's dietary status;

(b) the advising and education of persons on dietary needs; and

(c) the evaluation of needs, implementation of systems to support needs, and maintenance of appropriate standards of quality in food and dietary service for individuals, groups, or patients in licensed institutional facilities or in private office settings.

[~~(5) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(6)~~] (5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes[~~, but is not limited to: (a) making fraudulent representations in the practice of dietetics; (b) advertising by means of knowingly false, deceptive, or misleading statements; (c) permitting one's certificate to be used by another; (d) the making of false or misleading statements in any advertisement of treatment or business; (e) failing to comply with the provisions of this chapter; (f) violating any of the standards of professional responsibility as provided by rule of the board in collaboration with the division; (g) obtaining a certificate by means of fraud, misrepresentation, or concealment of material facts; (h) being convicted of a felony; (i) violating any lawful order or rule adopted by the division; and (j)~~] failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which certification is achieved or maintained under this chapter.

Section 238. Section Repealed and Reenacted.

Section 58-49-3, Utah Code Annotated 1953, as enacted by Chapter 192, Laws of Utah 1986, is repealed and reenacted to read:

58-49-3. Board created — Duties.

(1) There is created the Dietitian Board consisting of four certified dietitians and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 239. Section Repealed and Reenacted.

Section 58-49-8, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is repealed and reenacted to read:

58-49-8. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 240. Section Enacted.

Section 58-49-11, Utah Code Annotated 1953, is enacted to read:

58-49-11. Grounds for denial of license — Disciplinary proceedings.

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

Section 241. Section Amended.

Section 58-50-2, Utah Code Annotated 1953, as last amended by Chapters 120 and 206, Laws of Utah 1991, is amended to read:

58-50-2. Definitions.

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

(1) "Board" means the Private Probation Provider Licensing Board created in Section 58-50-3.

(2) "Court" means the particular court which orders probation in a case.

[~~(3) "Department" means the Department of Commerce.~~]

[~~(4) "Director" means the Director of the Division of Occupational and Professional Licensing.~~]

[~~(5) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(6)~~] (3) "Private probation" means the preparation of presentence investigation reports and the performance of supervision services by a private probation provider and funded by a court-ordered fee, to be paid by the defendant, pursuant to Section 77-18-1.

[~~(7)~~] (4) "Private probation provider" means any private individual preparing presentence investigation reports or providing probation supervision pursuant to court order under Section 77-18-1 and who is licensed under this chapter, provided that services are limited to minor offenses and misdemeanor violations. A private probation provider does not have the authority of a peace officer.

(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failure to disclose any financial or personal interest or prior relationship with parties that might affect the private probation provider's impartiality or otherwise constitute a conflict of interest;

(b) providing contract probation services when any financial or personal interest or prior relationship with parties might affect the private probation provider's impartiality or otherwise constitute a conflict of interest;

(c) failure to clearly define to the offender the services provided by the private probation provider, the rules of conduct, the criteria used, and the fees charged;

(d) failure to provide adequate supervision, or supervision as ordered by the court, as determined by the division in collaboration with the board; and

(e) failure to comply with the standards specified in Section 58-50-9.

Section 242. Section Amended.

Section 58-50-3, Utah Code Annotated 1953, as last amended by Chapter 120, Laws of Utah 1991, is amended to read:

58-50-3. Board — Membership — Duties.

(1) There is created the Private Probation Provider Licensing Board. The board shall consist of five members as follows:

(a) one member representing the administrative office of the courts;

(b) one member representing the Department of Corrections;

(c) two members licensed as private probation providers; and

(d) one member from the general public.

(2) The board shall be appointed by the governor and serve in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 243. Section Amended.

Section 58-50-4, Utah Code Annotated 1953, as last amended by Chapters 120 and 206, Laws of Utah 1991, is amended to read:

58-50-4. License required — License classifications.

(1) An individual may not engage in practice as a private probation provider unless licensed or exempted from licensure under this chapter.

[~~(1)~~] (2) The division shall issue to a person qualified for licensure under the provisions of this chapter a license as a private probation provider.

[~~(2) It is unlawful for a person to engage in business as a private probation provider within the state without first obtaining a license in accordance with the provisions of this chapter or unless specifically exempted as set forth in Subsection (4).~~]

[~~(3) A person who engages in business regulated under this chapter as a private probation provider without a valid license issued in accordance with the provisions of this chapter is guilty of a class A misdemeanor.~~]

[~~(4) The following persons may engage in probation supervision services without being licensed under this chapter as a private probation provider:~~]

[~~(a) employees of the Department of Corrections who perform probation services as part of their normal duties and responsibilities;~~]

[~~(b) members of the armed forces and employees, agents, or representatives of the federal government while acting in their official capacity; and~~]

[~~(c) agencies of local government, pursuant to Section 77-18-1.~~]

Section 244. Section Repealed and Reenacted.

Section 58-50-6, Utah Code Annotated 1953, as last amended by Chapter 120, Laws of Utah 1991, is repealed and reenacted to read:

58-50-6. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of completion of continuing education as required under this chapter.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 245. Section Repealed and Reenacted.

Section 58-50-7, Utah Code Annotated 1953, as enacted by Chapter 124, Laws of Utah 1990, is repealed and reenacted to read:

58-50-7. Grounds for denial of license — Disciplinary proceedings.

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

Section 246. Section Enacted.

Section 58-50-10, Utah Code Annotated 1953, is enacted to read:

58-50-10. Exceptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in probation supervision services subject to the stated circumstances and limitations without being licensed under this chapter:

(1) employees of the Department of Corrections while performing probation services as part of their normal duties and responsibilities;

(2) members of the armed forces and employees, agents, or representatives of the federal government while acting in their official capacity; and

(3) agencies of local government, pursuant to Subsection 77-18-1(1)(a)(ii).

Section 247. Section Amended.

Section 58-53-2, Utah Code Annotated 1953, as enacted by Chapter 141, Laws of Utah 1988, is amended to read:

58-53-2. Definitions.

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

(1) "Board" means the Landscape Architects Board established under this chapter.

[~~(2) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(3)~~] (2) "Practice of landscape architecture" means rendering or offering to render any of the following services for the purpose of landscape preservation, development, or enhancement:

(a) investigation, selection, and allocation of land and water resources for appropriate use;

(b) preparation of feasibility studies;

(c) formulation of graphic and written criteria to govern the planning and design of land construction programs;

(d) preparation, review, and analysis of master plans for land use and development, production of overall site plans, landscape grading, and landscape drainage plans, irrigation plans, planting plans, and construction details;

(e) producing specifications, cost estimates, and reports for land development;

(f) collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed;

(g) negotiation and arrangement for execution of land area projects; and

(h) field observation and inspection of land area construction, restoration, and maintenance.

(3) "Unlawful conduct" as defined in Section 58-1-501, includes using the title landscape architect or any other description, words, letters, or abbreviation indicating that the person is a landscape architect when the person is not licensed as a landscape architect under this chapter.

(4) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes[~~, but is not limited to, any one or more of the following~~]:

(a) affixing a seal or allowing a seal to be affixed to any document of which the landscape architect was neither the author nor in responsible charge of preparation; and

(b) having a pecuniary interest in the performance of the contract for the work designed, planned, or supervised by the landscape architect without the knowledge and consent of the person employing the landscape architect[~~:~~].

[~~(c) procuring any contract in the practice of landscape architecture by fraud or misrepresentation;~~]

[~~(d) failing to exercise reasonable care and skill in the rendering of landscape architectural services;~~]

[~~(e) dishonest acts done by a landscape architect in the practice of landscape architecture;~~]

[~~(f) conviction of a criminal offense involving moral turpitude;~~]

[~~(g) fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license as a landscape architect;~~]

[~~(h) fraud or deceit in the practice of landscape architecture;~~]

[~~(i) violation of the provisions of this chapter or any rules adopted by the division; or~~]

[~~(j) suspension or revocation of the landscape architect's license in another state or jurisdiction.~~]

Section 248. Section Repealed and Reenacted.

Section 58-53-3, Utah Code Annotated 1953, as enacted by Chapter 141, Laws of Utah 1988, is repealed and reenacted to read:

58-53-3. Board.

(1) There is created the Landscape Architects Board consisting of four landscape architects and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

Section 249. Section Repealed and Reenacted.

Section 58-53-4, Utah Code Annotated 1953, as last amended by Chapter 18, Laws of Utah 1989, is amended to read:

58-53-4. Requirements for licensure.

(1) An applicant for a license to practice landscape architecture under this chapter shall:

(a) submit to the division a written application on a form prescribed by the division;

(b) pay a fee as determined by the department under Subsection 63-38-3 (2);

[~~(b)~~] (c) have completed a high school course of study or its equivalent approved by the division;

[~~(c)~~] (d) (i) have graduated from a nationally accredited school, college, or university approved by the division, having successfully completed a curriculum in landscape architecture; or

(ii) have completed as an employee of a governmental agency or private enterprise not less than eight years of practical experience in landscape architecture under the direction of one or more landscape architects; which experience is of a grade and character acceptable to the division, at least four of the years shall be continuous and immediately precede the filing of the application; and

[~~(d)~~] (e) have passed an examination approved by the division.

(2) Satisfactory completion of each year of a landscape architectural course described in Subsection (1)[~~(c)~~] (d)(i) is equivalent to one year of experience for purposes of Subsection (1)[~~(c)~~] (d)(ii).

(3) The division may issue a license without examination to an applicant who is licensed as a landscape architect in another state or country whose license requirements are equivalent to the requirements of this state.

(4) The requirements of this section are waived for any person who applies for a license before July 1, 1989, and who has practiced landscape architecture, as defined in Subsection 58-53-2 [~~(3)~~] (2), for a period of not less than two years prior to April 25, 1988.

Section 250. Section Repealed and Reenacted.

Section 58-53-5, Utah Code Annotated 1953, as last amended by Chapter 225, Laws of Utah 1989, is repealed and reenacted to read:

58-53-5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 251. Section Amended.

Section 58-53-8, Utah Code Annotated 1953, as enacted by Chapter 141, Laws of Utah 1988, is amended to read:

58-53-8. Exemptions.

[~~(1) This chapter may not be construed to limit or extend the rights of any other occupation or profession defined elsewhere in this title.~~]

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

[~~(2) This chapter does not apply to~~] (1) an individual property owner doing work on his own premises[~~,~~]; or [~~to the business conducted in this state by any~~]

(2) a city planner, horticulturist, nurseryman, gardener, or landscape contractor, as these terms are generally used, except that these persons may not use the designation "landscape architect" or any description, words, or letters of abbreviation tending to convey the impression that he is a licensed landscape architect.

Section 252. Section Enacted.

Section 58-53-9, Utah Code Annotated 1953, is enacted to read:

58-53-9. Grounds for denial of license — Disciplinary proceedings.

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

Section 253. Section Amended.

Section 58-54-2, Utah Code Annotated 1953, as last amended by Chapter 199, Laws of Utah 1991, is amended to read:

58-54-2. Definitions.

[As] In addition to the definition in Section 58-1-102, as used in this chapter:

(1) "Board" means the Radiology Technologist Licensing Board established under this chapter.

[~~(2) "Department" means the Department of Commerce.~~]

[~~(3) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(4) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(5)~~] (2) "Practice of radiologic technology" means using radiation from a radioactive substance, radiology equipment, or any other source, in amounts beyond normal background levels, for diagnostic or therapeutic purposes on humans.

[~~(6)~~] (3) "Radiologist" means a physician certified by the American Board of Radiology, the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

[~~(7)~~] (4) "Radiology equipment" means any medical radiation device that emits ionizing or nonionizing radiation or detects that radiation for the purpose or intended purpose of:

(a) diagnosing disease or other medical conditions in humans; or

(b) treating, curing, mitigating, or preventing disease in humans.

[~~(8)~~] (5) "Radiology practical technician" means a person licensed under this chapter to engage in a practice of radiologic technology performing diagnostic radiology procedures as defined and permitted by rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, under the supervision of a radiologist or radiology practitioner.

[~~(9)~~] (6) "Radiology practitioner" means any person or individual licensed in this state as a physician and surgeon, osteopathic physician, podiatrist, chiropractic physician, dentist, or a physician's assistant, nurse practitioner, or nurse specialist practicing under the supervision of an approved supervising physician and in accordance with an approved protocol and utilization plan.

[~~(10)~~] (7) "Radiology technologist" means a person licensed under this chapter to engage in the practice of radiology technology under the supervision of a radiologist or radiology practitioner including the administration of parenteral contrast media, radionucleides, and other medications incidental to radiology procedures provided the administrations are under the direct supervision of a qualified physician and the technologist is currently certified in cardiopulmonary (CPR) and appropriate patient care procedures.

(8) Unlawful conduct" as defined in Section 58-1-501 includes using any of the following titles if not licensed as a radiology technologist under this chapter:

(a) radiology practical technician;

(b) radiology technologist;

(c) medical radiographer;

(d) radiation therapist; or

(e) nuclear medicine technologist.

(9) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) any act or omission by a person licensed under this chapter that is contrary to the instructions of the radiologist or radiology practitioner responsible for supervising the licensee and which does or reasonably could pose a threat to the health, safety, or welfare of a patient or any other person;

(b) operating any radiology equipment that is known to be unsafe or not in compliance with all applicable state requirements regulating radiology equipment;

(c) permitting any person to operate any radiology equipment who is not permitted to do so under provisions of law or who is incompetent to operate radiology equipment for any reason;

(d) revealing to any unauthorized person any information considered confidential or privileged regarding any patient;

(e) the use of any controlled substance as defined by the statutes of this state except to the extent such controlled substance is lawfully prescribed to the licensee and used in accordance with the instructions of the prescribing practitioner; and

(f) willfully and intentionally or negligently making any false statement or entry on any patient record or upon any record used to facilitate payment for radiology services.

Section 254. Section Amended.

Section 58-54-3, Utah Code Annotated 1953, as last amended by Chapters 112 and 199, Laws of Utah 1991, is amended to read:

58-54-3. Board created — Membership — Duties.

(1) There is created a Radiology Technologist Licensing Board]. [consisting of seven members as follows:

[~~(2) The board shall consist of seven members broadly representative of the state who are appointed to serve in accordance with Section 58-1-7 and include:~~]

(a) four licensed radiology technologists;

(b) one licensed radiology practical technician;

(c) one radiologist; and

(d) one member from the general public.

(2) The board shall be appointed in accordance with Section 58-1-201.

[~~(3) Members of the board shall be compensated in accordance with Section 58-1-7.~~]

[~~(4)~~] (3) The duties and responsibilities of the board shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

[~~(5)~~] (4) In accordance with Subsection [~~58-1-9~~] 58-1-203 (6), there is established an advisory peer committee to the board consisting of seven members broadly representative of the state and including:

(a) one licensed physician and surgeon who is not a radiologist and who uses radiology equipment in an office-based practice, appointed from among recommendations of the Physicians Licensing Board;

(b) one licensed physician and surgeon who is a radiologist practicing in radiology, appointed from among recommendations of the Physicians Licensing Board;

(c) one licensed dentist, appointed from among recommendations of the Dentists and Dental Hygienists Licensing Board;

(d) one licensed osteopathic physician, appointed from among recommendations of the Osteopathic Physicians Licensing Board;

(e) one licensed chiropractic physician, appointed from among recommendations of the Chiropractors Licensing Board;

(f) one licensed podiatrist, appointed from among recommendations of the Podiatry Board; and

(g) one representative of the state agency with primary responsibility for regulation of sources of radiation, recommended by that agency.

[~~(6)~~] (5) Members of the advisory peer committee shall be appointed by the director in collaboration with the board from among the recommendations.

[~~(7)~~] (6) The duties, responsibilities, and scope of authority of the advisory peer committee shall be to advise the board with respect to the board's fulfillment of their duties, functions, and responsibilities under Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 255. Section Amended.

Section 58-54-4, Utah Code Annotated 1953, as last amended by Chapter 181, Laws of Utah 1992, is amended to read:

58-54-4. License required.

(1) An individual may not engage in the practice of radiologic technology unless licensed or exempted from licensure under this chapter.

[~~(1)~~] (2) The division shall issue to persons qualified under this chapter a license in the classification of radiology technologist or radiology practical technician.

[~~(2)~~] (3) A license shall be issued without regard to any area of practice specialty as a radiology technologist. A license for a radiology practical technician may be issued certifying the practical technician for a specialty type or limited practice.

[~~(3) It is unlawful for any individual to engage in the practice of radiology technology without first obtaining a license under this chapter or without being excepted from licensure under this chapter as provided in Subsection (5).~~]

[~~(4) A person who engages in the practice of radiology technology without a license or being excepted from licensure is guilty of a class A misdemeanor.~~]

[~~(5) The following persons may engage in the practice of radiology technology subject to the stated circumstances and limitations without being licensed under this chapter:~~]

[~~(a) a radiology technologist serving in the Armed Forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in the performance of official duties as a radiology technologist and while holding a valid license to practice as a radiology technologist issued by any other state or jurisdiction approved by the division;~~]

[~~(b) persons licensed in another profession in this state who are permitted to practice radiologic technology as part of their licensed professional practice, within the scope and discipline of their profession;~~]

[~~(c) a student in training in a professional school approved by the division while performing the duties of a student, intern, or resident under the supervision of qualified staff of the school or the intern or residency program; or~~]

[~~(d) any person performing the duties of a radiology practical technician until July 1, 1993, under the supervision of a radiologist or radiology practitioner.~~]

Section 256. Section Enacted.

Section 58-54-4.5, Utah Code Annotated 1953, is enacted to read:

58-54-4.5. Exemption from licensure.

In addition to the exemptions from licensure in Section 58-1-307, any person performing the duties of a radiology practical technician prior to July 1, 1993, under the supervision of a radiologist or radiology practitioner may engage in the practice of radiology technology without being licensed under this chapter.

Section 257. Section Repealed and Reenacted.

Section 58-54-6, Utah Code Annotated 1953, as last amended by Chapter 199, Laws of Utah 1991, is repealed and reenacted to read:

58-54-6. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal, licensees shall show satisfactory evidence of each of the following renewal requirements:

(a) 16 hours of approved professional education during a two-year period, defined by rule, before renewal of a radiology technologist license.

(b) 10 hours of approved professional education during a two-year period, defined by rule, before renewal of a radiology practical technician license.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 258. Section Repealed and Reenacted.

Section 58-54-7, Utah Code Annotated 1953, as enacted by Chapter 198, Laws of Utah 1989, is repealed and reenacted to read:

58-54-7. Grounds for denial of license — Disciplinary proceedings.

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

Section 259. Section Amended.

Section 58-55-2, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-2. Definitions.

[~~The~~] In addition to the definitions in Section [~~58-1-2 apply to this chapter. As~~] 58-1-102, as used in this chapter:

(1) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under approved supervision of a master electrician or a journeyman electrician.

(2) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under approved supervision of a journeyman plumber.

(3) "Approved supervision" means the immediate supervision of apprentices by qualified licensed electricians or plumbers as a part of a planned program of training.

(4) "Board" means the Contractors Licensing Board, Electrician Licensing Board, or Plumbers Licensing Board created in Section 58-55-3, as its use is applied in context in this chapter.

(5) "Construction trade" means any trade or occupation involving construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property.

(6) "Contractor" means any person, firm, partnership, corporation, association, or other organization or any combination of them who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(a) a person who builds any structure on his own property for the purpose of sale or who builds any structure intended for public use on his own property;

(b) any person who represents himself to be a contractor by advertising or any other means;

(c) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of "construction trade";

(d) any person engaged in any construction trade for which licensure is required under this chapter; or

(e) a construction manager who performs management and counseling services on a construction project for a fee.

(7) "Electrical trade" means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(a) "Electrical trade" does not include such activities as:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

(iii) work commonly done by unskilled labor or any installations under the exclusive control of electrical utilities.

(b) For purposes of Subsection (a):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) no shop may so employ unlicensed persons in excess of the five-to-one ratio permitted by this subsection.

(8) "Employee" means an individual as defined by the division by rule giving consideration to the defi-

nition adopted by the Internal Revenue Service and the Industrial Commission of Utah.

(9) "Engage in a construction trade" means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name "contractor" or "builder" or in any other way lead a reasonable person to believe one is or will act as a contractor.

(10) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare. Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

(11) "General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical, and mechanical, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical and hire a licensed plumber or electrician as an employee. The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(12) "General engineering contractor" means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any or all of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works. However, a general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(13) "Immediate supervision" means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervising person, so as to ensure that the end result complies with applicable standards.

(14) "Individual" means a natural person.

(15) "Journeyman electrician" means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

(16) "Journeyman plumber" means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

(17) [~~(a)~~] "Master electrician" means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

[~~(b) "Master residential electrician" means a person licensed under this chapter as a master residential electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.~~]

(18) "Monetary limit on the combined amount of work which a licensee may undertake" means the maximum value of work in process which a licensee may undertake at any one time, while engaged in any work requiring licensure under this chapter.

(19) "Percentage of completion on a contract" is the percentage obtained by dividing costs to date by total estimated costs and multiplying by 100. Unless otherwise specified by rule, specific application of this definition shall be based upon the "cost-to-cost method" provided in the 1990 edition of the "Audit and Accounting Guide for Construction Contractors", Appendix D, published by the American Institute of Certified Public Accountants. The division may, upon request or upon its own action, establish an alternate generally recognized method of calculation to determine percentage of completion, if the method is appropriate to the licensee's or applicant's accounting procedures.

(20) "Person" means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

[~~(20)~~] (21) "Plumbing trade" means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings or within three feet beyond the outside walls of buildings of pipes, fixtures, and fittings for delivery of the water supply, discharge of liquid and water carried waste, or the building drainage system within the walls of the building. It includes that work pertaining to the water supply, distribution pipes, fixtures, and fixture traps, the soil, waste and vent pipes, and the building drain and roof drains together with their devices, appurtenances, and connections where installed within the outside walls of the building.

[~~(21)~~] (22) "Ratio of apprentices" means, for the purpose of determining compliance with the re-

quirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work. All on-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

[~~(22)~~] (23) "Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multi-family residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical, and mechanical, for which the residential and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multi-family residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

[~~(23)~~] (24) "Residential journeyman electrician" means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

(25) "Residential master electrician" means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

[~~(24)~~] (26) "Residential project" as it relates to an electrician or electrical contractor means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

[~~(25)~~] (27) "Residential trainee electrician" means a person licensed under this chapter as a residential trainee electrician who is learning the residential electrician trade under approved supervision of a master electrician, journeyman electrician, or a residential journeyman electrician.

[~~(26)~~] (28) "Specialty contractor" means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare. A specialty contractor may perform work in crafts or trades other than those in which he is licensed if they are incidental to the performance of his licensed craft or trade.

(29) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) engaging in a construction trade, acting as a contractor, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(b) acting in a construction trade beyond the scope of the license held;

(c) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(d) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(e) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(f) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(g) failing to obtain a building permit when required by law or rule;

(h) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(i) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(j) allowing one's license to be used by another except as provided by statute or rule;

(k) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(l) exceeding one's monetary limit as a licensed contractor, as the limit is defined by statute or rule;

(m) if licensed as a journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;

(n) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(o) if licensed under this chapter, willfully or deliberately disregarding or violating:

(i) the building or construction laws of this state or any political subdivision;

(ii) the safety and labor laws applicable to a project;

(iii) any provision of the health laws applicable to a project;

(iv) the workers' compensation insurance laws of the state applicable to a project;

(v) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(vi) reporting, notification, and filing laws of this state or the federal government; or

(p) aiding or abetting any person in evading the provisions of this chapter or rules.

(30) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;

(b) disregarding or violating through gross negligence or a pattern of negligence:

(i) the building or construction laws of this state or any political subdivision;

(ii) the safety and labor laws applicable to a project;

(iii) any provision of the health laws applicable to a project;

(iv) the workers' compensation insurance laws of this state applicable to a project;

(v) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(vi) any reporting, notification, and filing laws of this state or the federal government;

(c) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

(d) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:

(i) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or his duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;

(ii) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee; or

(iii) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction.

[~~(27)~~] (31) "Wages" means all amounts due an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

[~~(28)~~] (32) "Work in process" means all unfinished work under verbal or written contract, whether in or out of Utah, regardless of whether licensure is required under this chapter, for which costs have accrued or been realized. The value of unfinished work on a contract shall be determined by expressing the current percentage of completion as a decimal fraction, subtracting it from 1.00 and multiplying the difference by the total dollar amount of the contract.

Section 260. Section Amended.

Section 58-55-3, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-3. Board created — Duties.

(1) There is created a Contractors Licensing Board, a Plumbers Licensing Board, and an Electricians Licensing Board. Members of the boards shall be selected to provide representation as follows:

(a) The Contractors Licensing Board consists of seven members as follows:

(i) one member shall be a licensed general engineering contractor;

(ii) one member shall be a licensed general building contractor;

(iii) two members shall be licensed residential and small commercial contractors;

(iv) two members shall be licensed specialty contractors; and

(v) one member shall be a certified public accountant.

(b) The Plumbers Licensing Board consists of five members as follows:

(i) four members shall be licensed journeyman plumbers, of whom two shall be licensed plumbing contractors; and

(ii) one member shall be from the public at large with no history of involvement in the construction trades.

(c) The Electricians Licensing Board consists of five members as follows:

(i) two members shall be licensed from among the license classifications of master or journeyman electrician, of whom one shall represent a union organization and one shall be selected having no union affiliation;

(ii) two shall be licensed electrical contractors of whom one shall represent a union organization and one shall be selected having no union affiliation; and

(iii) one member shall be from the public at large with no history of involvement in the construction trades or union affiliation.

(2) The boards shall be appointed and serve in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The duties and responsibilities of the boards shall be in accordance with Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 261. Section Amended.

Section 58-55-4, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-4. License required — License classifications.

(1) (a) Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-55-6.

(b) The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a construction trade or as a contractor within the state.

(c) Neither the state nor any of its political subdivisions may require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensed contractor to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies, or the payment of any fee for the license, registration, or certification established as a condition to do business in that local jurisdiction.

[~~(1)~~](2) The division shall issue licenses under this chapter to qualified persons in the following classifications:

(a) general engineering contractor;

(b) general building contractor;

(c) residential and small commercial contractor;

(d) specialty contractor;

(e) journeyman plumber;

(f) apprentice plumber;

(g) master electrician;

(h) [~~master~~] residential master electrician;

(i) journeyman electrician;

(j) residential journeyman electrician;

(k) residential trainee electrician; and

(l) apprentice electrician.

[~~(2)~~](3) An applicant may apply for a license in one or more classification or specialty contractor subclassification. A license shall be granted in each classification or subclassification for which the applicant qualifies. A separate application and fee must be submitted for each license classification or subclassification.

Section 262. Section Amended.

Section 58-55-5, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-5. Qualifications for licensure.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under [~~Section~~] Subsection 63-38-3(2);

(c) (i) pass an examination approved by the division in collaboration with the board, except for the classifications of apprentice plumber, apprentice electrician, and residential trainee electrician for whom no examination is required; or

(ii) the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility;

(ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; and

(iii) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license; or

(iv) be a journeyman plumber if an applicant for a plumbing contractor's license.

(2) After approval of an applicant for a contractor's license by the board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule; and

(c) proof of registration with the Utah Department of Commerce, Division of Corporations and Commercial Code, Utah Department of Employment Security, the State Tax Commission, and the Internal Revenue Service as required by applicable law.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) A journeyman plumber applicant shall produce satisfactory evidence of successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber and in accordance with a planned program of training approved by the division.

(b) A master electrician applicant shall produce satisfactory evidence that he either:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) is a graduate of an electrical trade school, having received a certificate of completion following successful completion of a course of study approved by the division, and has four years of practical experience as a journeyman electrician;

(iv) has at least eight years of practical experience under the supervision of a licensed journeyman or master electrician;

(v) meets the qualifications determined by the division and board to be equivalent to these qualifications; or

(vi) a master residential electrician applicant shall produce satisfactory evidence that he has at least two years of practical experience as a residential journeyman electrician.

(c) A journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has six years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master or journeyman electrician; or

(iii) meets the qualifications determined by the division and board to be equivalent to these qualifications.

(d) A residential journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed two years of training in an electrical training program approved by the division; or

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician.

(e) The conduct of licensed apprentice electricians, residential trainee electricians, and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician or residential trainee electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under his immediate supervision on a residential project up to three licensed apprentice or residential trainee electricians.

(iii) A licensed master or journeyman electrician may have under his immediate supervision on nonresidential projects only one licensed apprentice electrician.

[~~(4) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.~~]

[~~(5) At the time of renewal the licensee shall show satisfactory evidence of continuing financial responsibility as required under Section 58-55-8.~~]

[~~(6) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with the provisions of Section 58-1-14.~~]

Section 263. Section Enacted.

Section 58-55-5.5, Utah Code Annotated 1953, is enacted to read:

58-55-5.5. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to main-

tain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal, the licensee shall show satisfactory evidence of continuing financial responsibility as required under Section 58-55-8.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 264. Section Amended.

Section 58-55-6, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-6. Exemptions from licensure.

[~~(1) Any person engaged in the construction trades licensed under this chapter, or as a contractor regulated under this chapter, must apply for and be licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under this section. The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a construction trade or as a contractor within the state. The state or any political subdivision of the state shall not require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensed contractor to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies or the payment of any fee for such license, registration, or certification established as a condition to do business in that local jurisdiction.~~]

[~~(2) It is unlawful for any person:~~]

[~~(a) not licensed or excepted from licensure under this chapter to engage in a construction trade, to act as a contractor, to represent himself to be engaged in a construction trade, or to be acting as a contractor in a construction trade requiring licensure;~~]

[~~(b) licensed under this chapter to act in a construction trade beyond the scope of the license held;~~]

[~~(c) to hire or employ in any manner, other than an employee for wages a person who is not required to be licensed under this chapter or any other person to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure, unless that person is licensed under this chapter;~~]

[~~(d) to apply for or obtain a building permit either for himself or another when not licensed or excepted from licensure as a contractor under this chapter;~~]

[~~(e) to issue a building permit to any person for whom there is no evidence of a current license or exception from licensure as a contractor under this chapter;~~]

[~~(f) to apply for or obtain a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;~~]

[~~(g) to fail to obtain a building permit when required by law or rule;~~]

[~~(h) to submit a bid for any work for which a license is required under this chapter by a person not licensed or excepted from licensure as a contractor under this chapter;~~]

[~~(i) as an applicant or licensee to willfully or deliberately misrepresent or omit a material fact in connection with an application to obtain or renew a license under this chapter;~~]

[~~(j) licensed under this chapter to allow his license to be used by another except as provided by statute or rule;~~]

[~~(k) licensed under this chapter to do business under a name other than that set forth upon the license;~~]

[~~(l) licensed as a contractor, to exceed his monetary limit as defined by statute or rule;~~]

[~~(m) licensed as a journeyman plumber, journeyman electrician, master electrician, or residential electrician, to fail to directly supervise an apprentice under his supervision or to exceed the number of apprentices he may have under his supervision;~~]

[~~(n) licensed as a contractor or representing himself as a contractor to receive any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and thereafter to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;~~]

[~~(o) licensed under this chapter to willfully or deliberately disregard or violate:~~]

[~~(i) the building or construction laws of the state or any political subdivision;~~]

[~~(ii) the safety and labor laws applicable to a project;~~]

[~~(iii) any provision of the health laws applicable to a project;~~]

[~~(iv) the worker's compensation insurance laws of the state applicable to a project;~~]

[~~(v) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, social security taxes, or other required withholdings; or~~]

[~~(vi) reporting, notification, and filing laws of this state or the federal government; or~~]

[~~(p) to aid or abet any person in evading the provisions of this chapter or rules.~~]

[~~(3) Any person who violates the provisions of Subsections (2)(a) through (m), (o), and (p), or who fails to comply with a citation issued under Subsection (6) after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsec-~~

tion (2) (h) may not be awarded a contract for the performance of the work.]

[(4) Any person who violates the provisions of Subsection (2)(n) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.]

[(5) Failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required or related rules, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier, shall be considered by the division and the board as grounds for immediate suspension of the licensee's license.]

[(6) (a) If upon inspection or investigation, the division concludes that a contractor has violated the provisions of Subsections (2)(a), (b), (c), or any rule or order issued with respect to either subsection, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the contractor according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the contractor to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.]

[(i) Any person who is in violation of the provisions of Subsections (2)(a), (b), or (c), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (6)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections (2)(a), (b), or (c).]

[(ii) The licensure sanctions cited in Section 58-55-12 may not be assessed through a citation.]

[(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The citation shall clearly state that the recipient thereof must notify the division within 10 working days of the citation's issuance if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.]

[(c) The division may, in its discretion, issue a notice in lieu of a citation.]

[(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.]

[(e) If within 10 working days from the issuance of a citation by the division, the recipient fails to notify the division that the recipient intends to contest the citation, the citation shall be deemed a final order of the division and not be subject to review by any court or agency. The period to contest a citation may be extended by the division for cause.]

[(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.]

[(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.]

[(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.]

[(i) Fines shall be assessed by the director or his designee according to the following:]

[(i) for a first offense handled pursuant to Subsection (a), a citation or fine of up to $1,000;]

[(ii) for a second offense handled pursuant to Subsection (a), a citation or fine of up to $2,000; and]

[(iii) for any subsequent offense handled pursuant to Subsection (a), a violation or fine of up to $2,000 for each day of unlicensed practice.]

[(7) Any penalty imposed by the director under this subsection shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this subsection, reasonable attorney's fees and costs shall be awarded.]

[(8) The] In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:

[(a) persons exempted from licensure under Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;]

[(b)] (1) any authorized representative of the United States government or any authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of their trust, office, or employment;

[(c)] (2) any person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and

drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, hauling to and from construction sites, and lumbering;

[~~(d)~~] (3) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business;

[~~(e)~~] (4) sole owners of property engaged in building structures on their property for their own noncommercial nonpublic use; except, any person other than the property owner who engages in building the structure must be licensed under this chapter if he is otherwise required to be licensed under this chapter;

[~~(f)~~] (5) any person engaged in the sale or merchandising of personal property which by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

[~~(g)~~] (6) any contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

[~~(h)~~] (7) any person engaged in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value of less than $500, including both labor and materials, and including all changes or additions to the contracted or agreed upon work; however, work in the plumbing and electrical trades must be performed by a licensed electrician or plumber regardless of the dollar value of the work;

[~~(i)~~] (8) any person practicing a specialty contractor classification or construction trade which is not classified by rule by the director as significantly impacting the public's health, safety, and welfare;

[~~(j)~~] (9) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

[~~(k)~~] (10) any person who ordinarily would be subject to the plumber licensure requirements set forth in this chapter when installing or repairing a water conditioner or other water treatment apparatus and the conditioner or apparatus meets the appropriate state construction codes or local plumbing standards and is installed or repaired under the direction of a person authorized to do such work under an appropriate specialty contractor license;

[~~(l)~~] (11) any person who ordinarily would be subject to the electrician licensure requirements set forth in this chapter when employed by or under contract with:

[~~(i)~~] (a) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

[~~(ii)~~] (b) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power; and

[~~(m)~~] (12) persons involved in minor electrical work incidental to a mechanical or service installation.

Section 265. Section Amended.

Section 58-55-12, Utah Code Annotated 1953, as repealed and reenacted by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-12. Grounds for denial of license and disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders, shall be in accordance with Section [~~58-1-15~~] 58-1-401.

Section 266. Section Repealed and Reenacted.

Section 58-55-13, Utah Code Annotated 1953, as repealed and reenacted by Chapter 303, Laws of Utah 1992, is repealed and reenacted to read:

58-55-13. Penalty for unlawful conduct — Citations.

(1) Any person who violates the provisions of Subsections 58-55-2(29)(a) through (m), (o), and (p), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-2(29)(h) may not be awarded a contract for the performance of the work.

(2) Any person who violates the provisions of Subsection 58-55-2(29)(n) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of the licensee's license by the division and the board include the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4)(a) If upon inspection or investigation, the division concludes that a contractor has violated the provisions of Subsections 58-55-2(29)(a), (b), (c), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the contractor according to this

chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the contractor to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-2(29)(a), (b), or (c), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (4)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-2(29)(a), (b), or (c).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-12 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may, in its discretion, issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and may not be subject to further agency review. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) Fines shall be assessed by the director or his designee according to the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(5) Any penalty imposed by the director under Subsection (4)(i) shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

Section 267. Section Amended.

Section 58-55-19, Utah Code Annotated 1953, as last amended by Chapter 303, Laws of Utah 1992, is amended to read:

58-55-19. Investigation of regulated activity.

(1) The division shall be responsible for the investigation of persons and activities in violation of the provisions of this chapter.

(2) Investigation by the division shall include investigations of:

(a) licensees engaged in unlawful or unprofessional conduct; and

(b) unlicensed persons engaged in the conduct of activity or work regulated under this chapter and for which a license is required.

(3) The division shall decline to proceed with investigation of the violation of any provisions of this chapter if the division finds there is no apparent material jeopardy to the public health, safety, and welfare.

(4) The division shall have no responsibility for the inspection of construction work performed in the state to determine compliance with applicable codes, or industry and workmanship standards, except as provided in Subsections [~~58-55-6(2)(e) and 58-55-13(1), (3), (5), unless the person engaging in a construction trade complies with applicable lawful corrective orders of compliance agencies of the state or a political subdivision of the state, and the division has no further reason to proceed under Subsection 58-1-6(2) as limited by Subsection (3)~~] 58-55-2(29)(e), 58-55-2(30)(c) and (d), and 58-1-501(2)(g).

(5) Authorized representatives of the division shall be permitted to enter upon the premises or site of work regulated under this chapter for the purpose of determining compliance with the provisions of this chapter.

Section 268. Section Amended.

Section 58-56-3, Utah Code Annotated 1953, as last amended by Chapter 293, Laws of Utah 1990, is amended to read:

58-56-3. Definitions.

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

(1) "ANSI" means American National Standards Institute, Inc.

(2) "Code(s)" means the NEC, UBC, UMC, or UPC as defined in this section and as applied in context.

(3) "Commission" means the Uniform Building Codes Commission created under this chapter.

(4) "Compliance agency" means an agency of the state or any of its political subdivisions which issue permits for construction regulated under the codes, or any other agency of the state or its political subdivisions specifically empowered to enforce compliance with the codes.

[~~(5) "Department" means the Department of Commerce.~~]

[~~(6) "Director" means the director of the Division of Occupational and Professional Licensing.~~]

[~~(7) "Division" means the Division of Occupational and Professional Licensing.~~]

[~~(8) "Executive director" means the executive director of the Department of Commerce.~~]

[~~(9)~~] (5) "Factory built housing" means manufactured homes or mobile homes.

[~~(10)~~] (6) "HUD code" means the Federal Manufactured Housing Construction and Safety Standards Act.

[~~(11)~~] (7) "IAPMO" means the International Association of Plumbing and Mechanical Officials.

[~~(12)~~] (8) "ICBO" means the International Conference of Building Officials.

[~~(13)~~] (9) "Installation standard" means the standard adopted and published by the National Conference of States on Building Codes and Standards (NCSBCS), for the installation of manufactured homes titled "The Standard for Manufactured Home Installations," the accompanying manufacturer's instructions for the installation of the manufactured home, or such equivalent standard as adopted by rule.

[~~(14)~~] (10) "Local regulator" means each political subdivision of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

[~~(15)~~] (11) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. All manufactured homes constructed on or after June 15, 1976, shall be identifiable by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.

[~~(16)~~] (12) "Factory built housing set-up contractor" means an individual licensed by the division to set up or install factory built housing on a temporary or permanent basis. The scope of the work included under the license includes the placement and or securing of the factory built housing on a permanent or temporary foundation, securing the units together if required, and connection of the utilities to the factory built housing unit, but does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the factory built housing unit. If a dealer is not licensed as a factory built housing set up contractor, that individual must subcontract the connection services to individuals who are licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

[~~(17)~~] (13) "Mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

[~~(18)~~] (14) "Modular unit" means a structure built from sections which are manufactured in accordance with the construction standards adopted pursuant to Section 58-56-4 and transported to a building site, the purpose of which is for human habitation, occupancy, or use.

[~~(19)~~] (15) "NEC" means the National Electrical Code.

[~~(20)~~] (16) "Opinion" means a written, nonbinding, and advisory statement issued by the commission concerning an interpretation of the meaning of the codes or the application of the codes in a specific circumstance issued in response to a specific request by a party to the issue.

[~~(21)~~] (17) "State regulator" means an agency of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

[~~(22)~~] (18) "UBC" means the Uniform Building Code.

[~~(23)~~] (19) "UMC" means the Uniform Mechanical Code.

(20) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) Engaging in the sale of factory built housing without being registered with the division as a dealer, unless the sale is exempt under Subsection 58-56-16(2).

(b) Selling factory built housing within the state as a dealer without paying to the division a fee of $75

for each housing unit sold, whether new or used, unless the sale is exempt under Subsection 58-56-16(2).

[~~(24)~~] (21) "UPC" means the Uniform Plumbing Code.

Section 269. Section Amended.

Section 58-57-2, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is amended to read:

58-57-2. Definitions.

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

(1) "Board" means the Respiratory Care Licensing Board created in Section 58-57-3.

(2) "Health care facility" means any facility or institution in which health care services are performed or furnished and includes a hospital, clinic, or emergency care center.

(3) "Physician" means a person licensed to practice medicine under [~~the~~] Title 58, Chapter 12, Part 5, Utah Medical Practice Act[~~, Sections 58-12-26 through 58-12-43~~].

(4) "Practice of respiratory care" means the treatment, operation of equipment, management, diagnostic testing, and care of any human disease, deficiency, pain, injury, or other physical condition associated with the cardiopulmonary system under the qualified medical direction or supervision of a physician who has training and knowledge in the diagnosis, treatment, and assessment of respiratory problems. "Practice of respiratory care" includes:

(a) accepting and carrying out a licensed physician's written, verbal, or telephonic prescription or order specifically relating to respiratory care in a hospital or other health care setting and includes consultation with licensed nurses, as appropriate;

(b) administering respiratory care during transportation of a patient and under other circumstances where an emergency requires immediate respiratory care;

(c) serving as a resource to other health care professionals and hospital administrators in relation to the technical aspects of, and the safe and effective methods for, administering respiratory care;

(d) functioning in situations of patient contact requiring individual judgment in administering respiratory care under the general supervision of a qualified physician; and

(e) supervising, directing, or teaching personnel in the performance of respiratory care modalities as part of a respiratory care education program.

(5) "Respiratory care practitioner" means any person licensed to practice respiratory care under this chapter.

(6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) acting contrary to the instructions of the physician responsible for supervising the licensee;

(b) knowingly operating any respiratory care equipment that is unsafe or not in compliance with standards of condition or operation consistent with the patient's safety;

(c) permitting any person to operate respiratory care equipment who is not competent or not allowed to operate the equipment;

(d) revealing to any unauthorized person confidential or privileged information about a patient;

(e) using any controlled substance, unless the controlled substance is prescribed by a physician and used in accordance with the physician's instructions; and

(f) making any statement that is incorrect due to negligence, willfulness, or intent to provide false information or entry on any patient record or other record that is used for payment of respiratory care services.

Section 270. Section Amended.

Section 58-57-3, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is amended to read:

58-57-3. Board created — Membership — Duties.

(1) There is created a five-member Respiratory Care Licensing Board [~~that consists~~] consisting of the following persons:

(a) one physician who is a member of either the American Society of Anesthesiologists, the American College of Chest Physicians, the American Thoracic Society, or the American Academy of Pediatrics;

(b) three licensed respiratory care practitioners who have practiced respiratory care for a period of not less than three years immediately preceding their appointment to the board; and

(c) one member from the general public.

(2) The [~~executive director shall appoint the board~~] board shall be appointed and serve in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The [~~board has the~~] duties[~~, functions,~~] and responsibilities [~~set forth in~~] of the board shall be in accordance with Sections [~~58-1-8, 58-1-8.5,~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 271. Section Amended.

Section 58-57-4, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is amended to read:

58-57-4. Qualifications for a license.

(1) The division shall issue a respiratory care practitioner license to an applicant who meets the requirements specified in this section.

[~~(1)~~] (2) An applicant seeking licensure as a respiratory care practitioner shall:

(a) submit an application on a form prescribed by the division;

(b) pay a fee as determined by the department pursuant to Subsection 63-38-3 (2);

(c) show evidence of good moral character;

(d) possess a high school education or its equivalent, as determined by the division in collaboration with the board;

(e) have completed a respiratory care practitioner educational program that is approved by the board and is accredited by the American Medical Association; and

(f) pass an examination approved by the division in collaboration with the board.

[~~(2)~~] (3) An applicant who has completed a respiratory care practitioner education program approved by the board and accredited by the American Medical Association and who, in the opinion of the division and board, meets the requirements for licensure except for passing the examination, may practice under the direct supervision of a respiratory care practitioner with an interim permit. An interim permit is valid only until the applicant receives notice of the results of the examination.

Section 272. Section Repealed and Reenacted.

Section 58-57-6, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is repealed and reenacted to read:

58-57-6. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 273. Section Amended.

Section 58-57-7, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is amended to read:

58-57-7. Exemptions from licensure.

[~~(1) The division shall issue a respiratory care practitioner license to an applicant who meets the requirements specified in this chapter.~~]

[~~(2) It is a class A misdemeanor for any individual to engage in the practice of respiratory care without a license or without being exempted from licensure as provided in this chapter.~~]

[~~(3) A person~~] (1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of respiratory [~~care~~] therapy subject to the stated circumstances and limitations without [~~a license while he~~] being licensed under this chapter:

[~~(a) attends a professional school approved by the division for training in respiratory care and performs duties of a student, intern, or resident under the supervision of an approved school staff, internship, or residency program;~~]

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

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

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

[~~(e)~~] (d) any person who acts under a certification issued pursuant to Title 26, Chapter 8, Emergency Medical Services System Act, while providing emergency medical services.

[~~(4)~~] (2) Nothing in this chapter permits a respiratory care practitioner to engage in the unauthorized practice of other health disciplines.

Section 274. Section Repealed and Reenacted.

Section 58-57-8, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990, is repealed and reenacted to read:

58-57-8. Grounds for denial of license — Disciplinary proceedings.

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

Section 275. Section Amended.

Section 58-58-2, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, is amended to read:

58-58-2. Definitions.

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

[~~(2)~~] (1) "Beneficiary" means the individual who is to receive the benefit of the personal property and services purchased under the preneed funeral arrangement contract at the time of his death.

(2) "Board" means the Preneed Funeral Arrangement Licensing Board created in Section 58-58-3.

[~~(1)~~] (3) "Buyer" means any person who purchases a preneed funeral arrangement as defined in this chapter.

[~~(3)~~] (4) "Incidental to the time of purchase" means within 90 days following the date of purchase.

[~~(4)~~] (5) "Licensed provider" means a licensed funeral establishment that furnishes or will furnish

the services or property purchased under a preneed funeral arrangement.

[~~(5)~~] (6) (a) "Preneed funeral arrangement or contract" means any written or oral contract or agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any merchandise, goods, services, real property, or personal property, including caskets, other primary containers, cremation or transportation containers, outer burial containers, vaults, grave liners, funeral clothing and accessories, monuments, grave markers, cremation urns, embalming services, and funeral directing services as are typically provided in connection with the final disposition of a dead human body.

(b) "Preneed funeral arrangement or contract" does not include a policy or product of life insurance providing a death benefit cash payment upon the death of the beneficiary which is not limited to providing the products or services described in Subsection (a).

[~~(6)~~] (7) "Sales agent" means an individual licensed under this chapter as a preneed funeral arrangement sales agent.

(8) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) engaging in, providing, or agreeing to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a preneed funeral arrangement provider under this chapter;

(b) engaging in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license as a preneed funeral arrangement sales agent under this chapter, or as a funeral service director under Title 58, Chapter 9, Funeral Service License Act;

(c) selling or representing for sale any preneed funeral arrangement contract or agreement:

(i) which has not been approved as to form and content by the division; and

(ii) a current copy of which is not on file with the division; and

(d) using the title "funeral service director," "funeral service apprentice," or "funeral service establishment" unless licensed under Title 58, Chapter 9, Funeral Service License Act.

Section 276. Section Amended.

Section 58-58-3, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, is amended to read:

58-58-3. Board — Membership — Duties.

(1) There is created [a] the Preneed Funeral Arrangement Licensing Board consisting of three [~~licensed~~] funeral directors, each of whom are owners or officers of [~~licensed~~] funeral establishments which are [~~licensed~~] providers under this chapter, one [~~licensed~~] preneed sales agent, and one member from the general public.

(2) The board shall be appointed and serve in accordance with Section [~~58-1-7~~] 58-1-201.

(3) The duties and responsibilities of the board are provided in this chapter and shall be in accordance with the provisions of Sections [~~58-1-8~~] 58-1-202 and [~~58-1-9~~] 58-1-203.

Section 277. Section Amended.

Section 58-58-4, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, is amended to read:

58-58-4. License classifications — Exemptions.

(1) The division shall issue licenses under this chapter in the classifications:

(a) preneed funeral arrangement provider; or

(b) preneed funeral arrangement sales agent.

[~~(2) It is unlawful for any person to:~~]

[~~(a) engage in providing or agree to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a preneed funeral arrangement provider under this chapter;~~]

[~~(b) engage in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license as a preneed funeral arrangement sales agent under this chapter, or as a funeral service director under Title 58, Chapter 9, Funeral Service License Act;~~]

[~~(c) sell or represent for sale any preneed funeral arrangement contract or agreement:~~]

[~~(i) which has not been approved as to form and content by the division; and~~]

[~~(ii) a current copy of which is not on file with the division;~~]

[~~(d) to use the title funeral service director, funeral service apprentice, or funeral service establishment unless licensed under Title 58, Chapter 9, Funeral Service License Act.~~]

[~~(3)~~] (2) A person engaged in the sale of funeral merchandise who delivers the merchandise at the time of purchase or incidental to the time of purchase is not considered to be engaged in the sale of preneed funeral arrangements and is exempt from licensure under this chapter even though the merchandise may not be used for its intended purpose until the death of a person at some future time.

Section 278. Section Repealed and Reenacted.

Section 58-58-6, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, is repealed and reenacted to read:

58-58-6. Term of license — Expiration — Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 279. Section Repealed and Reenacted.

Section 58-58-7, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, is repealed and reenacted to read:

58-58-7. Grounds for denial of license — Disciplinary proceedings.

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

Section 280. Repealer.

Section 13-1-12, Order by hearing officer or body — Appeal of order to the division director or the executive director, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987;

Section 58-1-3.5, Division procedures — Adjudicative proceedings, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 58-1-8.5, Board procedures — Adjudicative proceedings, Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987;

Section 58-1-10, Unlawful conduct — Penalty, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990;

Section 58-1-15, Grounds for refusal, suspension, revocation, or probation, Utah Code Annotated 1953, as last amended by Chapter 103, Laws of Utah 1990;

Section 58-1-16, Notice of disciplinary action — Hearing officers — Director's powers — Evidence, Utah Code Annotated 1953, as last amended by Chapters 70 and 103, Laws of Utah 1990;

Section 58-1-17, License refusal — Special appeals board — Per diem allowance, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987;

Section 58-3-8, Reinstatement of revoked license, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1986;

Section 58-5-6, Unlawful to practice without license, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-10, "Unprofessional conduct" defined, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-5-13, Use of official designation prima facie evidence — Misdemeanor, Utah Code Annotated 1953, as enacted by Chapter 4, Laws of Utah 1985;

Section 58-9-14, Unprofessional conduct, Utah Code Annotated 1953, as repealed and reenacted by Chapter 250, Laws of Utah 1991;

Section 58-12-7, Osteopathic Medicine Licensing Act — "Unprofessional conduct" defined, Utah Code Annotated 1953, as enacted by Chapter 27, Laws of Utah 1981;

Section 58-12-35.1, Medical Practice Act — Disciplinary actions — Notice of charges — Hearing — Procedure, Utah Code Annotated 1953, as last amended by Chapters 161 and 214, Laws of Utah 1987;

Section 58-12-36, Medical Practice Act — "Unprofessional conduct" defined, Utah Code Annotated 1953, as last amended by Chapter 214, Laws of Utah 1987;

Section 58-12-53, Chiropractic Improvements Act — "Unprofessional conduct" defined, Utah Code Annotated 1953, as last amended by Chapter 125, Laws of Utah 1988;

Section 58-12-64, Acupuncture — Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 12, Laws of Utah 1983;

Section 58-12-78, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 213, Laws of Utah 1990;

Section 58-16a-110, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 287, Laws of Utah 1991;

Section 58-17-10, Unlawful conduct — Class A misdemeanor, Utah Code Annotated 1953, as last amended by Chapter 252, Laws of Utah 1990;

Section 58-17-11, Penalties — License Reinstatement — Criminal Prosecutions — Judicial review, Utah Code Annotated 1953, as last amended by Chapter 124, Laws of Utah 1988;

Section 58-20-5.1, Persons exempt from chapter, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1986;

Section 58-22-8, Use of title or designation, Utah Code Annotated 1953, as repealed and reenacted by Chapter 183, Laws of Utah 1992;

Section 58-24a-113, Use of professional titles, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1992;

Section 58-25a-12, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1989;

Section 58-26-16, Unprofessional conduct, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990;

Section 58-26-17, Unlawful conduct — Penalty, Utah Code Annotated 1953, as repealed and reenacted by Chapter 242, Laws of Utah 1990;

Section 58-26-19, Use of titles or abbreviations, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1990;

Section 58-26-20, Violation a misdemeanor, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1990;

Section 58-28-7, Unlawful conduct, Utah Code Annotated 1953, as enacted by Chapter 3, Laws of Utah 1985;

Section 58-31-14, Use of title or designation, Utah Code Annotated 1953, as repealed and reenacted by Chapter 82, Laws of Utah 1992;

Section 58-35-10, Unprofessional conduct, Utah Code Annotated 1953, as repealed and reenacted by Chapter 240, Laws of Utah 1992;

Section 58-40-9, Unlawful conduct — Penalty, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992;

Section 58-40-10, Unprofessional conduct, Utah Code Annotated 1953, as repealed and reenacted by Chapter 108, Laws of Utah 1992;

Section 58-41-10, Improper or unprofessional conduct, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989;

Section 58-41-11, Denial, suspension, or revocation of license — Compliance with order — Relicensing, Utah Code Annotated 1953, as last amended by Chapter 207, Laws of Utah 1989;

Section 58-42-11, "Unprofessional conduct" defined, Utah Code Annotated 1953, as last amended by Chapter 218, Laws of Utah 1985;

Section 58-44-3, General provisions of registration law applicable, Utah Code Annotated 1953, as enacted by Chapter 21, Laws of Utah 1979;

Section 58-44-6, Meetings of committee — Powers, Utah Code Annotated 1953, as last amended by Chapter 187, Laws of Utah 1985;

Section 58-46-8, Prohibited conduct, Utah Code Annotated 1953, as enacted by Chapter 22, Laws of Utah 1979;

Section 58-47a-7, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 193, Laws of Utah 1990;

Section 58-50-8, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 124, Laws of Utah 1990;

Section 58-53-6, Unauthorized use of titles, descriptions, and abbreviations prohibited, Utah Code Annotated 1953, as enacted by Chapter 141, Laws of Utah 1988;

Section 58-54-9, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 198, Laws of Utah 1989;

Section 58-54-10, Use of title or designation, Utah Code Annotated 1953, as enacted by Chapter 198, Laws of Utah 1989;

Section 58-56-18, Unlawful conduct — Penalty, Utah Code Annotated 1953, as last amended by Chapter 262, Laws of Utah 1991;

Section 58-57-9, Unprofessional conduct, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990;

Section 58-57-13, Penalty for violation, Utah Code Annotated 1953, as enacted by Chapter 208, Laws of Utah 1990; and

Section 58-58-16, Violation as misdemeanor, Utah Code Annotated 1953, as enacted by Chapter 261, Laws of Utah 1991, are repealed.

Section 281. Coordinating clause.

If this bill and H.B. 74, Podiatrist Licensing Act, both pass in the 1993 General Session, it is the intent of the Legislature that the repeal of Section 58-5-7 in H.B. 74 take precedence over the repeal and reenactment of the same section in this bill.

Section 282. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 298
S. B. No. 42
Passed March 3, 1993
Approved March 23, 1993
Effective January 1, 1993
Retrospective operation to
January 1, 1993

ECONOMIC INCENTIVES FOR HISTORIC PRESERVATION

By Ronald J. Ockey
Delpha A. Baird
Robert C. Steiner

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; ALLOWING CORPORATE FRANCHISE AND INDIVIDUAL INCOME TAX CREDITS AS AN INCENTIVE TO REHABILITATE HISTORIC RESIDENTIAL BUILDINGS; AND PROVIDING FOR RETROSPECTIVE OPERATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
59-7-109.5, UTAH CODE ANNOTATED 1953
59-10-108.5, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 59-7-109.5, Utah Code Annotated 1953, is enacted to read:

59-7-109.5. Historic preservation credit.

(1) (a) For tax years beginning January 1, 1993, and thereafter, there is allowed to a taxpayer subject to Section 59-7-102, as a credit against the tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than $10,000, incurred in connection with any residential certified historic building. When qualifying expenditures of more than $10,000 are incurred, the credit allowed by this section shall apply to the full amount of expenditures.

(b) All rehabilitation work to which the credit may be applied shall be approved in advance by the State Historic Preservation Office as meeting the Secretary of the Interior's Standards for Rehabilitation so that the office can provide corrective comments to the taxpayer in order to preserve the historical qualities of the building.

(c) Any amount of credit remaining may be carried forward to each of the five taxable years following the qualified expenditures.

(d) The commission, in consultation with the Division of State History, shall promulgate rules to implement this section.

(2) As used in this section:

(a) "Certified historic building" means a building that is listed on the National Register of Historic Places within three years of taking the credit under this section or that is located in a National Register Historic District and the building has been designated by the Division of State History as being of significance to the district.

(b) (i) "Qualified rehabilitation expenditures" means any amount properly chargeable to the rehabilitation and restoration of the physical elements of the building, including the historic decorative elements, and the upgrading of the structural, mechanical, electrical, and plumbing systems to applicable codes.

(ii) "Qualified rehabilitation expenditures" does not include expenditures related to:

(A) the taxpayer's personal labor;

(B) cost of acquisition of the property;

(C) any expenditure attributable to the enlargement of an existing building;

(D) rehabilitation of a certified historic building without the preliminary approval required in Subsection (1)(b); or

(E) any expenditure attributable to landscaping and other site features, out buildings, garages, and related features.

(c) "Residential" means a building used for residential use, either owner occupied or income producing.

Section 2. Section Enacted.

Section 59-10-108.5, Utah Code Annotated 1953, is enacted to read:

59-10-108.5. Historic preservation credit.

(1) (a) For tax years beginning January 1, 1993, and thereafter, there is allowed to resident individuals, as a credit against the income tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than $10,000, incurred in connection with any residential certified historic building. When qualifying expenditures of more than $10,000 are incurred, the credit allowed by this section shall apply to the full amount of expenditures.

(b) All rehabilitation work to which the credit may be applied shall be approved in advance by the State Historic Preservation Office as meeting the Secretary of the Interior's Standards for Rehabilitation so that the office can provide corrective comments to the taxpayer in order to preserve the historical qualities of the building.

(c) Any amount of credit remaining may be carried forward to each of the five taxable years following the qualified expenditures.

(d) The commission, in consultation with the Division of State History, shall promulgate rules to implement this section.

(2) As used in this section:

(a) "Certified historic building" means a building that is listed on the National Register of Historic Places within three years of taking the credit under this section or that is located in a National Register Historic District and the building has been designated by the Division of State History as being of significance to the district.

(b) (i) "Qualified rehabilitation expenditures" means any amount properly chargeable to the rehabilitation and restoration of the physical elements of the building, including the historic decorative elements, and the upgrading of the structural, mechanical, electrical, and plumbing systems to applicable codes.

(ii) "Qualified rehabilitation expenditures" does not include expenditures related to:

(A) the taxpayer's personal labor;

(B) cost of acquisition of the property;

(C) any expenditure attributable to the enlargement of an existing building;

(D) rehabilitation of a certified historic building without the preliminary approval required in Subsection (1)(b); or

(E) any expenditure attributable to landscaping and other site features, out buildings, garages, and related features.

(c) "Residential" means a building used for residential use, either owner occupied or income producing.

Section 3. Retrospective Operation.

This act has retrospective operation to January 1, 1993.

CHAPTER 299
S. B. No. 93
Passed March 3, 1993
Approved March 16, 1993
Effective May 3, 1993

ABUSE OR NEGLECT OF DISABLED CHILD

By Mike Dmitrich

AN ACT RELATING TO CRIMINAL CODE; AMENDING DEFINITION OF CARETAKER FOR PURPOSES OF ABUSE OR NEGLECT OF A DISABLED CHILD; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
76-5-110, AS ENACTED BY CHAPTER 39, LAWS OF UTAH 1988

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

Section 1. Section Amended.

Section 76-5-110, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1988, is amended to read:

76-5-110. Abuse or neglect of disabled child.

(1) As used in this section:

(a) "Abuse" means physical injury, as that term is defined in Subsection 76-5-109(1)(b), or unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under his care and custody a disabled child; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a disabled child.

(c) "Disabled child" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that he is unable to care for his own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree felony. A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the caretaker is a member or adherent shall not for that reason alone be considered to be in violation under this section. However, this exception shall not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare.

CHAPTER 300
S. B. No. 159
Passed March 1, 1993
Approved March 23, 1993
Effective January 1, 1993
Retrospective operation to
January 1, 1993

TAXATION OF REGULATED INVESTMENT COMPANIES

By Lyle W. Hillyard

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING A METHOD TO TAX REGULATED INVESTMENT COMPANIES; AND PROVIDING RETROSPECTIVE OPERATION.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
59-7-401, UTAH CODE ANNOTATED 1953 (CODIFIED AS 59-7-116)

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

Section 1. Section Enacted.

Section 59-7-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Regulated Investment Companies

59-7-401. Taxation of regulated investment companies.

(1) A regulated investment company or a fund of such a company, as defined in Sections 851(a) or 851(h), Internal Revenue Code, which is organized under the laws of Utah, shall determine net income as follows:

(a) calculate investment company taxable income, as determined in Section 852(b)(2), Internal Revenue Code;

(b) add any municipal interest and the exclusion of net capital gain provided in Section 852(b)(2)(A), Internal Revenue Code; and

(c) subtract the deduction for the capital gain dividends and exempt interest dividends as defined in Sections 852(b)(3)(c) and 852(b)(5), Internal Revenue Code.

(2) A regulated investment company which is organized under the laws of Utah or a fund of such a company, shall be taxed at the same rate and in the same manner as a corporation as provided in this chapter.

Section 2. Retrospective Operation.

This act has retrospective operation for taxable years beginning on or after January 1, 1993.

CHAPTER 301
S. B. No. 165
Passed March 2, 1993
Approved March 23, 1993
Effective May 3, 1993

POPULATION ESTIMATES

By David L. Watson

AN ACT RELATING TO POPULATION ESTIMATES; PROVIDING A METHOD TO DETERMINE POPULATION ESTIMATES FOR SMALLER CITIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
27-12-129, AS LAST AMENDED BY CHAPTER 91, LAWS OF UTAH 1985
32A-1-115, AS RENUMBERED AND AMENDED BY CHAPTER 23, LAWS OF UTAH 1990
59-12-205, AS LAST AMENDED BY CHAPTERS 250 AND 287, LAWS OF UTAH 1990

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

Section 1. Section Amended.

Section 27-12-129, Utah Code Annotated 1953, as last amended by Chapter 91, Laws of Utah 1985, is amended to read:

27-12-129. Apportionment of funds available for use on class B and class C roads — Bonds.

(1) The funds made available for use upon class B and class C roads shall be apportioned among the various counties, cities, and towns in the following manner:

(a) 32% in the ratio that the mileage of class B roads within each county and class C roads within each city or town bears to the total class B and class C road mileage within the state;

(b) 54% in the ratio that the population of each county, city, or town bears to the total population of the state as of the last official federal census[~~, the revenue sharing estimate,~~] or the [Federal] United States Bureau of Census estimate, whichever is most recent[~~; and~~]. If population estimates are not made for any county, city, or town by the United States Bureau of Census, population figures shall be determined according to the biennial estimate from the Utah Population Estimates Committee; and

(c) 14% in the ratio that the land area of each county, city, or town bears to the total land area within the state.

(2) For the purposes of Subsection (1), the land area of each county means the land area of each county outside the corporate limits of cities and towns in that county. For the purposes of Subsection (1), the population of each county means the population of each county outside the corporate limits of cities and towns in that county, if the population so determined is not less than 14% of the total population of that county, including incorporated cities and towns. If the population so determined is less than 14% of the total population, the population apportioned to the incorporated cities and towns in that county shall be reduced by a percentage of population equal to the difference between 14% and the actual percent of population outside the corporate limits of cities and towns in that county and the population apportioned to the county shall be 14% of the total population.

(3) The governing body of any municipality or county may issue bonds redeemable up to a period of ten years under Title 11, Chapter 14, the Utah Municipal Bond Act, to pay the costs of constructing, repairing, and maintaining Class B or C roads and may pledge Class B or C road funds received pursuant to this section to pay principal, interest, premiums, and reserves for the bonds.

Section 2. Section Amended.

Section 32A-1-115, Utah Code Annotated 1953, as renumbered and amended by Chapter 23, Laws of Utah 1990, is amended to read:

32A-1-115. Appropriation from Liquor Control Fund to cities, towns, and counties for law enforcement and rehabilitation — Distribution.

(1)(a) The Legislature shall provide an appropriation from the General Fund from liquor control profits to cities, towns, and counties and from the proceeds of the beer excise tax under Section 59-15-101 in an amount not exceeding $4,350,000.

(b) The appropriation shall be used exclusively for programs or projects related to prevention, detection, prosecution, and control of violations of this title and other alcohol-related offenses. The portion distributed under this section to counties shall also be used for the confinement or rehabilitation, and construction and maintenance of facilities for confinement or rehabilitation, of persons arrested for or convicted of alcohol-related offenses. Any city, town, or county entitled to receive funds shall use the funds exclusively as required by this subsection.

(c) The appropriation provided for under Subsection (a) is intended to supplement the budget of the law enforcement agencies of each city, town, and county within the state to enable the cities, towns, and counties to more effectively enforce the liquor laws of the state and alcohol-related offenses. The appropriation is not intended to replace funds that would otherwise be allocated for law enforcement and confinement or rehabilitation or both, of persons arrested for or convicted of alcohol-related offenses.

(2) The amount of $4,350,000 shall be distributed to cities, towns, and counties on the following basis:

(a) 25% to cities, towns, and counties based upon the percentage of the state population located in each city, town, and county;

(b) 30% to cities, towns, and counties based upon each city, town, and county's percentage of the statewide convictions for all alcohol-related offenses;

(c) 20% to cities, towns, and counties based upon the percentage of all state stores, package agencies,

liquor licensees, and beer licensees in the state which are located in each city, town, and county; and

(d) 25% to the counties for confinement and rehabilitation and confinement and rehabilitation facilities purposes authorized in this section based upon the percentage of the state population located in each county.

(3) To determine the amount of the 30% due each city, town, and county based on convictions described in Subsection (2)(b), the State Tax Commission semiannually shall:

(a) double the total number of convictions in the state obtained between July 1, 1982, and June 30, 1983, and during the same period in succeeding years for violation of Section 41-6-44, or an ordinance that complies with the requirements of Subsection 41-6-43 (1) or Section 76-5-207, and to that number, add the number of convictions obtained during the same period for all other alcohol-related offenses;

(b) divide the figure equal to the 30% due each city, town, and county by the sum obtained in Subsection (a), to obtain the quotient for alcohol-related offenses statewide; and

(c) multiply the quotient obtained in Subsection (b), by the number of convictions obtained in each city, town, and county between July 1, 1982 and June 30, 1983, and for the same period in succeeding years, for violation of Section 41-6-44, or an ordinance that complies with the requirements of Subsection 41-6-43 (1) or Section 76-5-207, and for all other alcohol-related offenses to determine the total revenue due each entity, based on convictions. The number of convictions for purposes of this subsection shall be determined in the manner prescribed in Subsection (a).

(4) For purposes of this section, the number of state stores, package agencies, and licensees located within the limits of each city, town, and county is the number determined by the department to be so located, and includes all private clubs, restaurants, airport lounges, package agencies, and state stores, but not on-premise beer retailer licensees. For purposes of this section, the number of state stores, package agencies, and licensees in a county consists only of that number located within unincorporated areas of the county.

(5) Population figures, for the purposes of this section, shall be determined according to the last decennial census taken by the United States Department of Commerce, or its five-year update, whichever is more recent. If population estimates are not made for any county, city, or town by the United States Bureau of Census, population figures shall be determined according to the biennial estimate from the Utah Population Estimates Committee. A county's population figure for the 25% distribution to cities, towns, and counties shall be determined only with reference to the population in the unincorporated areas of the county, and a county's population figure for the 25% distribution to counties only shall be determined with reference to the total population in the county, including that of cities and towns.

(6) (a) For purposes of this section, a conviction occurs in the city, town, or county that actually prosecutes the offense to judgment. In the case of a conviction based upon a guilty plea, the city, town, or county that, except for the guilty plea, would have prosecuted the offense is entitled to credit for the conviction.

(b) For purposes of this section, "alcohol-related offense" means a violation of Section 41-6-44, or an ordinance that complies with the requirements of Subsection 41-6-43 (1) or Section 76-5-207, or an offense involving the illegal sale, distribution, transportation, possession, or consumption of alcohol.

(7) Payments under this section shall be made semiannually to each city, town, and county.

(8) (a) The state court administrator, not later than September 1 each year, shall certify to the State Tax Commission the number of convictions obtained for violation of Section 41-6-44, [~~or~~] an ordinance that complies with the requirements of Subsection 41-6-43 (1), or Section 76-5-207, and for other alcohol-related offenses in each city, town, or county in the state during the period specified in Subsection (3)(a), and for the same period each succeeding year.

(b) The State Tax Commission shall prepare forms for use by cities, towns, and counties in applying for revenues. The forms may require the submission of information the State Tax Commission considers necessary to enable it to comply with this section.

Section 3. Section Amended.

Section 59-12-205, Utah Code Annotated 1953, as last amended by Chapters 250 and 287, Laws of Utah 1990, is amended to read:

59-12-205. Ordinances to conform with statutory amendments — Distribution of tax revenue.

(1) [~~All counties, cities, and towns~~] Each county, city, and town, in order to maintain in effect sales and use tax ordinances pursuant to this part, shall, within 30 days of any amendment of any applicable provisions of Title 59, Chapter 12, Part 1, adopt amendments of their respective sales and use tax ordinances to conform with the amendments to Title 59, Chapter 12, Part 1, insofar as they relate to sales and use taxes.

(2) Any county, city, or town may distribute its sales or use tax revenues by means other than point of sale or use by notifying the commission in writing of such decision, no later than 30 days before commencement of the next tax accrual period. After such notice is given, a county, city, or town may increase the tax authorized by this part to a total of 1% from and after January 1, 1990, of the purchase price paid or charged, excluding a public transit sales and use tax as provided in Section 59-12-501 and a resort communities sales tax as provided in

Section 59-12-401. This tax shall be collected and distributed as follows:

[~~(a) from January 1, 1990, through June 30, 1991, 35% of the tax revenue shall be paid to each county, city, and town providing notice under this section, based upon the percentage that the population of the county, city, or town bears to the total population of all such entities providing notice under this section, and 65% based upon the point of sale or use of the transaction;~~]

[~~(b) from July 1, 1991, through June 30, 1992, 40% of each dollar collected from the sales and use tax authorized by this part shall be paid to each county, city, and town providing notice under this section, based upon the percentage that the population of the county, city, or town bears to the total population of all such entities providing notice under this section, and 60% based upon the point of sale or use of the transaction;~~]

[~~(c)~~] (a) from July 1, 1992, through June 30, 1993, 45% of each dollar collected from the sales and use tax authorized by this part shall be paid to each county, city, and town providing notice under this section, based upon the percentage that the population of the county, city, or town bears to the total population of all such entities providing notice under this section, and 55% based upon the point of sale or use of the transaction; and

[~~(d)~~] (b) from and after July 1, 1993, 50% of each dollar collected from the sales and use tax authorized by this part shall be paid to each county, city, and town providing notice under this section, based upon the percentage that the population of the county, city, or town bears to the total population of all such entities providing notice under this section, and 50% based upon the point of sale or use of the transaction.

(3) Notwithstanding any provision of Subsection (2), [~~no~~] a county, city, or town that has given notice under this section [~~shall~~] may not receive a tax revenue distribution less than 3/4 of 1% of the taxable sales within its boundaries. The commission shall proportionally reduce quarterly distributions to any county, city, or town, which, but for the reduction, would receive a distribution in excess of 1% beginning January 1, 1990, of the sales and use tax revenue collected within its boundaries.

(4) Notwithstanding any other provision of this section, from January 1, 1990, through December 31, 1999, the commission shall determine and retain the amount of revenue generated by a 1/64% tax rate and deposit it in the Olympics Special Revenue Fund or funds provided for in Subsection 59-12-103 (4) for the purposes of the Utah Sports Authority described in Title [62] 9, Chapter 1, Part 3.

(5) (a) Population figures for purposes of this section shall be based on the most recent official census or census estimate of the United States Bureau of the Census.

(b) If population estimates are not made for any county, city, or town by the United States Bureau of Census, population figures shall be determined according to the biennial estimate from the Utah Population Estimates Committee.

(6) The population of a county for purposes of this section shall be determined solely from the unincorporated area of the county.

CHAPTER 302
S. B. No. 171
Passed March 3, 1993
Approved March 22, 1993
Effective July 1, 1993

FEES OF COUNTY OFFICERS' AMENDMENTS

By Craig A. Peterson

AN ACT RELATING TO FEES; SHIFTING COUNTY FEE-SETTING RESPONSIBILITY FROM THE STATE TO THE COUNTIES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-15-204, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
63-55-253, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992, THIRD SPECIAL SESSION
63-63A-8, AS ENACTED BY CHAPTER 253, LAWS OF UTAH 1992
70A-9-403, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1984, SECOND SPECIAL SESSION
70A-9-404, AS LAST AMENDED BY CHAPTER 50, LAWS OF UTAH 1987

ENACTS:
17-5-19.2, UTAH CODE ANNOTATED 1953

REPEALS:
21-2-1, UTAH CODE ANNOTATED 1953
21-2-2, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1992, THIRD SPECIAL SESSION
21-2-5, AS LAST AMENDED BY CHAPTER 5, LAWS OF UTAH 1991
21-2-6, UTAH CODE ANNOTATED 1953
21-2-7, AS LAST AMENDED BY CHAPTER 33, LAWS OF UTAH 1961

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

Section 1. Section Enacted.

Section 17-5-19.2, Utah Code Annotated 1953, is enacted to read:

17-5-19.2. Fees of county officers.

(1) As used in this section, "county officer" means all of the county officers enumerated in Section 17-16-2 except county recorders, county constables, and county sheriffs.

(2) The county legislative body shall adopt an ordinance establishing the fees for services provided by each county officer.

(3)(a) Each county officer shall collect, in advance, for exclusive county use and benefit:

(i) all fees established by the county legislative body under this section; and

(ii) any other fees authorized or required by law.

(b) As long as the displaced homemaker program is authorized by Section 53A-15-204, the county clerk shall:

(i) assess $20 in addition to whatever fee for a marriage license is established under authority of this section; and

(ii) transmit $20 from each marriage license fee to the Division of Finance to be credited to the displaced homemaker program.

(c) As long as the Children's Legal Defense Account is authorized by Section 63-63a-8, the county clerk shall:

(i) assess $10 in addition to whatever fee for a marriage license is established under authority of this section and in addition to the $20 assessed for the displaced homemaker program; and

(ii) transmit $10 from each marriage license fee to the Division of Finance for deposit in the Children's Legal Defense Account.

(4) This section does not apply to any fees currently being assessed by the state but collected by county officers.

Section 2. Section Amended.

Section 53A-15-204, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-15-204. Programs for displaced homemakers.

(1) For purposes of this section, "displaced homemaker" means an individual who:

(a) has been a homemaker for a period of eight or more years without significant gainful employment outside the home, and whose primary occupation during that period of time was the provision of unpaid household services for family members;

(b) has found it necessary to enter the job market but is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and

(c) has depended on the income of a family member and lost that income or has depended on governmental assistance as the parent of dependent children[;] and is no longer eligible for that assistance.

(2) The State Board for Applied Technology Education shall establish, in cooperation with state and local governmental agencies, community-based organizations, and private employers, a program for the education, training, and transitional counseling of displaced homemakers, which includes referral services and the following services:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues; and

(f) prevocational self-esteem and assertiveness training.

(3) The State Board for Applied Technology Education shall:

(a) (i) contract with existing governmental or private agencies or community-based organizations which have demonstrated effectiveness in serving displaced homemakers[;] to provide a program for displaced homemakers in each county or group of counties, as the population demands;

(ii) if no such program exists, that board may establish a program for displaced homemakers in that area;

(iii) displaced homemakers may act as peer counselors in programs for displaced homemakers; and

(b) coordinate its program for displaced homemakers with existing state or federal programs of a similar nature and, where possible, utilize existing physical resources;

(c) establish rules to implement this section, and may form an advisory committee for recommendations on the establishment and improvement of a program for displaced homemakers;

(d) encourage the placement of displaced homemakers in programs established under the Job Training Partnership Act, 29 U.S.C. Section 1501, and under the Carl D. Perkins Vocational Education Act, 20 U.S.C. Section 2301, et seq.; and

(e) prepare an evaluation of its program for displaced homemakers, including the success of placement of displaced homemakers in programs described in this section, and annually submit a written report of that evaluation to the Legislature.

(4) (a) Appropriate funds received by the state under Section [~~21-2-2~~] 17-5-19.2 shall be deposited as nonlapsing dedicated credits and used for the purposes of this section.

(b) However, if the nonlapsing amount exceeds $300,000 at the end of any fiscal year, the excess shall lapse into the General Fund.

(5) The State Board for Applied Technology Education shall establish procedures for payment and repayment by recipients to that board of the costs of services provided to displaced homemakers under this section, when possible.

Section 3. Section Amended.

Section 63-55-253, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, Third Special Session, is amended to read:

63-55-253. Repeal dates, Titles 53A, 53B.

(1) The following provisions of Title 53A are repealed on the following dates:

(a) The State Textbook Commission, created in Section 53A-14-101, is repealed July 1, 2001.

(b) Section 53A-15-204, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection [~~21-2-2(1)(a)(ii)~~] 17-5-19.2(2)(b), is repealed July 1, 1997.

(c) The advisory council for the Division of Services for the Visually Handicapped, appointed in Section 53A-24-305, is repealed July 1, 1996.

(d) The institutional council for the Schools for the Deaf and Blind, created in Section 53A-25-301, is repealed July 1, 1995.

(2) The following provisions of Title 53B are repealed on the following dates:

(a) The State Board of Regents, created in Section 53B-1-103, is repealed July 1, 2001.

(b) The following Boards of Trustees, created in Section 53B-2-103, are repealed on the following dates:

(i) University of Utah is repealed July 1, 2002.

(ii) Utah State University is repealed July 1, 1993.

(iii) Weber State University is repealed July 1, 1994.

(iv) Southern Utah University is repealed July 1, 1999.

(v) Snow College is repealed July 1, 1997.

(vi) Dixie College is repealed July 1, 2000.

(vii) College of Eastern Utah is repealed July 1, 1998.

(viii) Utah Valley Community College is repealed July 1, 1996.

(ix) Salt Lake Community College is repealed July 1, 1995.

Section 4. Section Amended.

Section 63-63a-8, Utah Code Annotated 1953, as enacted by Chapter 253, Laws of Utah 1992, is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, Mandatory

Educational Course on Children's Needs for Divorcing Parents - Pilot Program, and Sections 30-3-15.3, 30-3-18, and 30-3-19 through 30-3-31, Mediation Pilot Program - Child Custody or Visitation;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-44.5, 78-3a-63, 78-3a-65, 78-11-6, and 78-7-9[;] and termination of parental rights as provided in Sections 78-3a-39, 78-3a-42, 78-3a-47, and [~~78-3a-101 through 78-3a-115~~] Title 78, Chapter 3f. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-63; and

(c) requiring community service for violation of visitation orders or failure to pay child support as provided in Section 78-32-12.1.

(4) The following withheld fees shall be allocated to the Children's Legal Defense Account:

(a) [~~an~~] the additional $10 fee [~~of $10 shall be~~] withheld on every marriage license issued in the state of Utah as provided in Section [~~21-2-2~~] 17-5-19.2; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Section (4) from the General Fund to the Children's Legal Defense Account.

Section 5. Section Amended.

Section 70A-9-403, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1984, Second Special Session, is amended to read:

70A-9-403. What constitutes filing — Required statement — Duration of filing — Effect of lapsed filing — Duties of filing officer.

(1) Presentation for filing by the Division of Corporations and Commercial Code, or for recording, indexing, and abstracting by tract by the county recorder of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter. The Division of Corporations and Commercial Code shall refuse and the county recorder may refuse to accept the financing statement for filing unless it either contains the statement referred to in Subsection 70A-9-402(6) or is accompanied by a statement signed by either the secured party or the debtor setting forth the statements referred to in said subsection.

(2) Except as provided in Subsection (6), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in Subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number or by entry numbers and book and page numbers and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection 70A-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in Subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statement or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under Subsection (6) shall be retained.

(4) Except as provided in Subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The fees for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be determined by the Division of Corporations and Commercial Code pursuant to Subsection 63-38-3(2). The secured party may at his option show a trade name for any person and an extra indexing fee determined by the Division of Corporations and Commercial Code pursuant to Subsection 63-38-3(2) shall be paid with respect thereto.

(6) If the debtor is a transmitting utility (Subsection 70A-9-401(5)) and a filed financing statement so states, it is effective until a termination state-

ment is filed. A real estate mortgage which is effective as a fixture filing under Subsection 70A-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection 70A-9-103(5), or is recorded as a fixture filing, the county recorder shall record and index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description, record and index it in the same fashion as if the financing statement were a mortgage of the real estate described. Original statements, once duly marked and recorded by the county recorder, may be returned to the party making the filing. Except as provided in Subsection 70A-9-404(3), filings made in the office of the county recorder shall be subject to the provisions of Section [~~21-2-3~~] 17-5-19.2 in lieu of the fees provided in this chapter.

Section 6. Section Amended.

Section 70A-9-404, Utah Code Annotated 1953, as last amended by Chapter 50, Laws of Utah 1987, is amended to read:

70A-9-404. Termination statement.

(1) If a financing statement covering consumer goods is filed on or after July 1, 1977, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number or by entry number and book and page numbers. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must, on written demand by the debtor, send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number or by entry number and book and page numbers. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with Subsection (2) of Section 70A-9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor, he shall be liable to the debtor for $100, and in addition, for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must duly file the same. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) No fee shall be charged for filing and indexing a termination statement including sending or delivering the financing statement, except that filings made in the office of the county recorder shall be subject to the provisions of Section [~~21-2-3~~] 17-5-19.2 in lieu of the no-fee provision in this chapter.

Section 7. Repealer.

Section 21-2-1, Collection in advance by county officers, Utah Code Annotated 1953;

Section 21-2-2, Fees of county clerk, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1992, Third Special Session;

Section 21-2-5, Fees of county treasurer, Utah Code Annotated 1953, as last amended by Chapter 5, Laws of Utah 1991;

Section 21-2-6, Fees of county auditor, Utah Code Annotated 1953; and

Section 21-2-7, Fees of county surveyor, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1961, are repealed.

Section 8. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 303
S.B. No. 212
Passed March 3, 1993
Approved March 23, 1993
Effective March 23, 1993

SUPPLEMENTAL
APPROPRIATIONS ACT

By LeRay McAllister

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING JULY 1, 1992 AND ENDING JUNE 30, 1993 AND BEGINNING JULY 1, 1993 AND ENDING JUNE 30, 1994 FOR THE USE AND SUPPORT OF CERTAIN STATE DEPARTMENTS AND AGENCIES OF STATE GOVERNMENT AND FOR OTHER PURPOSES AS IN THIS ACT PROVIDED; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 1992 and ending June 30, 1993. This in addition to amounts appropriated by Chapters 305 and 306 Laws of Utah 1992.

EXECUTIVE OFFICES,
COURTS AND CORRECTIONS

ITEM 1
To Office of Legislative Research
and General Counsel
From General Fund $25,000
Schedule of Programs:
Law on Disk FY 1993 25,000

ITEM 2
To Governor - Administration
From General Fund 125,000
Schedule of Programs:
Transition Administration 100,000
Transition Residence 25,000

ITEM 3
To Governor - Commission on Criminal
and Juvenile Justice
From General Fund 50,000
Schedule of Programs:
Gang Suppression 50,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 4
To Attorney General - Abortion
From General Fund 100,000
Schedule of Programs:
Abortion Litigation 100,000

It is the intent of the Legislature that these funds be non-lapsing.

In the event an appeal is avoided in the abortion matter, or funds are not otherwise needed for defending any abortion litigation, the Attorney General may use the $100,000 one-time supplemental, or any part thereof, after June 30, 1993, for child abuse and prevention programs for training of investigators and prosecutors of child abuse reports.

ITEM 5
To Attorney General - Administration
From General Fund Restricted -
Antitrust Revolving 28,000
Schedule of Programs:
White Collar Crime 28,000

ITEM 6
To Attorney General - Domestic Violence
From General Fund Restricted -
Domestic Violence Account 12,000
Schedule of Programs:
Domestic Violence 12,000

ITEM 7
To Judicial Council\State Court
Administrator - Jury and Witness Fees
From General Fund 143,900
Schedule of Programs:
Jury and Witness Fees FY 1992 23,900
Jury and Witness Fees FY 1993 120,000

ITEM 8
To Judicial Council\State Court
Administrator

It is the intent of the Legislature that the appropriations for the Courts for FY 1993, as included in Item 28, Chapter 305, Laws of Utah 1992, shall be non-lapsing.

ITEM 9
To Judicial Council\State Court Administrator
From General Fund 400,000
Schedule of Programs:
Data Processing 400,000

It is the intent of the Legislature that the funding for the Courts data processing be non-lapsing.

ITEM 10
To Department of Human Services - Youth
Corrections Division
From General Fund Restricted - Youth
Corrections Restitution Account 250,000
Schedule of Programs:
Growth 250,000

ITEM 11
To Department of Human Services - Youth
Corrections Division
From General Fund 50,000
Schedule of Programs:
Blood Borne Pathogens 50,000

ITEM 12
To Department of Corrections - Medical
From General Fund 200,000
Schedule of Programs:
Blood Borne Pathogens 200,000

ITEM 13
To Department of Corrections - Administration
From General Fund 25,000
Schedule of Programs:

Offender Based Tracking System 25,000

It is the intent of the Legislature that the funding for the Offender Based Tracking System in Corrections be made non-lapsing.

ITEM 14
To Department of Corrections - Data Processing Internal Service Fund
From General Fund 150,000
Schedule of Programs:
Data Processing 150,000

It is the intent of the Legislature that the funding for the Corrections data processing be made non-lapsing.

ITEM 15
To Department of Corrections

It is the intent of the Legislature that the appropriations for the Department of Corrections for FY 1993, as included in Chapter 305, Items 33 to 39, Laws of Utah 1992, shall be non-lapsing.

ITEM 16
To Board of Pardons

It is the intent of the Legislature that the appropriation in Chapter 305, Item 40, Laws of Utah 1992, be non-lapsing.

BUSINESS, LABOR, AGRICULTURE, AND ENVIRONMENTAL QUALITY

ITEM 17
To Department of Agriculture
From General Fund $30,000
From Federal Funds 30,000
Schedule of Programs:
Chemistry Laboratory 60,000

It is the intent of the Legislature that any unexpended funds from the FY 1993 appropriation (Chapter 305, Item 41, Laws of Utah 1992) for pesticide amnesty are to be considered as non-lapsing through FY 1994.

ITEM 18
To Department of Agriculture - Agriculture Marketing and Development
From General Fund 300,000
Schedule of Programs:
Marketing and Promotion 100,000
Loan Fund 200,000

It is the intent of the Legislature that funding for the Department of Agriculture Agribusiness program be considered non-lapsing.

It is the intent of the Legislature that all money made available to agriculture resource development from any source including interest earned be deposited into that account, in accordance to 4-18-6, Utah Code Annotated.

It is the intent of the Legislature that all income including interest earned from the Rural Rehabilitation Account be deposited into that account (reference 4-19-4, Utah Code Annotated.)

ITEM 19
To Department of Agriculture - Resource Conservation
From General Fund 9,000
Schedule of Programs:
Resource Conservation 9,000

ITEM 20
To Department of Alcoholic Beverage Control
From Liquor Control Fund 18,000
Schedule of Programs:
Retail Sales 18,000

ITEM 21
To Department of Environmental Quality
From General Fund 507,500
From General Fund Restricted - Thrift Account 1,200,000
Schedule of Programs:
Environmental Response/Remediation . 250,000
Water Quality 728,800
Drinking Water 728,700

It is the intent of the Legislature that the Division of Environmental Response and Remediation be authorized to expend up to $200,000 (beginning in FY 1993) from the Hazardous Waste Mitigation Fund (Chapter 306, Item 128, Laws of Utah 1992) for all necessary legal expenses, in support of the Proof of Claim filed by the Utah Department of Environmental Quality in the bankruptcy proceedings pending in the United States Bankruptcy Court, Southern District of New York, in the matter entitled "In Re Loan Star Industries, Inc., Debtor," case number 90B21277. A complete accounting of the funds expended will be provided to the Office of the Legislative Fiscal Analyst. Funds unspent by June 30, 1994, will revert to the Hazardous Waste Mitigation Fund, for the matching monies for the Lone Star cleanup.

It is the intent of the Legislature that any unexpended funds resulting from the Division of Air Quality's Operating Permit fees that were collected during FY 1993 be considered non-lapsing and authorized for use in the operating permit program in FY 1994, thereby allowing for a reduction in emission fees in FY 1994.

ITEM 22
To Department of Environmental Quality
From General Fund 450,000
Schedule of Programs:
Hazardous Waste 450,000

It is the intent of the Legislature that if hazardous waste fees in excess of $1,688,000 are received during FY 1993, up to $120,000 of supplemental money allocated to the Department of Environmental Quality to cover costs of operating the hazardous waste program will be carried over to FY 1994 to cover the cost for up to 20 Department of Environmental Quality employees to vacate the Cannon Health Building to facilitate space needs for the increase in employees in the Department of Health.

ITEM 23
To Industrial Commission

From General Fund 107,600
From Federal Funds 12,800
Schedule of Programs:
Industrial Accidents 75,900
Anti-Discrimination 44,500

It is the intent of the Legislature that the funding for the Fair Housing Coordinator be considered non-lapsing.

ITEM 24
To Insurance Department
From General Fund 10,000
Schedule of Programs:
Administration 10,000

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

ITEM 25
To Department of Community and Economic Development - Office of Child Care
From General Fund $20,000
Schedule of Programs:
Child Care Toddler/Infant Initiative ... 20,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 26
To Department of Community and Economic Development - Industrial Assistance Fund
From General Fund 442,000
Schedule of Programs:
Industrial Assistance Fund 442,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 27
To Department of Community and Economic Development - Office of Job Training
From General Fund 200,000
Schedule of Programs:
Single Head of Household Training ... 200,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 28
To Department of Community and Economic Development - Division of Indian Affairs
From General Fund 25,000
Schedule of Programs:
Administration 25,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 29
To Department of Community and Economic Development - Division of Business and Economic Development
From General Fund 285,000
Schedule of Programs:
Business Creation -
Innovation Assistance 40,000
Special Opportunity Fund 245,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 30
To Department of Community and Economic Development - Travel Development
From General Fund 3,000
Schedule of Programs:
Travel Advertising 3,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 31
To Department of Community and Economic Development - Expositions
From General fund 25,000
Schedule of Programs:
Americans with Disabilities Act
Modifications 25,000

It is the intent of the Legislature that these funds be non-lapsing.

It is the intent of the Legislature that expenditure of funds from appropriations for American's with Disability Act shall be only for facility barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommendations to the Director of Finance for allotment of these funds.

ITEM 32
To Department of Community and Economic Development - Division of State History
From General Fund 90,000
Schedule of Programs:
Centennial County History
Writing Project 90,000

It is the intent of the legislature that these funds be non-lapsing.

ITEM 33
To Department of Community and Economic Development - State Library Division
From General Fund 90,000
Schedule of Programs:
Library Development - Library
Network Initiative 90,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 34
To Department of Community and Economic Development - Community Development
From General Fund 1,805,000
Schedule of Programs:
Zoos 95,000
Community Services -
Food Bank Facility 580,000
Home Program 700,000
Homeless Trust Fund 295,000
State Railroad Museum 85,000
Springville Museum 50,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 35
To Utah Technology Finance Corporation

From General Fund 900,000
Schedule of Programs:
Innovation Financing 900,000

It is the intent of the legislature that these funds be non-lapsing.

GENERAL GOVERNMENT AND CAPITAL FACILITIES

ITEM 36
To Department of Administrative Services - Division of Administrative Rules
From General Fund $3,500
Schedule of Programs:
Publication Expense 3,500

ITEM 37
To Department of Administrative Services - Executive Director's Office - Fuel Mitigation
From General Fund 170,000
Schedule of Programs:
Underground Storage Tanks 170,000

It is the intent of the Legislature that funding for underground storage tank mitigation be non-lapsing.

ITEM 38
To Department of Administrative Services - Division of Facilities Construction and Management - Administration
From General Fund 210,000
Schedule of Programs:
Legislative Process Committee - Implementation of Recommendations 210,000

ITEM 39
To Department of Administrative Services - Division of Finance - Mandated Expenditures
From General Fund 975,000
Schedule of Programs:
Fair Labor Standards Act 975,000

It is the intent of the Legislature that funds appropriated to FIRSTplus development be non-lapsing.

The Division of Finance is authorized to allocate costs of the FIRSTplus project to agencies expected to use the system. The allocation is contingent upon the availability of funds. The FY 1993 allocation may not exceed $1,500,000. The allocation may be made up to the amount of available funds in agency line items.

ITEM 40
To Department of Administrative Services - Division of Finance - Mandated Expenditures
From General Fund 30,000
Schedule of Programs:
Navajo Trust Litigation 30,000

ITEM 41
To Department of Administrative Services - Division of Risk Management
From Dedicated Credits 50,000
Schedule of Programs:
Claims Management Software 50,000

ITEM 42
To Career Services Review Board
From General Fund 12,000
Schedule of Programs:
Hearings 12,000

It is the intent of Legislature that funds for hearings expense within the Career Service Review Board be non-lapsing.

ITEM 43
To Department of Human Resource Management

It is the intent of the Legislature that funds appropriated for employee tracking software (Chapter 306, Item 37, Laws of Utah 1992) be non-lapsing.

ITEM 44
To Tax Commission - Tax Administration and Revenue Collection

It is the intent of the Legislature that the appropriation to the Tax Commission (Chapter 305, Item 110, Laws of Utah 1992) be non-lapsing for FY 1993.

ITEM 45
To State Board of Bonding Commissioners
From General Fund 230,000
From Dedicated Credits 20,000
Schedule of Programs:
Debt Service 250,000

CAPITAL BUDGET

ITEM 46
To Department of Administrative Services - Division of Facilities Construction and Management
From General Fund 3,449,000
Schedule of Programs:
Department of Corrections - B-Block Remodel 225,000
Capital Improvements 3,224,000

It is the intent of the Legislature that expenditure of funds from appropriations for American's with Disability Act shall be only for facility barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expendi- tures and make recommendations tothe Director of Finance for allotment of these funds.

ITEM 47
To General Fund 14,224,000
From Division of Facilities Construction and Management - Capital Projects Fund 14,224,000
Schedule of Programs:
To Reverse the Appropriation in Chapter 307, Item 67, Laws of Utah 1992.

It is the intent of the Legislature that all costs associated with the construction and

furnishing of the Tax Commission building which are incurred prior to the issuance of the 1993 General Obligation Bonds be reimbursed by bond proceeds. The maximum amount of cost which may be reimbursed from the 1993 General Obligation Bond proceeds for the Tax Commission building and furnishings may not exceed $14,230,000. This intent statement constitutes a declar- ation of official intent under Section 1.103-18 of the United States Treasury Regulations.

ITEM 48
To General Fund 2,240,000
From Capital Projects Fund -
Statewide Contingency 2,240,000

HIGHER EDUCATION

ITEM 49
To University of Utah - Education and General - Enrollment Growth
From General Fund $388,100

ITEM 50
To University of Utah - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 417,400

It is the intent of the Legislature that expenditure of funds from appropriations for American's with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 51
To University of Utah - Education and General - Science and Technology
From General Fund 164,700

ITEM 52
To University of Utah - Education and General - Library Acquisitions
From General Fund 153,200

ITEM 53
To University of Utah - Education and General - Deferred Maintenance
From General Fund 51,100

ITEM 54
To University of Utah - Statewide TV Administration - EDNET Equipment
From General Fund 77,400

ITEM 55
To University of Utah - Statewide TV Administration - KUED Studio Cameras
From General Fund 220,400

ITEM 56
To Utah State University - Education and General - Enrollment Growth
From General Fund 299,900

ITEM 57
To Utah State University - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 278,000

It is the intent of the Legislature that expenditure of funds from appropriations for American's with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 58
To Utah State University - Education and General - Science and Technology
From General Fund 92,100

ITEM 59
To Utah State University - Education and General - Instruction and Support Equipment
From General Fund 32,200

ITEM 60
To Utah State University - Education and General - Space Dynamics Lab Equipment
From General Fund 53,500

ITEM 61
To Utah State University - Education and General - Distance Education Equipment
From General Fund 21,100

ITEM 62
To Utah State University - Cooperative Extension Division - Distance Education Equipment
From General Fund 10,700

ITEM 63
To Weber State University - Education and General - Alumni House
From General Fund 48,900

ITEM 64
To Weber State University - Education and General - Enrollment Growth
From General Fund 180,600

ITEM 65
To Weber State University - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 143,700

It is the intent of the Legislature that expenditure of funds from appropriations for American's with Disabilities Act shall be only for facilities barrier removal. No facility bar-

rier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 66
To Weber State University - Education and General - Science and Technology
From General Fund 45,700

ITEM 67
To Weber State University - Education and General - Library Acquisitions
From General Fund 57,500

ITEM 68
To Southern Utah University - Education and General - Enrollment Growth
From General Fund 85,900

ITEM 69
To Southern Utah University - Education and General - Americans with Disabilities Act Facilities Cost
From General Fund 104,000

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 70
To Southern Utah University - Education and General - Science and Technology
From General Fund 20,000

ITEM 71
To Southern Utah University - Education and General - Deferred Maintenance
From General Fund 20,100

ITEM 72
To Snow College - Education and General - Workmen's Compensation
From General Fund 25,000

ITEM 73
To Snow College - Education and General - Enrollment Growth
From General Fund 43,600

ITEM 74
To Snow College - Education and General - Americans with Disabilities Act Facilities Cost
From General Fund 46,600

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 75
To Snow College - Education and General - Science and Technology
From General Fund 14,500

ITEM 76
To Snow College - Education and General - Library Acquisitions
From General Fund 11,100

ITEM 77
To Dixie College - Education and General - Fuel and Power
From General Fund 6,000

ITEM 78
To Dixie College - Education and General - Enrollment Growth
From General Fund 64,700

ITEM 79
To Dixie College - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 52,100

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 80
To Dixie College - Education and General - Science and Technology
From General Fund 14,800

ITEM 81
To Dixie College - Education and General - Instructional Equipment
From General Fund 11,800

ITEM 82
To College of Eastern Utah - Education and

General - Enrollment Growth
From General Fund 42,700

ITEM 83
To College of Eastern Utah - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 36,000

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 84
To College of Eastern Utah - Education and General - Science and Technology
From General Fund 14,300

ITEM 85
To College of Eastern Utah - Education and General - Library Acquisitions
From General Fund 10,600

ITEM 86
To Utah Valley Community College - Education and General - Enrollment Growth
From General Fund 146,800

ITEM 87
To Utah Valley Community College - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 108,700

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 88
To Utah Valley Community College - Education and General - Science and Technology
From General Fund 23,100

ITEM 89
To Utah Valley Community College - Education and General - Library Acquisitions
From General Fund 24,400

ITEM 90
To Salt Lake Community College - Education and General - Storm Drain Assessment
From General Fund 18,600

ITEM 91
To Salt Lake Community College - Education and General - Enrollment Growth
From General Fund 249,800

ITEM 92
To Salt Lake Community College - Education and General - Americans with Disabilities Act Facilities Costs
From General Fund 138,500

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed American with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 93
To Salt Lake Community College - Education and General - Science and Technology
From General Fund 34,200

ITEM 94
To Salt Lake Community College - Education and General - Library Acquisitions/Move
From General Fund 42,300

ITEM 95
To State Board of Regents - Administration - Science and Technology
From General Fund 153,600

DEPARTMENT OF NATURAL RESOURCES

ITEM 96
To Department of Natural Resources - Department of Administration
From General Fund $75,000
From Transfers 64,700
From Non-Lapsing 9,800
Schedule of Programs:
Administration - Transition Costs 149,500

ITEM 97
To Department of Natural Resources - Division of State Lands and Forestry
From General Fund Restricted - Land Grant Maintenance 45,000
Schedule of Programs:
Audit Litigation 45,000

ITEM 98
To Department of Natural Resources - Division of State Lands and Forestry
From Transfers ..... (64,700)
Schedule of Programs:

Fire Suppression ..... (64,700)

ITEM 99
To Department of Natural Resources -
Division of Water Rights
From General Fund 50,000
Schedule of Programs:
Technical Services - Imaging System .. 50,000

ITEM 100
To Department of Natural Resources -
Division of Water Resources
From Federal Funds 65,000
Schedule of Programs:
Water Education - Project WET 65,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 101
To Department of Natural Resources -
Division of Water Resources
From Federal Funds 35,000
Schedule of Programs:
Water Education Non-Lapsing 35,000

It is the intent of the Legislature that these funds not lapse and that this program be a separate line item.

ITEM 102
To Department of Natural Resources -
Division of Water Resources -
Conservation and Development Fund
From General Fund 400,000
From General Fund Restricted -
Thrift Account 800,000
Schedule of Programs:
Conservation and Development Fund 1,200,000

ITEM 103
To Department of Natural Resources -
Division of Utah Geological Survey
From General Fund 25,000
Schedule of Programs:
Administration - Mineral Lease Shortfall 25,000

ITEM 104
To Department of Natural Resources -
Division of Wildlife Resources
From General Fund Restricted -
Wildlife Resources 108,400
Schedule of Programs:
Small Game - Upland Game Habitat
Protection Fund 108,400

ITEM 105
To Department of Natural Resources -
Division of Wildlife Resources
From General Fund Restricted -
Wildlife Resources 25,000
Schedule of Programs:
Law Enforcement 25,000

ITEM 106
To Department of Natural Resources -
Division of Wildlife Resources
From General Fund Restricted -
Wildlife Resources 29,000
Schedule of Programs:
Administration - Americans with Disabilities Act
Compliance 29,000

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda-tions to the Director of Finance for allotment of these funds.

ITEM 107
To Department of Natural Resources -
Division of Wildlife Resources
DEER TAGS
Resident Antlerless Deer Permit/Tag 75.00

There is a $3.00 postage and handling fee for these permits.

BIG GAME PERMITS/TAGS
Resident Limited Entry Deer 40.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Entry Deer 400.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident High Country Buck Deer 30.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident High Country Buck Deer .. 250.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Archery Elk 40.00
Resident General Elk 40.00

Resident Limited Entry Bull Elk 75.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Control Elk 50.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Depredation Elk 50.00

Resident Limited Entry
Hunter Choice Elk 75.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Limited Entry Muzzleloader Elk 75.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Archery Elk 300.00

Nonresident General Elk 300.00

Nonresident Limited Entry Bull Elk 450.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Control Elk 300.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Entry
Hunter Choice Elk 300.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Entry
Muzzleloader Elk 450.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Resident Limited Buck Antelope 35.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Buck Antelope 215.00

A $3.00 postage and handling fee is currently being assessed for these big game permits. A $5.00 postage and handling fee for these big game permits is being requested at the 1993 Legislative Session in order to implement a Bonus Point System. If any indicated specie is not included in the Bonus Point System, the $3.00 postage and handling fee will remain in effect.

Nonresident Limited Doe Antelope 125.00

There is a $3.00 postage and handling fee for these permits.

ITEM 108

To Department of Natural Resources –
Division of Parks and Recreation –
Capital Budget
From General Fund Restricted –
Boating Account 400,000
Schedule of Programs:
Park Renovation and Maintenance 400,000

ITEM 109

To Department of Natural Resources –
Division of Parks and Recreation –
Capital Budget
From General Fund 1,950,000
Schedule of Programs:
Riverway and Trails Enhancement ... 500,000
Bear Lake Marina/Antelope Island .. 1,450,000

ITEM 110

To Department of Natural Resources –
Division of Parks and Recreation –
Capital Budget

From General Fund 500,000
From Federal Funds 125,000
Schedule of Programs:
Americans with Disabilities
Act Compliance 625,000

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act shall be only for facilities barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommenda- tions to the Director of Finance for allotment of these funds.

ITEM 111
To Department of Natural Resources -
Division of Parks and Recreation
From General Fund 400,000
Schedule of Programs:
Antelope Island Causeway
Pass-Through 400,000

It is the intent of the Legislature that these funds not lapse.

ITEM 112
To Department of Natural Resources -
Division of Parks and Recreation
From General Fund 500,000
Schedule of Programs:
Recreational Trails 500,000

It is the intent of the Legislature that these funds not lapse.

PUBLIC EDUCATION

ITEM 113
To State Board of Education - Minimum
School Program
From Uniform School Fund $1,000,000
Schedule of Programs:
Transportation 1,000,000

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 114
To State Board of Education - State Office
of Education
From Uniform School Fund 150,000
Schedule of Programs:
Gang Prevention 150,000

It is the intent of the Legislature that these funds be utilized for implementation of House Bill 34, 1993 General Session.

It is the intent of the Legislature that these funds be non-lapsing.

ITEM 115
To State Board of Education - State Office
of Education
From Uniform School Fund 74,000
Schedule of Programs:
EDNET 74,000

These funds are to be used to upgrade the EDNET Center at the State Office of Education.

ITEM 116
To State Board of Education - State Office
of Education
From Uniform School Fund 315,000
Schedule of Programs:
Rehabilitation Services 315,000

ITEM 117
To State Board for Applied Technology
Education - Applied Technology Centers
From Uniform School Fund 27,900
Schedule of Programs:
Bridgerland Applied Technology Center . 7,900
Ogden-Weber Applied Technology
Center 20,000

These funds are to be used to meet Americans with Disabilities Act requirements.

ITEM 118
To State Board of Education - Utah Schools
for the Deaf and the Blind
From Uniform School Fund 108,100
Schedule of Programs:
Administration 2,100
Special Account 106,000

These funds are to be used as follows: $2,100 to meet Americans with Disabilities Act require- ments, and $106,000 to fund transportation.

ITEM 119
To State Board of Education - Critical
School Building Program
From Uniform School Fund 354,700
Schedule of Programs:
Critical School Building Program 354,700

DEPARTMENT OF HUMAN SERVICES

ITEM 120
To Department of Human Services -
Executive Director Operations
From General Fund $125,000
From Federal Funds 9,400
Schedule of Programs:
General Services 109,400
Liability Management 25,000

This appropriation is to provide for an Americans with Disabilities Act Coordinator, facility modification, and moving cost.

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disabilities Act modifications shall be only for facility barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided in 63-38-11 Utah Code Annotated, the Governor's Office of Planning and budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act barrier removal expenditures and make recommen-

dations to the Director of Finance for allotment of these funds.

ITEM 121
To Department of Human Services –
Division of Family Services
From General Fund ..... (740,000)
Schedule of Programs:
Administration ..... (740,000)

This negative appropriation is to allow the reallocation of surplus funds.

ITEM 122
To Department of Human Services –
Division of Services for People with Disabilities
From General Fund 276,000
Schedule of Programs:
State Office 126,000
Utah State Developmental Center 150,000

This appropriation is to provide for immunization against blood borne pathogens and to provide for the replacement of vehicles at the Utah State Developmental Center.

ITEM 123
To Department of Human Services – Division of Mental Health
From General Fund 574,300
Schedule of Programs:
State Hospital 574,300

This appropriation is to provide for Medicaid cost settlement, equipment purchases, the reclassification of workers, and immunization against blood borne pathogens.

It is the intent of the Legislature that the appropriation for blood borne pathogens be non-lapsing.

It is the intent of the Legislature that any General Fund appropriated for Community Services in Chapter 305, Item 212, Laws of Utah 1992, not used for mental health services for the guilty but mentally ill be non-lapsing and used for treatment with Clozaril at the State Hospital.

ITEM 124
To Department of Human Services – Office of Social Services
From General Fund 147,000
Schedule of Programs:
State Office 147,000

This appropriation is to settle claims under the Fair Labor Standards Act.

ITEM 125
To Department of Human Services – Division of Aging and Adult Services
From General Fund 200,000
Schedule of Programs:
Local Government Grants 200,000

This appropriation is for transportation equipment in local Area Agencies on Aging.

It is the intent of the Legislature that this item shall be non-lapsing.

ITEM 126
To Department of Human Services – Office of Family Support
From General Fund ..... (1,707,000)
From Federal Funds ..... (5,190,000)
Schedule of Programs:
Aid to Families with
Dependent Children ..... (6,897,000)

This negative appropriation is to allow the reallocation of surplus funds.

ITEM 127
To Department of Human Services –
Internal Service Fund

Capital outlay authorization for the General Services Internal Service Fund is increased to $75,000 for FY 1993.

DEPARTMENT OF HEALTH

ITEM 128
To Department of Health – Executive
Director Operations
From General Fund $222,400
Schedule of Programs:
Medical Examiner 40,700
State Laboratory – Lab Equipment ... 120,000
Administrative Services – First
Plus Equipment 61,700

The appropriation for the Medical Examiner's Office includes monies for Body Transportation, OSHA requirements and reclassifications.

It is the intent of the Legislature that $10,000 of the appropriation to the Medical Examiner be non-lapsing and shall be used to comply with OSHA requirements. The Department of Health shall report to the Legislature in the 1994 Legislative Session how non-lapsing money was utilized.

It is the intent of the Legislature that the appropriation for Administrative Services shall be non-lapsing, and shall be used to purchase equipment related to necessary modifications for FIRSTplus. The Department of Health shall report to the Legislature in the 1994 Legislative Session about how non-lapsing money was utilized.

It is the intent of the Legislature that unexpended General Fund up to $54,000 of Line Item 221, Chapter 305, Laws of Utah 1992 remaining at the end of FY 1993 shall be non-lapsing, and shall be used to pay for one-time payout costs of retiring employees. The Department of Health shall report to the Legislature in the 1994 Legislative Session how non-lapsing money was utilized.

ITEM 129
To Department of Health – Health Care Resources
From General Fund 60,000
Schedule of Programs:
Health Data Analysis 60,000

It is the intent of the Legislature that this appropriation shall be non-lapsing, and shall be used to fund the completion of the Physician Practice Guidelines.

ITEM 130
To Department of Health – Community

Health Services
From General Fund 60,000
Schedule of Programs:
Chronic Disease Control 45,000
HIV/AIDS Prevention and Control 15,000

For AIDS Outreach and Tuberculosis medication.

ITEM 131
To Department of Health - Family Health Services
From General Fund 100,000
Schedule of Programs:
Maternal and Infant 100,000

For support of the Poison Control Center.

ITEM 132
To Department of Health - Medical Assistance
From General Fund 4,014,600
From Federal Funds 11,993,600
Schedule of Programs:
Utah Medical Assistance Program 64,600
Medical Assistance 15,943,600

Includes funding for extra payments in the Utah Medical Assistance Program, increased utilization of the Medical Assistance Program and funding for specialized wheelchairs for eligible disabled clients.

It is the intent of the Legislature that General Funds appropriated to the Department of Health - Medical Assistance in (Item 227 of Chapter 305, Laws of Utah 1992), shall be non-lapsing, and shall be used for the payment of Medicaid and Utah Medical Assistance claims in FY 1994 and for no other purpose.

ITEM 133
To Department of Health - Data Processing - Internal Service Fund

Capital outlay authorization for the Data Processing Internal Service Fund is increased to $445,000 for FY 1993.

DEPARTMENT OF PUBLIC SAFETY

ITEM 134
To Department of Public Safety - Commissioner's Office
From General Fund $36,200
Schedule of Programs:
Commissioner's Office ..... (13,800)
Community Crime Prevention 50,000

ITEM 135
To Department of Public Safety - Driver License
From General Fund ..... (27,500)
Schedule of Programs:
Administration ..... (27,500)

ITEM 136
To Department of Public Safety - Highway Patrol
From General Fund ..... (66,700)
Schedule of Programs:
Administration ..... (66,700)

ITEM 137
To Department of Public Safety - Police Officer Standards and Training
From General Fund 300,700
From General Fund Restricted - Public Safety Support Fund ..... (300,700)

ITEM 138
To Department of Public Safety - Investigations
From General Fund ..... (42,000)
Schedule of Programs:
Narcotics and Liquor Law ..... (42,000)

ITEM 139
To Department of Public Safety - Law Enforcement Services
From General Fund 209,000
Schedule of Programs:
Communications 169,000
State Crime Lab 40,000

It is the intent of the Legislature that $79,000 for capital outlay is to be non-lapsing.

ITEM 140
To Utah National Guard
From General Fund 154,900
From Federal Funds 134,400
Schedule of Programs:
Armory Maintenance 289,300

It is the intent of the Legislature that expenditure of funds from appropriations for Americans with Disability Act shall be only for facility barrier removal. No facility barrier may be removed if the total cost of a programmatic accommodation is less than the cost of the facility barrier removal. As provided by 63-38-11 Utah Code Annotated, the Governor's Office of Planning and Budget shall review agency and institution work programs for the appropriateness of proposed Americans with Disabilities Act facility barrier removal expenditures and make recommendations to the Director of Finance for allotment of these funds.

DEPARTMENT OF TRANSPORTATION

ITEM 141
To Department of Transportation - Support Services
From Transportation Fund $444,400
From Federal Funds ..... (310,000)
Schedule of Programs:
Administration 50,000
Ports of Entry 84,400

ITEM 142
To Department of Transportation - Engineering Services
From Transportation Fund 200,000
Schedule of Programs:
Planning and Programming 100,000
Materials Lab 100,000

ITEM 143
To Department of Transportation - District Management
From Transportation Fund ..... (246,800)

Schedule of Programs:
District Management ..... (246,800)

ITEM 144
To Department of Transportation -
Maintenance Management
From Transportation Fund 5,000,000
Schedule of Programs:
Maintenance Management 5,000,000

ITEM 145
To Department of Transportation -
Equipment management
From Transportation Fund 33,800
Schedule of Programs:
Maintenance Planning 33,800

ITEM 146
To Department of Transportation -
State Construction
From Transportation Fund ..... (5,431,400)
Schedule of Programs:
State Construction ..... (5,431,400)

Section 2. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 1993 and ending June 30, 1994.

HIGHER EDUCATION

ITEM 147
To State Board of Regents - Administration -
Education Technology Initiative
From General Fund $900,000

PUBLIC EDUCATION

ITEM 148
To State Board of Education - Minimum
School Program
From Uniform School Fund $8,000,000
Schedule of Programs:
Education Technology Initiatives 8,000,000

It is the intent of the Legislature that these funds be non-lapsing. Funds are to be made available to districts as they are available to the State Board of Education.

ITEM 149
To State Board of Education - Minimum
School Program
From Uniform School Fund 500,000
Schedule of Programs:
EDNET 500,000

It is the intent of the Legislature that these funds be non-lapsing. Funds are to be made available to districts as they are available to the State Board of Education.NATURAL RESOURCES

ITEM 150
To Department of Natural Resources -
Division of State Lands and Forestry
From General Fund Restricted -
Land Grant Maintenance 2,000,000
Schedule of Programs:
Trust Management Projects 2,000,000

It is the intent of the Legislature that the Division of State Lands and Forestry be authorized to expend up to $2 million dollars of funds from the General Fund Restricted - Land Grant Maintenance Account for the development of trust lands, consistent with statute and trust principles. It is further the intent of the Legislature that the division seek to establish partnerships with local governments and private entities in pursuing development objectives; and that any development partnership shall include provisions for repayment of General Fund Restricted - Land Grant Maintenance Account funds expended under the agreement.

If other federal, state, or local funds are reasonably available for the purposes stated above, it is the intent of the Legislature that the division not expend funds of the General Fund Restricted - Land Grant Maintenance Account.

It is the intent of the Legislature that the Board of State Lands and Forestry, or its successor, review any proposed partnership regarding the expenditure of General Fund Restricted - Land Grant Maintenance Account funds for consistency with constitutional principles, statutes, and rules of the board and division.

Section 3. This act takes effect upon approval by the Governor, or the day following the constitutional time limit of Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override.

CHAPTER 304
S. B. No. 214
Passed March 2, 1993
Approved March 22, 1993
Effective May 3, 1993

CAPITAL FACILITIES FUNDING

By Stephen J. Rees
Lane Beattie
Winn L. Richards

AN ACT RELATING TO CAPITAL INFRASTRUCTURE; AMENDING BOND LEGISLATION REQUIREMENTS; AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS FOR CAPITAL FACILITIES, INCLUDING BUILDINGS, HIGHWAYS, AND RELATED FACILITIES; SPECIFYING THE USE OF BOND PROCEEDS AND THE MANNER OF ISSUANCE; CREATING SINKING FUNDS; APPROVING THE ISSUANCE OF CERTAIN OBLIGATIONS BY THE STATE BUILDING OWNERSHIP AUTHORITY; APPROVING OTHER PROJECTS; AND PROVIDING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
63B-1-101, UTAH CODE ANNOTATED 1953
63B-1-201, UTAH CODE ANNOTATED 1953
63B-1-202, UTAH CODE ANNOTATED 1953
63B-2-101, UTAH CODE ANNOTATED 1953
63B-2-102, UTAH CODE ANNOTATED 1953
63B-2-103, UTAH CODE ANNOTATED 1953
63B-2-104, UTAH CODE ANNOTATED 1953
63B-2-105, UTAH CODE ANNOTATED 1953
63B-2-106, UTAH CODE ANNOTATED 1953
63B-2-107, UTAH CODE ANNOTATED 1953
63B-2-108, UTAH CODE ANNOTATED 1953
63B-2-109, UTAH CODE ANNOTATED 1953
63B-2-110, UTAH CODE ANNOTATED 1953
63B-2-111, UTAH CODE ANNOTATED 1953
63B-2-112, UTAH CODE ANNOTATED 1953
63B-2-113, UTAH CODE ANNOTATED 1953
63B-2-114, UTAH CODE ANNOTATED 1953
63B-2-115, UTAH CODE ANNOTATED 1953
63B-2-116, UTAH CODE ANNOTATED 1953
63B-2-117, UTAH CODE ANNOTATED 1953
63B-2-201, UTAH CODE ANNOTATED 1953
63B-2-202, UTAH CODE ANNOTATED 1953
63B-2-203, UTAH CODE ANNOTATED 1953
63B-2-204, UTAH CODE ANNOTATED 1953
63B-2-205, UTAH CODE ANNOTATED 1953
63B-2-206, UTAH CODE ANNOTATED 1953
63B-2-207, UTAH CODE ANNOTATED 1953
63B-2-208, UTAH CODE ANNOTATED 1953
63B-2-209, UTAH CODE ANNOTATED 1953
63B-2-210, UTAH CODE ANNOTATED 1953
63B-2-211, UTAH CODE ANNOTATED 1953
63B-2-212, UTAH CODE ANNOTATED 1953
63B-2-213, UTAH CODE ANNOTATED 1953
63B-2-214, UTAH CODE ANNOTATED 1953
63B-2-215, UTAH CODE ANNOTATED 1953
63B-2-216, UTAH CODE ANNOTATED 1953
63B-2-217, UTAH CODE ANNOTATED 1953
63B-2-301, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 63B-1-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 1. GENERAL PROVISIONS

Part 1. Definitions

63B-1-101. Definitions.

As used in this title:

(1) "Board" means the State Building Board.

(2) "Commission" means the State Bonding Commission created in Section 63B-1-201.

(3) "Division" means the Division of Facilities Construction and Management.

Section 2. Section Enacted.

Section 63B-1-201, Utah Code Annotated 1953, is enacted to read:

63B-1-201. Members.

(1) There is created a State Bonding Commission composed of:

(a) the governor;

(b) the state treasurer; and

(c) a third person appointed by the governor to serve a two-year term, who is a member of a political party different from that of the governor.

(2) The commission shall exercise the powers and perform the duties prescribed for the commission by statute.

Section 3. Section Enacted.

Section 63B-1-202, Utah Code Annotated 1953, is enacted to read:

63B-1-202. Bond legislation to contain operation cost estimates of funded projects.

(1) As used in this section, "capital projects" means buildings but does not include highways, roads, or capital improvements to buildings.

(2) All legislation authorizing the commission to issue bonds for the acquisition and construction of capital projects shall contain an estimate of the annual amount of funds necessary to operate and maintain each capital project.

(3) If any operations and maintenance costs estimates required by this section are omitted from any legislation authorizing the commission to issue bonds, that omission does not affect the authority of the commission to issue bonds.

Section 4. Section Enacted.

Section 63B-2-101, Utah Code Annotated 1953, is enacted to read:

CHAPTER 2. 1993 BONDING

Part 1. Capital Facilities and Capital Improvement Bonding

63B-2-101. State Bonding Commission authorized to issue general obligation bonds.

The commission created under Section 63B-1-201 may issue and sell general obligation bonds of the state pledging the full faith, credit, and resources of the state for the payment of the principal of and interest on the bonds to provide funds to the division.

Section 5. Section Enacted.

Section 63B-2-102, Utah Code Annotated 1953, is enacted to read:

63B-2-102. Maximum amount — Projects authorized.

(1) The total amount of bonds issued under this part may not exceed $80,000,000.

(2)(a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

1	Alterations, Repairs, and Improvements	$8,413,900
TOTAL IMPROVEMENTS		$8,413,900

CAPITAL FACILITIES CONSTRUCTION

PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
1	Corrections – Northern Utah Community Corrections Center Phase II	$2,729,700	$158,000
2	University of Utah Marriot Library Phase II	$10,200,000	$881,600
3	Ogden Courts Building Phase II	$12,096,000	$340,000
4	Utah National Guard – Southeast Utah Armory Phase II	$397,800	$70,500
5	Southern Utah University Library Phase II	$7,004,400	$427,000
6	Utah Valley Special Events Center Phase II	$11,845,300	$536,900
7	Salt Lake Community College – Land	$1,300,000	$0
8	Tax Commission Building	$14,224,000	$812,000
9	Dixie College Business Building	$2,823,300	$187,800
10	Salt Lake Community College South City 3rd Floor and Boiler	$4,009,500	$257,600
11	Public Education – Deaf and Blind Classrooms	$3,456,100	$124,800
TOTAL CONSTRUCTION		$70,086,100	
TOTAL IMPROVEMENTS AND CONSTRUCTION		$78,500,000	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3)(a) The amount funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4)(a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5)(a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section 63-56-40.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future

Legislatures to fund projects initiated from this authorization.

Section 6. Section Enacted.

Section 63B-2-103, Utah Code Annotated 1953, is enacted to read:

63B-2-103. Use of bond proceeds for issuance and other costs.

The proceeds of bonds issued under this chapter shall be used for the purposes described in Section 63B-2-102 and to pay all or part of any cost incident to the issuance and sale of the bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees' fees, financial advisors' fees, and underwriters' discount.

Section 7. Section Enacted.

Section 63B-2-104, Utah Code Annotated 1953, is enacted to read:

63B-2-104. Manner of issuance — Amounts, interest, and maturity.

(1) Bonds issued under this chapter may be authorized, sold, and issued at times and in a manner determined by the commission by resolution.

(2) Bonds may be issued in one or more series, in amounts, and shall bear dates, interest rates, including a variable rate, and maturity dates as the commission determines by resolution.

(3) A bond issued may not mature later than 20 years after the date of final passage of this chapter.

Section 8. Section Enacted.

Section 63B-2-105, Utah Code Annotated 1953, is enacted to read:

63B-2-105. Terms and conditions of sale — Plan of financing — Signatures — Replacement — Registration — Federal rebate.

(1) In the issuance of bonds, the commission may determine by resolution:

(a) the manner of sale, including public or private sale;

(b) the terms and conditions of sale, including price, whether at, below, or above face value;

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

(2) The commission may by resolution adopt a plan of financing, which may include terms and conditions of arrangements entered into by the commission on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the commission.

(3)(a) Any signature of a public official authorized by resolution of the commission to sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the bonds.

(b) If all signatures of public officials on the bonds are facsimile signatures, provision shall be made for a manual authenticating signature on the bonds by or on behalf of a designated authentication agent.

(c) If an official ceases to hold office before delivery of the bonds signed by that official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

(d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise placed on the bonds.

(4)(a) The commission may enact resolutions providing for the replacement of lost, destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller or larger denominations.

(b) Bonds in changed denominations shall:

(i) be exchanged for the original bonds in like aggregate principal amounts and in a manner that prevents the duplication of interest; and

(ii) bear interest at the same rate, mature on the same date, and be as nearly as practicable in the form of the original bonds.

(5)(a) Bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(b) The commission may provide for the services and payment for the services of one or more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

(c) The records of ownership, registration, transfer, and exchange of the bonds, and of persons to whom payment with respect to the obligations is made, are private records as provided in Section 63-2-302 or protected records as provided in Section 63-2-304.

(d) The bonds and any evidences of participation interest in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 of the Internal Revenue Code of 1986, as

amended, or any successor to it, and applicable regulations.

(6) The commission may:

(a) by resolution, provide for payment to the United States of whatever amounts are necessary to comply with Section 148(f) of the Internal Revenue Code of 1986, as amended; and

(b) enter into agreements with financial and other institutions and attorneys to provide for:

(i) the calculation, holding, and payment of those amounts; and

(ii) payment from any legally available source of fees, charges, or other amounts coming due under any agreements entered into by the commission.

Section 9. Section Enacted.

Section 63B-2-106, Utah Code Annotated 1953, is enacted to read:

63B-2-106. Constitutional debt limitation.

(1) The commission may not issue bonds under this chapter in an amount that violates the limitation described in Article XIV, Sec. 1, Utah Constitution.

(2) For purposes of applying the debt limitation contained in Article XIV, Sec. 1, Utah Constitution, the value of the taxable property in Utah is considered to be 100% of the fair market value of the taxable property of the state, as computed from the last assessment for state purposes previous to the issuance of the bonds.

Section 10. Section Enacted.

Section 63B-2-107, Utah Code Annotated 1953, is enacted to read:

63B-2-107. Tax levy — Abatement of tax.

(1) Each year after issuance of the bonds and until all outstanding bonds are retired, there is levied a direct annual tax on all real and personal property within the state subject to state taxation, sufficient to pay:

(a) applicable bond redemption premiums, if any;

(b) interest on the bonds as it becomes due; and

(c) principal of the bonds as it becomes due.

(2)(a) The State Tax Commission shall fix the rate of the direct annual tax levy each year.

(b) The tax shall be collected and the proceeds applied as provided in this chapter.

(3) The direct annual tax imposed under this section is abated to the extent money is available from sources, other than ad valorem taxes in the sinking fund, for the payment of bond interest, principal, and redemption premiums.

Section 11. Section Enacted.

Section 63B-2-108, Utah Code Annotated 1953, is enacted to read:

63B-2-108. Creation of sinking fund.

(1) There is created a sinking fund, to be administered by the state treasurer, entitled the "1993 General Obligation Bonds Sinking Fund."

(2) All monies deposited in the sinking fund, from whatever source, shall be used to pay debt service on the bonds.

(3) The proceeds of all taxes levied under this chapter are appropriated to this fund.

(4) The state treasurer may create separate accounts within the sinking fund for each series of bonds issued.

Section 12. Section Enacted.

Section 63B-2-109, Utah Code Annotated 1953, is enacted to read:

63B-2-109. Payment of interest, principal, and redemption premiums.

(1) The Division of Finance shall draw warrants on the state treasury before any interest, principal, or redemption premiums become due on the bonds.

(2) After receipt of the warrants, the state treasurer shall:

(a) promptly pay the warrants from funds within the sinking fund; and

(b) immediately transmit the amount paid to the paying agent for the bonds.

Section 13. Section Enacted.

Section 63B-2-110, Utah Code Annotated 1953, is enacted to read:

63B-2-110. Investment of sinking fund money.

(1) The state treasurer may, by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, invest any money contained in the sinking fund until it is needed for the purposes for which the fund is created.

(2) Unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter, the treasurer shall retain all income from the investment of any money contained in the sinking fund in the sinking fund and use it for the payment of debt service on the bonds.

Section 14. Section Enacted.

Section 63B-2-111, Utah Code Annotated 1953, is enacted to read:

63B-2-111. Bond proceeds — Deposits — Investment — Disposition of investment income and unexpended proceeds.

(1)(a) Proceeds from the sale of bonds issued under this chapter shall be deposited within one or more accounts as determined by resolution of the commission.

(b) The state treasurer shall administer and maintain these accounts unless otherwise provided by the commission by resolution.

(c) The commission by resolution may provide for the deposit of these monies with a trustee and the

administration, disposition, or investment of these monies by this trustee.

(2)(a) The commission by resolution shall provide for the kinds of investments in which the proceeds of bonds issued under this chapter may be invested.

(b) Income from the investment of proceeds of bonds issued under this chapter shall be applied as provided by resolution of the commission.

(3) Any unexpended bond proceeds issued under this chapter shall be deposited, upon completion of the purposes for which the bonds were issued, in the sinking fund, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 15. Section Enacted.

Section 63B-2-112, Utah Code Annotated 1953, is enacted to read:

63B-2-112. Refunding of bonds.

(1) The commission may provide for the refunding of any of the bonds in accordance with Title 11, Chapter 27, Utah Refunding Bond Act.

(2) For purposes of Title 11, Chapter 27, Utah Refunding Bond Act, the state of Utah is considered the public body and the commission its governing body.

Section 16. Section Enacted.

Section 63B-2-113, Utah Code Annotated 1953, is enacted to read:

63B-2-113. Certification of satisfaction of conditions precedent — Conclusiveness.

(1) The commission may not issue any bond under this chapter until it finds and certifies that all conditions precedent to issuance of the bonds have been satisfied.

(2) A recital on any bond of this finding and certification conclusively establishes the completion and satisfaction of all conditions precedent.

Section 17. Section Enacted.

Section 63B-2-114, Utah Code Annotated 1953, is enacted to read:

63B-2-114. Tax exemption.

The bonds issued under this chapter, any interest paid on the bonds, and any income from the bonds are not taxable in this state for any purpose, except for the corporate franchise tax.

Section 18. Section Enacted.

Section 63B-2-115, Utah Code Annotated 1953, is enacted to read:

63B-2-115. Legal investment status.

Bonds issued under this chapter are legal investments for all state trust funds, insurance companies, banks, trust companies, and the State School Fund and may be used as collateral to secure legal obligations.

Section 19. Section Enacted.

Section 63B-2-116, Utah Code Annotated 1953, is enacted to read:

63B-2-116. Publication of resolution or notice — Limitation on actions to contest legality.

(1) The commission may:

(a) publish any resolution it adopts under this chapter once in a newspaper having general circulation in Utah; or

(b) in lieu of publishing the entire resolution, publish a notice of bonds to be issued, titled as such, containing the information required in Subsection 11-14-21(3).

(2)(a) Any interested person, for 30 days after the date of publication, may contest:

(i) the legality of the resolution;

(ii) any of the bonds authorized under it; or

(iii) any of the provisions made for the security and repayment of the bonds.

(b) After 30 days, a person may not contest the legality of the resolution, any of the bonds authorized under it, or any of the provisions made for the security and repayment of the bonds for any cause.

Section 20. Section Enacted.

Section 63B-2-117, Utah Code Annotated 1953, is enacted to read:

63B-2-117. Report to Legislature.

The governor shall report the commission's proceedings to each annual general session of the Legislature in his budget for as long as bonds issued under this chapter remain outstanding.

Section 21. Section Enacted.

Section 63B-2-201, Utah Code Annotated 1953, is enacted to read:

Part 2. Highway General Obligation Bonds

63B-2-201. State Bonding Commission authorized to issue general obligation bonds.

The commission created under Section 63B-1-201 may issue and sell general obligation bonds of the state pledging the full faith, credit, and resources of the state for the payment of the principal of and interest on the bonds, to provide funds to the Department of Transportation.

Section 22. Section Enacted.

Section 63B-2-202, Utah Code Annotated 1953, is enacted to read:

63B-2-202. Maximum amount — Projects authorized.

(1) The total amount of bonds issued under this part may not exceed $12,000,000.

(2)(a) Proceeds from the issuance of bonds shall be provided to the Department of Transportation as follows:

(i) not more than $9,000,000 to provide funds to pay all or part of the cost of constructing the West Valley Highway;

(ii) not more than $1,000,000 to provide funds to pay all or part of the cost of enhancing and improving the 90th South interchange; and

(iii) not more than $1,000,000 to provide funds to pay all or part of the cost of enhancing and improving the I-15 interchange at South University Avenue in Provo.

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(3) If, after completion of the projects authorized under Subsection (2)(a) and payment of the costs of issuing and selling the bonds under Section 63B-2-203, any bond proceeds remain unexpended, the Department of Transportation may use those unexpended proceeds to pay all or part of the costs of construction projects approved by the Utah Transportation Commission.

(4) The Department of Transportation may enter into agreements related to that project before the receipt of proceeds of bonds issued under this chapter.

Section 23. Section Enacted.

Section 63B-2-203, Utah Code Annotated 1953, is enacted to read:

63B-2-203. Bond proceeds may be used to pay costs of issuance and sale.

The proceeds of bonds issued under this chapter shall be used for the purposes described in Section 63B-2-202 and to pay all or part of any cost incident to the issuance and sale of the bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees' fees, financial advisors' fees, and underwriters' discount.

Section 24. Section Enacted.

Section 63B-2-204, Utah Code Annotated 1953, is enacted to read:

63B-2-204. Manner of issuance — Amounts, interest, and maturity.

(1) Bonds issued under this chapter may be authorized, sold, and issued at times and in a manner determined by the commission by resolution.

(2) Bonds may be issued in one or more series, in amounts, and shall bear dates, interest rates, including a variable rate, and maturity dates as the commission determines by resolution.

(3) A bond issued may not mature later than 20 years after the date of final passage of this chapter.

Section 25. Section Enacted.

Section 63B-2-205, Utah Code Annotated 1953, is enacted to read:

63B-2-205. Terms and conditions of sale — Plan of financing — Signatures — Replacement — Registration — Federal rebate.

(1) In the issuance of bonds, the commission may determine by resolution:

(a) the manner of sale, including public or private sale;

(b) the terms and conditions of sale, including price, whether at, below, or above face value;

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

(2) The commission may by resolution adopt a plan of financing which may include terms and conditions of arrangements entered into by the commission on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the commission.

(3)(a) Any signature of a public official authorized by resolution of the commission to sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the bonds.

(b) If all signatures of public officials on the bonds are facsimile signatures, provision shall be made for a manual authenticating signature on the bonds by or on behalf of a designated authentication agent.

(c) If an official ceases to hold office before delivery of the bonds signed by that official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

(d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise placed on the bonds.

(4)(a) The commission may enact resolutions providing for the replacement of lost, destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller or larger denominations.

(b) Bonds in changed denominations shall:

(i) be exchanged for the original bonds in like aggregate principal amounts and in a manner that prevents the duplication of interest; and

(ii) bear interest at the same rate, mature on the same date, and be as nearly as practicable in the form of the original bonds.

(5) (a) Bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(b) The commission may provide for the services and payment for the services of one or more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

(c) The records of ownership, registration, transfer, and exchange of the bonds, and of persons to whom payment with respect to the obligations is made, are private records as provided in Section 63-2-302, or protected records as provided in Section 63-2-304.

(d) The bonds and any evidences of participation interest in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 of the Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

(6) The commission may:

(a) by resolution, provide for payment to the United States of whatever amounts are necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended; and

(b) enter into agreements with financial and other institutions and attorneys to provide for:

(i) the calculation, holding, and payment of those amounts; and

(ii) payment from any legally available source of fees, charges, or other amounts coming due under any agreements entered into by the commission.

Section 26. Section Enacted.

Section 63B-2-206, Utah Code Annotated 1953, is enacted to read:

63B-2-206. Constitutional debt limitation.

(1) The commission may not issue bonds under this chapter in an amount that violates the limitation described in Article XIV, Sec. 1, Utah Constitution.

(2) For purposes of applying the debt limitation contained in Article XIV, Sec. 1, Utah Constitution, the value of the taxable property in Utah is considered to be 100% of the fair market value of the taxable property of the state, as computed from the last assessment for state purposes previous to the issuance of the bonds.

Section 27. Section Enacted.

Section 63B-2-207, Utah Code Annotated 1953, is enacted to read:

63B-2-207. Tax levy — Abatement of tax.

(1) Each year after issuance of the bonds and until all outstanding bonds are retired, there is levied a direct annual tax on all real and personal property within the state subject to state taxation, sufficient to pay:

(a) applicable bond redemption premiums, if any;

(b) interest on the bonds as it becomes due; and

(c) principal of the bonds as it becomes due.

(2) (a) The State Tax Commission shall fix the rate of the direct annual tax levy each year.

(b) The tax shall be collected and the proceeds applied as provided in this chapter.

(3) The direct annual tax imposed under this section is abated to the extent money is available from sources, other than ad valorem taxes in the sinking fund, for the payment of bond interest, principal, and redemption premiums.

Section 28. Section Enacted.

Section 63B-2-208, Utah Code Annotated 1953, is enacted to read:

63B-2-208. Creation of sinking fund.

(1) There is created a sinking fund, to be administered by the state treasurer, entitled the "1993 Highway General Obligation Bonds Sinking Fund."

(2) All monies deposited in the sinking fund, from whatever source, shall be used to pay debt service on the bonds.

(3) The proceeds of all taxes levied under this chapter are appropriated to this fund.

(4) The state treasurer may create separate accounts within the sinking fund for each series of bonds issued.

Section 29. Section Enacted.

Section 63B-2-209, Utah Code Annotated 1953, is enacted to read:

63B-2-209. Payment of interest, principal, and redemption premiums.

(1) The Division of Finance shall draw warrants on the state treasury before any interest, principal, or redemption premiums become due on the bonds.

(2) After receipt of the warrants, the state treasurer shall:

(a) promptly pay the warrants from funds within the sinking fund; and

(b) immediately transmit the amount paid to the paying agent for the bonds.

Section 30. Section Enacted.

Section 63B-2-210, Utah Code Annotated 1953, is enacted to read:

63B-2-210. Investment of sinking fund money.

(1) The state treasurer may, by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, invest any money contained in the sinking fund until it is needed for the purposes for which the fund is created.

(2) Unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter, the treasurer shall retain all income from the investment of any money contained in the sinking fund in the sinking fund and use it for the payment of debt service on the bonds.

Section 31. Section Enacted.

Section 63B-2-211, Utah Code Annotated 1953, is enacted to read:

63B-2-211. Bond proceeds — Deposits — Investment — Disposition of investment income and unexpended proceeds.

(1) (a) Proceeds from the sale of bonds issued under this chapter shall be deposited within one or more accounts as determined by resolution of the commission.

(b) The state treasurer shall administer and maintain these accounts unless otherwise provided by the commission by resolution.

(c) The commission by resolution may provide for the deposit of these monies with a trustee and the administration, disposition, or investment of these monies by this trustee.

(2) (a) The commission by resolution shall provide for the kinds of investments in which the proceeds of bonds issued under this chapter may be invested.

(b) Income from the investment of proceeds of bonds issued under this chapter shall be applied as provided by resolution of the commission.

(3) Any unexpended bond proceeds issued under this chapter shall be deposited, upon completion of the purposes for which the bonds were issued, in the sinking fund, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 32. Section Enacted.

Section 63B-2-212, Utah Code Annotated 1953, is enacted to read:

63B-2-212. Refunding of bonds.

(1) The commission may provide for the refunding of any of the bonds in accordance with Title 11, Chapter 27, Utah Refunding Bond Act.

(2) For purposes of Title 11, Chapter 27, Utah Refunding Bond Act, the state of Utah is considered the public body and the commission its governing body.

Section 33. Section Enacted.

Section 63B-2-213, Utah Code Annotated 1953, is enacted to read:

63B-2-213. Certification of satisfaction of conditions precedent — Conclusiveness.

(1) The commission may not issue any bond under this chapter until it finds and certifies that all conditions precedent to issuance of the bonds have been satisfied.

(2) A recital on any bond of this finding and certification conclusively establishes the completion and satisfaction of all such conditions.

Section 34. Section Enacted.

Section 63B-2-214, Utah Code Annotated 1953, is enacted to read:

63B-2-214. Tax exemption.

The bonds issued under this chapter, any interest paid on the bonds, and any income from the bonds are not taxable in this state for any purpose, except for the corporate franchise tax.

Section 35. Section Enacted.

Section 63B-2-215, Utah Code Annotated 1953, is enacted to read:

63B-2-215. Legal investment status.

Bonds issued under this chapter are legal investments for all state trust funds, insurance companies, banks, trust companies, and the State School Fund and may be used as collateral to secure legal obligations.

Section 36. Section Enacted.

Section 63B-2-216, Utah Code Annotated 1953, is enacted to read:

63B-2-216. Publication of resolution or notice — Limitation on actions to contest legality.

(1) The commission may:

(a) publish any resolution it adopts under this chapter once in a newspaper having general circulation in Utah; or

(b) in lieu of publishing the entire resolution, publish a notice of bonds to be issued, titled as such, containing the information required by Subsection 11-14-21(3).

(2) (a) Any interested person, for 30 days after the date of publication, may contest:

(i) the legality of the resolution;

(ii) any of the bonds authorized under it; or

(iii) any of the provisions made for the security and repayment of the bonds.

(b) After 30 days, a person may not contest the legality of the resolution, any of the bonds authorized under it, or any of the provisions made for the security and repayment of the bonds for any cause.

Section 37. Section Enacted.

Section 63B-2-217, Utah Code Annotated 1953, is enacted to read:

63B-2-217. Report to Legislature.

The governor shall report the commission's proceedings to each annual general session of the Leg-

islature in his budget for as long as bonds issued under this chapter remain outstanding.

Section 38. Section Enacted.

Section 63B-2-301, Utah Code Annotated 1953, is enacted to read:

63B-2-301. Legislative intent — Additional projects.

It is the intent of the Legislature that:

(1) The Department of Employment Security use monies in the special administrative fund to plan, design, and construct a Davis County facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(2) The University of Utah may use donated funds to plan, design, and construct the Nora Eccles Harrison addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(3) The University of Utah may use hospital funds to plan, design, and construct the West Patient Services Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(4) The University of Utah may use federal funds to plan, design, and construct the Computational Science Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(5) The Board of Regents may issue revenue bonds to provide:

(a) $6,700,000 to plan, design, and construct single student housing at Utah State University under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1; and

(b) additional monies necessary to:

(i) pay costs incident to the issuance and sale of the bonds;

(ii) pay interest on the bonds that accrues during construction and acquisition of the project and for up to one year after construction is completed; and

(iii) fund any reserve requirements for the bonds.

(6) Utah State University may use federal funds to plan, design, and construct the Natural Resources Lab addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(7) Utah State University may use funds derived from property sales to plan, design, and construct emergency relocation facilities for the Farmington Botanical Gardens under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(8) Utah State University may use institutional funds to plan, design, and construct an institutional residence for the president under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(9) Weber State University may use discretionary funds to construct a remodel and expansion of the stores building and mail service facilities under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(10) Weber State University may use fees and auxiliary revenue to plan, design, and construct a remodel and expansion of the Shepherd Student Union Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(11) Southern Utah University may use donated funds to plan, design, and construct an alumni house under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(12) The College of Eastern Utah may use auxiliary revenues and other fees to:

(a) make lease or other payments;

(b) redeem revenue bonds or repay loans issued on behalf of the college; and

(c) plan, design, and construct a 200 person residence hall under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(13) The Se[illegible]r Valley Applied Technology Center may use priv[illegible]d Community Impact Board funds, if appr[illegible]o plan, design, and construct a performing arts [illegible]ulti-use facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(14) Ogden City and Weber County may have offices and related space for their attorneys included in the Ogden Courts building if the city and county are able to provide upfront funding to cover all costs associated with the design and construction of that space. In addition, the city and county shall cover their proportionate share of all operations and maintenance costs of their facility, including future major repairs to the building.

(15) If the Legislature authorizes the Division of Facilities Construction and Management to enter into a lease purchase agreement for the Depart-

ment of Human Services facility at 1385 South State Street in Salt Lake City or for the State Board of Education facility and adjacent space in Salt Lake City, or for both of those facilities, the State Building Ownership Authority, at the reasonable rates and amounts it may determine, and with technical assistance from the State Treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget, may seek out the most cost effective lease purchase plans available to the state and may, pursuant to Title 63, Chapter 9a, State Building Ownership Act, certificate out interests in, or obligations of the authority pertaining to:

(a) the lease purchase obligation; or

(b) lease rental payments under the lease purchase obligation.

(16) Salt Lake Community College may use donated funds to plan, design, and construct an amphitheater under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section 63-1-38.1.

(17) For the Tax Commission building, that:

(a) All costs associated with the construction and furnishing of the Tax Commission building that are incurred before the issuance of the 1993 general obligation bonds be reimbursed by bond proceeds.

(b) The maximum amount of cost that may be reimbursed from the 1993 general obligation bond proceeds for the Tax Commission building and furnishings may not exceed $14,230,000.

(c) This intent statement for Subsection (17) constitutes a declaration of official intent under Section 1.103-18 of the U.S. Treasury Regulations.

CHAPTER 305
S. B. No. 234
Passed March 2, 1993
Approved March 22, 1993
Effective May 3, 1993

INSURANCE CODE AMENDMENTS

By Lane Beattie

AN ACT RELATING TO INSURANCE; AMENDING DEFINITIONS; AMENDING APPOINTMENT OF COMMISSIONER; PROVIDING FOR ADMINISTRATIVE COSTS IN THE HANDLING OF DEPOSITS; AMENDING DEPOSIT REQUIREMENTS; AMENDING UNAUTHORIZED INSURER PROVISIONS; PROVIDING A STANDARD VALUATION LAW; AMENDING BOARD MEMBERSHIP REQUIREMENTS; AMENDING POOL COVERAGE TERMINATION; ADJUSTING THE PREMIUM TAX RATE; UPDATING CROSS-REFERENCES; REPEALING THE SUPERSEDED STANDARD VALUATION LAW; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
31A-1-105, AS LAST AMENDED BY CHAPTER 204, LAWS OF UTAH 1986
31A-1-301, AS LAST AMENDED BY CHAPTER 203, LAWS OF UTAH 1992
31A-2-102, AS LAST AMENDED BY CHAPTER 114, LAWS OF UTAH 1991
31A-2-105, AS LAST AMENDED BY CHAPTER 204, LAWS OF UTAH 1986
31A-2-206, AS LAST AMENDED BY CHAPTER 204, LAWS OF UTAH 1986
31A-3-102, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1985
31A-8-103, AS LAST AMENDED BY CHAPTER 277, LAWS OF UTAH 1992
31A-15-103, AS LAST AMENDED BY CHAPTER 230, LAWS OF UTAH 1992
31A-15-204, AS ENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-15-212, AS ENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-16-103, AS REPEALED AND REENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-17-201, AS LAST AMENDED BY CHAPTER 203, LAWS OF UTAH 1992
31A-17-402, AS LAST AMENDED BY CHAPTER 204, LAWS OF UTAH 1986
31A-21-104, AS LAST AMENDED BY CHAPTER 21, LAWS OF UTAH 1991
31A-23-501, AS ENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-23-503, AS ENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-23-602, AS ENACTED BY CHAPTER 258, LAWS OF UTAH 1992
31A-29-111, AS ENACTED BY CHAPTER 232, LAWS OF UTAH 1990
59-9-105, AS LAST AMENDED BY CHAPTER 74, LAWS OF UTAH 1991

ENACTS:
31A-17-501, UTAH CODE ANNOTATED 1953
31A-17-502, UTAH CODE ANNOTATED 1953
31A-17-503, UTAH CODE ANNOTATED 1953
31A-17-504, UTAH CODE ANNOTATED 1953
31A-17-505, UTAH CODE ANNOTATED 1953
31A-17-506, UTAH CODE ANNOTATED 1953
31A-17-507, UTAH CODE ANNOTATED 1953
31A-17-508, UTAH CODE ANNOTATED 1953
31A-17-509, UTAH CODE ANNOTATED 1953
31A-17-510, UTAH CODE ANNOTATED 1953
31A-17-511, UTAH CODE ANNOTATED 1953
31A-17-512, UTAH CODE ANNOTATED 1953
31A-17-513, UTAH CODE ANNOTATED 1953

REPEALS:
31A-17-403, AS LAST AMENDED BY CHAPTER 91, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 31A-1-105, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-1-105. Presumption of jurisdiction.

(1) Any insurer [~~which~~], including the Workers Compensation Fund of Utah, that provides coverage of a resident of this state, property located in this state, or a business activity conducted in this state, or [~~which~~] that engages in any activity described in Subsections 31A-15-102 (2) (a) through (h), is doing an insurance business in this state and is subject to the jurisdiction of the insurance commissioner and the courts of this state under Sections 31A-2-309 and 31A-2-310 to the extent of that coverage or activity.

(2) Any person doing or purporting to do an insurance business in this state as defined in Subsection 31A-1-301 (44) is subject to the jurisdiction of the insurance commissioner and this title, unless the insurer can establish that the exemptions of Section 31A-1-103 apply.

(3) This section does not limit the jurisdiction of the courts of this state under other applicable law.

Section 2. Section Amended.

Section 31A-1-301, Utah Code Annotated 1953, as last amended by Chapter 203, Laws of Utah 1992, is amended to read:

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

(0.5) "Administrator" is defined in Subsection (77).

(1) "Adult" means a natural person who has attained the age of at least 18 years.

(2) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.

(3) "Alien insurer" means an insurer domiciled outside the United States.

(4) "Annuities" means all agreements to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life. This definition does not apply to payments made under the definition of life insurance.

(5) "Articles" or "articles of incorporation" means the original articles, special laws, charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and other constitutive documents for trusts and other entities that are not corporations, and amendments to any of these. Refer also to "bylaws" in this section and Section 31A-5-203.

(6) "Bail bond insurance" means a guarantee that a person will attend court when required, or will obey the orders or judgment of the court, as a condition to the release of that person from confinement.

(7) "Binder" is defined in Section 31A-21-102.

(8) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated. Refer also to "trustee" in this section.

(9) "Business of insurance" is defined in Subsection (44).

(10) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204 (2)(i) and (j), including the information required when these subsections are applicable by reference under Section 31A-7-201, Section 31A-8-205, or Subsection 31A-9-205 (2).

(11) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated. It includes comparable rules for trusts and other entities that are not corporations. Refer also to "articles" and Section 31A-5-203.

(12) "Casualty insurance" means liability insurance as defined in Subsection (50).

(13) "Certificate" means the evidence of insurance given to an insured under a group policy.

(14) "Certificate of authority" is included within the term "license."

(14.5) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of benefits according to the terms of an insurance policy.

(14.6) "Claims-made coverage" means any insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(15) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner. Where appropriate, these terms apply to the equivalent supervisory official of another jurisdiction.

(16) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be by contract, by common management, through the ownership of voting securities, or otherwise. There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position. A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement. There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person. Refer also to "affiliate" in this section.

(17) (a) "Corporation" means insurance corporation, except where referring under Chapter 23, Insurance Marketing - Licensing Agents, Brokers and Consultants, and Reinsurance Intermediaries, and Chapter 26, Insurance Adjusters, to corporations doing business as insurance agents, brokers, consultants, or adjusters, or where referring under Chapter 16, Insurance Holding Companies, to a noninsurer which is part of a holding company system.

(b) "Stock corporation" means stock insurance corporation.

(c) "Mutual" or "mutual corporation" means mutual insurance corporation.

(18) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled. Refer also to Subsection 31A-22-802 (1).

(19) "Credit insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

(20) "Credit life insurance" means insurance on the life of a debtor in connection with a loan or other credit transaction. Refer also to Subsection 31A-22-802 (2).

(21) "Creditor" means a person, including an insured, having any claim, whether matured, unmatured, liquidated, unliquidated, secured, unsecured, absolute, fixed, or contingent.

(22) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute so provides, the condition precedent may be the commissioner's failure to take a specific action. Refer also to Section 31A-2-302.

(23) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(24) "Department" means the Insurance Department.

(25) "Director" means a member of the board of directors of a corporation.

(26) "Disability insurance" means insurance written to indemnify for losses and expenses resulting from accident or sickness, to provide payments to replace income lost from accident or sickness, and to pay for services resulting directly from accident or sickness, including medical, surgical, hospital, and other ancillary expenses.

(27) "Domestic insurer" means an insurer organized under the laws of this state.

(28) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state of entry into the United States.

(29) "Employee benefits" means one or more benefits or services provided employees or their dependents.

(30) "Employee welfare fund" means a fund established or maintained by one or more employers, one or more labor organizations, or a combination of employers and labor organizations, whether directly or through trustees. This fund is to provide employee benefits paid or contracted to be paid, other than income from investments of the fund, by or on behalf of an employer doing business in this state or for the benefit of any person employed in this state. It includes plans funded or subsidized by user fees or tax revenues.

(31) "Excludes" is not exhaustive and does not mean that other things are not also excluded. The items listed are representative examples for use in interpretation of this title.

(31.5) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(32) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

(33) "Form" means a policy, certificate, or application prepared for general use. It does not include one specially prepared for use in an individual case. Refer also to "policy" in this section.

(34) "Franchise insurance" means individual insurance policies provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

(35) "Health care insurance" or "health insurance" means disability insurance providing benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical, surgical, hospital, or other ancillary expenses incurred. "Health care insurance" or "health insurance" does not include disability insurance providing benefits for:

(a) replacement of income;

(b) short-term accident;

(c) fixed indemnity;

(d) credit disability;

(e) supplements to liability;

(f) workers' compensation;

(g) automobile medical payment;

(h) no-fault automobile;

(i) equivalent self-insurance; or

(j) any type of disability insurance coverage that is a part of or attached to another type of policy.

(35.5) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

(36) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers. Refer also to Subsection 31A-26-102 (3).

(37) "Independently procured insurance" means insurance procured under Section 31A-15-104.

(37.5) "Individual" means a natural person.

(38) "Inland marine insurance" includes insurance covering:

(a) property in transit on or over land;

(b) property in transit over water by means other than boat or ship;

(c) bailee liability;

(d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and

(e) personal and commercial property floaters.

(39) "Insolvency" means that an insurer is unable to pay its debts or meet its obligations as they mature or that an insurer's qualified assets under Section 31A-17-201 do not exceed its liabilities plus:

(a) (i) minimum required capital; or

(ii) for mutuals, permanent surplus; plus

(b) 30% of the compulsory surplus required to be maintained under Section 31A-17-302 or 31A-8-[illegible]10.

For purposes of this definition, "liabilities" includes reserves required by law, and "qualified assets" includes 1/2 of the maximum total assessment liability of the policyholders of the insurer.

(40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons, or any arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute his risk. "Insurance" includes:

(a) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;

(b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(c) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

(41) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy. Refer also to Subsection 31A-26-102 (1).

(41.5) "Interinsurance exchange" is defined in Subsection (69).

(42) "Insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance. Refer to Subsection 31A-23-102 (3) for exceptions to this definition.

(43) "Insurance broker" or "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts. Refer also to Subsection 31A-23-102 (3) for exceptions to this definition.

(44) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection (35), by organizations which are or should be licensed under this title;

(b) providing benefits to employees in the event of contingencies not within the control of the employees, in which the employees are entitled to the benefits as a right, which benefits may be provided either by single employers or by multiple employer groups through trusts, associations, or other entities;

(c) providing annuities, including those issued in return for gifts, except those provided by persons specified in Subsections 31A-22-1305 (2) and (3);

(d) providing the characteristic services of motor clubs as outlined in Subsection (56);

(e) providing other persons with insurance as defined in Subsection (40);

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; and

(h) doing, or proposing to do, any business in substance equivalent to Subsections (a) through (g) in a manner designed to evade the provisions of this title.

(45) "Insurance consultant" or "consultant" means a person who advises other persons about insurance needs and coverages, is compensated by the person advised on a basis not directly related to the insurance placed, and is not compensated directly or indirectly by an insurer, agent, or broker for advice given. Refer also to Subsection 31A-23-102 (3) for exceptions to this definition.

(46) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

(47) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries. This definition applies only to the provisions of this title and does not define the meaning of this word as used in insurance policies or certificates.

(48) (a) "Insurer" means any person doing an insurance business as a principal, including fraternal benefit societies, issuers of gift annuities other than those specified in Subsections 31A-22-1305 (2) and (3), motor clubs, employee welfare plans, and any person purporting or intending to do an insurance business as a principal on his own account. It does not include a governmental entity, as defined in Subsection 63-30-2 (3), to the extent it is engaged in the activities described in Section 31A-12-107.

(b) "Admitted insurer" is defined in Subsection (80)(b).

(c) "Alien insurer" is defined in Subsection (3).

(d) "Authorized insurer" is defined in Subsection (80)(b).

(e) "Domestic insurer" is defined in Subsection (27).

(f) "Foreign insurer" is defined in Subsection (32).

(g) "Nonadmitted insurer" is defined in Subsection (80)(a).

(h) "Unauthorized insurer" is defined in Subsection (80)(a).

(49) "Legal expense insurance" means insurance written to indemnify or pay for specified legal expenses. It includes arrangements that create reasonable expectations of enforceable rights, but it does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages. Refer to Section 31A-1-103 for a list of exemptions.

(50) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional liability insurance, and Subsection (83) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional liability insurance, and Subsection (83) for workers' compensation insurance;

(iii) for loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(iv) for loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings; or

(v) for other loss or damage properly the subject of insurance not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes vehicle liability insurance as defined in Subsection (81), and also includes making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and apparatus of any kind when done in connection with insurance on them.

(51) "License" means the authorization issued by the insurance commissioner under this title to engage in some activity that is part of or related to the insurance business. It includes certificates of authority issued to insurers.

(52) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life. The business of life insurance includes granting endowment benefits, granting additional benefits in the event of death by accident or accidental means, granting additional benefits in the event of the total and permanent disability of the insured, and providing optional methods of settlement of proceeds.

(53) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of medical services other than the practice and provision of dental services.

(54) "Member" means a person having membership rights in an insurance corporation. Refer also to "insured" in Subsection (47).

(55) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute. Refer also to "permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, [~~31A-6-204,~~] 31A-8-209, and 31A-9-209.

(56) "Motor club" means a person licensed under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 11, Motor Clubs, or Chapter 14, Foreign Insurers, that promises for an advance consideration to provide legal services under Subsection 31A-11-102(1)(b), bail services under Subsection 31A-11-102(1)(c), trip reimbursement [under Subsection 31A-11-102(1)(d)], towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections 31A-11-102 (1)(b) through (f) for a stated period of time.

(57) "Mutual" means mutual insurance corporation.

(57.5) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

(58) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

(59) "Order" means an order of the commissioner.

(59.5) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

(60) "Person" includes an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(61) (a) "Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract. Service contracts issued by motor clubs under Chapter 11, Motor Clubs, and by corporations licensed under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans, are policies. A certificate under a group insurance contract is not a policy. A document which does not purport to have legal effect is not a policy.

(b) "Group insurance policy" means a policy covering a group of persons that is issued to a policyholder on behalf of the group, for the benefit of group members who are selected under procedures defined in the policy or in agreements which are collateral to the policy. This type of policy may, but is not required to, include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without individual underwriting, where the persons insured are determined by definition of the class with or without designating the persons covered.

(62) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise. Refer also to "insured" in Subsection (47).

(63) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated. Consideration paid to third party administrators for their services is not "premium," though amounts paid by third party administrators to insurers for insurance on the risks administered by the third party administrators are "premium."

(64) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203 (3).

(65) "Proceedings" includes actions and special statutory proceedings.

(66) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

(67) "Property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property, from all hazards or causes, and against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages, but excluding inland marine insurance and ocean marine insurance as defined under Subsections (38) and (58).

(67.5) "Public agency insurance mutual" means any entity formed by joint venture or interlocal cooperation agreement by two or more political subdivisions or public agencies of the state for the purpose of providing insurance coverage for the political subdivisions or public agencies. Any public agency insurance mutual created under this title and Title 11, Chapter 13, Interlocal Co-operation Act, is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state.

(68) (a) Except as provided in Subsection (b), "rate service organization" means any person who assists insurers in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice. Refer also to Subsection 31A-19-102 (2).

(b) "Rate service organization" does not mean an employee of an insurer, a single insurer or group of insurers under common control, a joint underwriting group, or a natural person serving as an actuarial or legal consultant.

(69) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons operating through an attorney-in-fact common to all of them and exchanging insurance contracts with one another that provide insurance coverage on each other.

(70) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to the insurer transferring the risk as the "ceding insurer," and to the insurer assuming the risk as the "assuming insurer" or the "assuming reinsurer."

(71) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

(72) (a) "Security" [~~has the same meaning as under Subsection 61-1-13 (17), except~~ that] means any:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in any profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections (i) through (xiv); or

(xvi) any other interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or

(ii) a burial certificate or burial contract [~~issued by an insurer is an insurance policy and not a security~~].

(73) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this subsection, self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.

(b) Self-insurance does include an arrangement by which a governmental entity, as defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the employees' employment.

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment. Self-insurance does not include any arrangement with independent contractors.

(74)(a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

(75) Subject to Subsection (40)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

(76) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(a) "Permanent surplus" means the surplus of a mutual insurer which has been designated by the insurer as permanent. Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus. Except for assessable mutuals, the minimum permanent surplus requirement is essentially the same as the minimum required capital requirement which applies to stock insurers. Refer also to Subsection (55) on "minimum capital."

(b) "Compulsory surplus" means an insurer's surplus to the extent the insurer has assets described in Section 31A-17-201 or Subsections 31A-8-210 (8)(a) and (b) which exceed the sum of the insurer's liabilities and minimum required capital or permanent surplus, but only to the extent required under Subsection 31A-17-302 (1), 31A-8-210 (2), or 31A-8-210(3). Refer also to Sections 31A-17-301, 31A-17-302, and Subsection 31A-8-210(1).

(c) "Security surplus" means an insurer's surplus to the extent the insurer has assets described in Section 31A-17-201 which exceed the sum of the insurer's liabilities, minimum required capital or permanent surplus, and the compulsory surplus required under Section 31A-17-302, but only to the extent specified under Subsection 31A-17-303(1) as constituting a full complement of security surplus. The term "security surplus" has no significance for insurers organized and operating under Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(d) "Excess surplus" means an insurer's surplus to the extent the insurer has assets in addition to those required to satisfy the compulsory surplus requirement of Section 31A-17-302 and to have a full complement of security surplus under Section 31A-17-303. Subsection 31A-17-202(2) places the burden upon insurers to show the extent of their excess surplus. The term "excess surplus" has no significance for insurers organized and operating under Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(77) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with life or health insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person exempt as a trust under Section 514 of the federal Employee Retirement Income Security Act of 1974;

(c) an employer on behalf of his employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance issued by the insurer; or

(e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are limited to those authorized under the license the person holds or for which the person is exempt. Refer also to Section 31A-25-101.

(78) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(79)(a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

(80)(a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer not holding a valid certificate of authority to do an insurance business in this state, or an insurer transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer holding a valid certificate of authority to do an insurance business in this state, and transacting business as authorized by a valid certificate.

(81) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection (67).

(82) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

(83) "Workers' compensation insurance" means:

(a) insurance for indemnification of employers against liability for compensation:

(i) based upon compensable accidental injuries; and

(ii) based on occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with it; and

(c) insurance assuring to the persons entitled to workers' compensation benefits the compensation provided by law.

Section 3. Section Amended.

Section 31A-2-102, Utah Code Annotated 1953, as last amended by Chapter 114, Laws of Utah 1991, is amended to read:

31A-2-102. Appointment, general powers, and duties of commissioner — Temporary acting commissioner — Compensation of commissioner.

(1) The chief officer of the department is the insurance commissioner, who may exercise all powers given to, and shall perform all duties imposed on, the Insurance Department. He shall be appointed by the governor, with the advice and consent of the Senate[~~, for a term of four years or until his successor is duly appointed and qualified. He may be reappointed for successive terms. The term of the commissioner commences on July 1, 1985, and every four years thereafter~~]. If the commissioner dies, resigns, or is removed, a successor may be appointed as specified in this subsection [~~for the remainder of the term~~]. If the Legislature is not then in session, the successor may serve as acting commissioner without confirmation until the Senate has an opportunity to confirm or reject the successor. The commissioner is subject to removal at the pleasure of the governor.

(2) When the office of the commissioner is vacant, or when the commissioner is unable to perform the duties of the office, the governor may name a temporary acting commissioner who is then subject to all the laws applicable to the commissioner.

(3) The governor shall establish the commissioner's salary within the salary range approved by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Section 4. Section Amended.

Section 31A-2-105, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-2-105. Constitutional oath.

Before entering upon the duties of [~~their offices~~] his office, the commissioner [~~and persons appointed under Section 31A-2-103~~] shall take, subscribe, and file the constitutional oath. If [~~a person required under this section to take the oath~~] the commissioner takes action in his office before complying with this section, in good faith and without knowledge of this requirement, and the validity of his action is then challenged, that person may take the oath after the action and the oath shall be given retroactive effect to the date on which he began his duties.

Section 5. Section Amended.

Section 31A-2-206, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-2-206. Receipt and handling of deposits.

(1) As used in this chapter:

(a) "Custodian institution" means any financial institution in this state as defined under Section 7-1-103 [~~with~~] that:

(i) has authority under Title 7, Chapter 5, Trust Business, to engage in a trust business[~~,~~]; and [~~which~~]

(ii) is approved by the commissioner to have custody of deposited securities, [~~either~~] whether physically, through the Federal Reserve book-entry system, or through a clearing corporation as defined under Subsection 70A-8-102 (3).

(b) "Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and other agencies and instrumentalities.

(2) Subject to the commissioner's approval and to the requirements of this section, the state treasurer shall accept, and a custodian institution qualified under Subsection (1)(a) may accept:

(a) deposits required or permitted under this title or rules adopted under this title;

(b) deposits of domestic insurers or of alien insurers domiciled in this state if required by the laws of other states as a prerequisite to authority to do an insurance business in other states; and

(c) deposits resulting from application of any retaliatory provisions of this title.

(3) Deposits authorized under Subsection (2) shall be of securities described in Subsection [~~(4)~~] (7).

(4) Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust:

(a) first, for administrative costs under Subsection 31A-27-335(1);

(b) second, for the claimants under Subsection 31A-27-335(3); [second]

(c) third, for the claimants under Subsection 31A-27-335(4); and [third]

(d) fourth, for all other creditors in the order of priority established under Section 31A-27-335. [No]

(5) A claim may be made against the deposit of an alien insurer [unless the claim] only if it arises out of a transaction in the United States.

(6) Deposits may be made by:

(a) delivering physical custody and control of the deposited security to the state treasurer or a custodian institution, accompanied by a statement signed by the depositor indicating that the deposit shall be held in trust under the terms of this section and subject to the commissioner's exclusive direction until control is released by the commissioner; or

(b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a custodian institution, describing securities qualifying for deposit under Subsection [(4)] (7) that are on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the name of the custodian institution, in trust for the purposes stated under this section, and that these securities are subject to the exclusive direction of the commissioner and may not be withdrawn or transferred by any person, including the insurer owning the securities, without the commissioner's written approval.

[(4)] (7) (a) Deposits may consist of any securities authorized in [this subsection] Subsection (b) for which there is a ready market if they:

(i) are expressly approved by the commissioner[,];

(ii) are subject to disposition by the state treasurer or custodian institution only with the concurrence of the commissioner[,]; and

(iii) are not available to any other person except as expressly provided by law.

(b) The authorized securities are:

[(a)] (i) deposits or certificates of deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

[(b)] (ii) bonds or other evidences of indebtedness [which] that are guaranteed as to principal and interest by the United States;

[(c)] (iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this state or of any county, incorporated city or town, school district, or other political subdivision of this state, [which] if the bonds or notes are rated AAA by Standard and Poor's or an equivalent nationally recognized rating agency;

[(d) real estate mortgages or deeds of trust secured by Federal Housing Administration Insurance, Veterans Administration guarantees, or mortgages guaranteed by other agencies of the United States government;]

[(e)] (iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or instrumentality of the United States; and

[(f)] (v) any other security approved by the commissioner [which] that he considers an equivalent grade investment to those enumerated under Subsections [(4)(a)] (i) through [(e)] (iv) based on [the following] tests[:(i)] of the safety of principal[;(ii)] and liquidity[; and (iii) yield on investments].

[(5)] (8) Securities held on deposit shall be valued under Section 31A-17-401 as those investments are valued for life insurers, or at market, whichever is lower. The securities shall be revalued whenever the commissioner requests[,] to ensure continued compliance with the requirements of this title.

[(6)] (9) (a) The state treasurer or custodian institution shall:

(i) deliver to the depositor a receipt for all securities deposited or held[, shall];

(ii) issue a duplicate copy of the receipt to the commissioner[,]; and [shall]

(iii) permit the depositor to inspect its physically held securities at any reasonable time.

(b) On application of the depositor or when required by the law of any state or country or by the order of any court of competent jurisdiction, the state treasurer or custodian institution shall certify that the deposit was made and what is on deposit.

(c) Depositors, the state treasurer, any custodian institution, and the commissioner shall each keep a permanent record of securities deposited or held under this section and of any substitutions or withdrawals. They shall compare records at least annually.

[(7) No] (10) A transfer of a deposited security, whether voluntary or by operation of law, is valid [unless] only if approved in writing by the commissioner and countersigned by the state treasurer or custodian institution.

[(8) No] (11) Neither a judgment creditor [or] nor other person may levy upon any deposit held under this section.

[(9) If a] (12) A depositor that has complied with all provisions of this title intended to preserve its financial solidity[, a depositor] is, while solvent and complying with the laws of this state, entitled to:

(a) [to] receive interest and cash dividends accruing on the securities held for its account; and

(b) [to] substitute for deposited securities other eligible securities, as expressly approved by the commissioner.

[(10)] (13) Within 45 days [of] after the commissioner [giving] gives notice to a depositor that a deposit is not an acceptable deposit under Subsection [(4)] (7), the depositor shall substitute other eligible securities expressly approved by the commissioner and allowed under Subsection [(4)] (7).

[~~(11)~~] (14) A depositor may voluntarily deposit or transfer control of eligible securities in excess of requirements to absorb fluctuations in value and to facilitate substitution of securities.

[~~(12)~~] (15) Upon the depositor's request and upon approval of the commissioner, any deposit or part of a deposit shall be released to, or on order of, the depositor to the extent not needed to satisfy requirements of this title. On the order of a court of competent jurisdiction, the deposit or appropriate part of the deposit shall be released to the person for whom it is held.

[~~(13)~~] (16) Each depositor shall pay the cost of custody of securities by a custodian institution or by the state treasurer.

[~~(14)~~] (17) The commissioner shall adopt rules to implement this section.

Section 6. Section Amended.

Section 31A-3-102, Utah Code Annotated 1953, as enacted by Chapter 242, Laws of Utah 1985, is amended to read:

31A-3-102. Exclusive fees and taxes.

(1) The taxes and fees under this chapter, the premium taxes under Sections 59-9-101 through 59-9-104, and the examination costs under Section 31A-2-205 are in [~~lieu~~] place of all other license fees or assessments that might otherwise be levied by the state or any other taxing body within the state.

(2) An insurer that pays premium taxes is not subject to corporate franchise taxes.

(3) Unless otherwise exempt, [~~licensees~~] a licensee under this [~~chapter are~~] title is subject to real and personal property taxes.

Section 7. Section Amended.

Section 31A-8-103, Utah Code Annotated 1953, as last amended by Chapter 277, Laws of Utah 1992, is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) Except for exemptions specifically granted under this title, organizations are subject to regulation under all of the provisions of this title. Notwithstanding any provision of this title, organizations licensed under this chapter are wholly exempt from the provisions of Chapters [~~6,~~] 7, 9, 10, 11, 12, 13, 19, [~~and~~] 24, and 28. In addition, organizations are not subject to:

(a) Chapter 3, except for Part I [~~of Chapter 3~~];

(b) Section 31A-4-107;

(c) Chapter 5, except for provisions [~~in Chapter 5~~] specifically made applicable by this chapter;

(d) Chapter 14, except for provisions [~~in Chapter 14~~] specifically made applicable by this chapter;

(e) Chapters 17 and 18, except as made applicable by the commissioner by rule consistent with [~~the provisions of~~] this chapter; and

(f) Chapter 22, except for Parts VI, VII, and XIII[; and].

[~~(g) Chapter 28, except for Part I.~~]

(2) The commissioner may by rule waive other specific provisions of this title that he considers inapplicable to health maintenance organizations or limited health plans, upon a finding that such a waiver will not endanger the interests of enrollees, investors, or the public.

(3) Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to organizations except as specifically made applicable by:

(a) this chapter;

(b) a provision referenced under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations [~~which~~] that are not settled under this chapter.

(4) Whenever in this chapter a section, subsection, or paragraph of Chapter 5 or 14 is made applicable to organizations, the application is of those provisions that apply to mutual corporations if the organization is nonprofit and of those that apply to stock corporations if the organization is for profit. [~~Wherever~~] Whenever a provision under Chapter 5 or 14 is made applicable to organizations under this chapter, "mutual" means "nonprofit organization."

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with the provisions of this chapter and Chapter 23.

(6) Nothing in this title prohibits any health maintenance organization from meeting the requirements of any federal law [~~which~~] that enables the health maintenance organization to receive federal funds[;] or to obtain or maintain federal qualification status.

(7) Notwithstanding any provision of this title, organizations are exempt from statutes or rules that restrict or limit their freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) Organizations are exempt from the assessment or payment of premium taxes imposed by Title 59, Chapter [~~3~~] 9, Taxation of Admitted Insurers.

Section 8. Section Amended.

Section 31A-15-103, Utah Code Annotated 1953, as last amended by Chapter 230, Laws of Utah 1992, is amended to read:

31A-15-103. Surplus lines insurance — Unauthorized insurers.

(1) Notwithstanding Section 31A-15-102, a foreign insurer [~~which~~] that has not obtained a certificate of authority to do business in this state under Section 31A-14-202[;] may negotiate for and make

insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements of this section.

(2) For contracts made under this section, the insurer may, in this state, inspect the risks to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the contract, through employees or through independent contractors.

(3) Subsections (1) and (2) do not permit any person to solicit business in this state on behalf of an insurer that has no certificate of authority. Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines broker licensed under Chapter 23. The commissioner may by rule prescribe how a surplus lines broker may pay or permit the payment, commission, or other remuneration on insurance placed by him under authority of his license to one holding a license to act as an insurance agent, and how he may advertise the availability of his services in procuring, on behalf of persons seeking insurance, contracts with nonadmitted insurers.

(4) For contracts made under this section, nonadmitted insurers are subject to Sections 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

(5) [No] A nonadmitted insurer may not issue workers' compensation insurance coverage to employers located in this state, except for stop loss coverages issued to employers securing workers' compensation under Subsection 35-1-46 (1)(c).

(6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state [which] that is adequate and reasonably competitive.

(b) The commissioner may by rule place restrictions and limitations on and create special procedures for making contracts under Subsection (1) for a specified class of insurance if there have been abuses of placements in the class or if the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making any contract under Subsection (1) and all insurance agents and brokers from dealing with the insurer if:

(i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or 31A-26-303, or any rule adopted under any of these sections;

(ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is in an unsound condition or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its domicile.

(d) The commissioner may issue lists of unauthorized foreign insurers whose solidity he doubts or whose practices he considers objectionable. The commissioner shall issue lists of unauthorized foreign insurers he considers to be reliable and solid. The commissioner may also issue other relevant evaluations of unauthorized insurers. No action lies against the commissioner or any employee of the department for any written or oral communication made in, or in connection with the issuance of, these lists or evaluations. A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

(i) has delivered a request to the commissioner to be on the list;

(ii) has established satisfactory evidence of good reputation and financial integrity;

(iii) has delivered to the commissioner a copy of its current annual statement certified by the insurer and continues each subsequent year to file its annual statements with the commissioner within 60 days of its filing with the insurance regulatory authority where it is domiciled; and

(iv) fulfills any of the following:

(A) is in substantial compliance with the solvency standards in Subsection 31A-17-301 (1) or maintains capital and surplus of at least $5,000,000, whichever is greater;

(B) any insurer included on the commissioner's "reliable" list on April 1, 1989, as a result of being in substantial compliance with Subsection 31A-17-301(1), but which does not have capital and surplus of $5,000,000 shall, as a condition to remaining on the "reliable" list, increase capital and surplus, in the aggregate, by a minimum of $500,000 per year until a minimum of $5,000,000 of capital and surplus is reached, but any insurer relying on this subsection to remain on the "reliable" list must reach the $5,000,000 minimum before March 31, 1994;

(C) maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve system, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

(I) shall be in an amount not less than $1,500,000 for the protection of all of [its] the insurer's policyholders in the United States[, which trust fund];

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201[;]; and [which]

(III) may include as part of the trust arrangement a letter of credit [which would qualify] that qualifies as acceptable security under Subsection 31A-17-404 (3)(c)(iii); or

(D) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund [of] that:

(I) shall be in an amount not less than $50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group[, which trust fund];

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201[;]; and [which]

(III) may include as part of this trust arrangement a letter of credit [which would qualify] that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii).

(7) [No] A surplus lines broker may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the broker gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the business with that insurer. A copy of this notice shall be kept in the office of the broker for at least five years. To be financially sound, an insurer shall satisfy standards [which] that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)(d) are presumed substandard.

(8) A policy issued under this section shall include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28."

(9) Upon placing a new or renewal coverage under this section, the broker shall promptly deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If he finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject policies issued under this section to as much of the regulation provided by this title as is required for comparable policies written by authorized foreign insurers.

(11) (a) Each surplus lines transaction in this state shall be examined to determine whether it complies with:

(i) the surplus lines tax levied under Chapter 3;

(ii) the solicitation limitations of Subsection (3);

(iii) the requirement of Subsection (3) that placement be through a surplus lines broker;

(iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

(v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (a) shall take place as soon as practicable after the transaction. The surplus lines broker shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) The examination described in Subsection (a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize any additional advisory organizations to conduct examinations under this subsection. The commissioner's authorization of one or more advisory organizations to act as examiners under this subsection shall be by rule. In addition, the authorization shall be evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) The person conducting the examination described in Subsection (a) shall collect a [2]stamping fee[2] of an amount not to exceed 1% of the policy premium payable in connection with the transaction. Stamping fees collected by the commissioner shall be deposited in the General Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory organization are the property of the advisory organization to be used in paying the expenses of the advisory organization. Liability for paying the stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule dealing with the payment of stamping fees. If stamping fees are not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2% per month from the time of default until full payment of the fee. Fees relative to policies covering risks located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this subsection or under Section 31A-15-111.

(f) Examinations conducted under this subsection and the documents and materials related to the examinations are confidential.

Section 9. Section Amended.

Section 31A-15-204, Utah Code Annotated 1953, as enacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-15-204. Risk retention groups not chartered in this state — Designation of commissioner as agent — Compliance with unfair claims settlement practices act — Deceptive, false, or fraudulent practices — Examination regarding financial condition — Prohibitions — Penalties — Operation prior to enactment of this part.

(1) Risk retention groups chartered and licensed in other states and seeking to do business as a risk retention group in this state shall comply with the following:

(a) Before offering insurance in this state a risk retention group shall submit to the commissioner:

(i) a statement identifying the states in which the group is chartered and licensed as a liability insurance company, its charter date, its principal place of business, and any other information, including information on its membership, the commissioner may require to verify that the group is a qualified risk retention group as defined in Subsection 31A-15-202(11); and

(ii) a copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed, [~~however, the submission of~~] except a plan or study [~~may~~] is not [~~apply with respect to~~] required for any line or classification of liability insurance [~~which~~] that:

(A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(B) was offered before that date by any risk retention group [~~which~~] that had been chartered and operating for not less than three years before that date.

(b) The risk retention group shall submit to the commissioner a copy of any revision to its plan or study required by Subsection 31A-15-203(2) at the same time [~~that~~] it submits the revision [~~is submitted to the commissioner~~] of its chartering state.

(c) [A] The risk retention group shall submit, on a form approved by the commissioner, a statement of registration and a notice designating the commissioner as agent for the purpose of receiving service of legal documents or process [~~must be submitted on forms approved by the commissioner~~].

(d) [Annual] The risk retention group shall pay annual license fees[,] in this state equal to the license fees required of an admitted liability insurer licensed to transact business in this state[~~, must be paid in this state~~].

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a [qualified] loss reserve specialist qualified under criteria approved by the commissioner;

(b) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) if the commissioner requests, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group [~~shall be submitted upon the commissioner's request~~]; and

(d) any other information required to verify the group's continuing qualification as a risk retention group within the definition in Subsection 31A-15-202(11).

(3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the Utah State Tax Commission the net premiums written for risks resident or located within this state. Each risk retention group shall be subject to taxation, and any applicable fines and penalties related to taxation, on the same basis as a foreign admitted insurer.

(b) To the extent licensed agents or brokers are utilized pursuant to Section 31A-15-212, they shall report to the commissioner the premiums for direct business for all risks resident or located within this state[~~, which~~] that the agents or brokers have placed with, or on behalf of, a risk retention group not chartered in this state.

(c) To the extent that insurance agents or brokers are utilized pursuant to Section 31A-15-212 they shall keep a complete and separate record of all policies procured from each risk retention group. The record shall be open to examination by the commissioner, as provided under Section 31A-23-312. These records shall include the following for each policy and each kind of insurance provided under each policy:

(i) the limit of liability;

(ii) the time period covered;

(iii) the effective date;

(iv) the name of the risk retention group [~~which~~] that issued the policy;

(v) the gross premium charged;

(vi) the amount of any returned premiums; and

(vii) additional information required by the insurance commissioner.

(4) [Any] Each risk retention group[,] and its agents and representatives[,] shall comply with the Unfair Claims Settlement Practices Act, including Section 31A-15-207, Title 31A, Chapter 26, Part 3, Claim Practices, and any other provision of law relating to claims settlement practices.

(5) [Any] Each risk retention group shall comply with the laws of this state regarding deceptive, false, [or] and fraudulent acts [or], practices [including,] regulated under Title 31A, Chapter 23, Part 3, Marketing Practices, and any other provision of law

relating to deceptive, false, or fraudulent practices. [If the] The commissioner [seeks] may only obtain an injunction regarding the conduct described in this subsection[, the injunction must be obtained] from a court of competent jurisdiction.

(6) If the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state, the risk retention group [must] shall submit to an examination by the commissioner of this state to determine its financial condition. Any examination conducted under this subsection shall be coordinated to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with the NAIC's Examiner Handbook.

(7) [Every] Each application form for insurance from a risk retention group[,] and [every] each policy and certificate[, on its front and declaration pages,] issued by a risk retention group[,] shall contain [in ten point type] the following notice in ten-point type on its front and declaration pages:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group[.]; and

(b) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(9) A risk retention group may not do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, [except in the case of a risk retention] unless all members of the group [members of which] are [all] insurance companies.

(10) The terms of any insurance policy issued by [any] a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the Utah Supreme Court.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state's insurance commissioner if there has been a finding of financial impairment after an examination under Subsection (6).

(12) A risk retention group that violates any provision of this part is subject to fines and penalties[,] applicable to licensed insurers generally, including revocation of its right to do business in this state.

(13) In addition to complying with the requirements of this section, [any] each risk retention group operating in this state [prior to] before the effective date of this part shall comply with [the provision of] Subsection (1)(a)[,] within 30 days after the effective date of this part.

Section 10. Section Amended.

Section 31A-15-212, Utah Code Annotated 1953, as enacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-15-212. Duty of agents or brokers to obtain license — Risk retention groups — Purchasing groups.

(1) A person[, firm, association, or corporation] may [not solicit, negotiate, or procure liability insurance in this state from a risk retention group unless the person, firm, association, or corporation] do the following only if he is licensed as an insurance agent or broker[,] or is exempt from licensure[, in accordance with] under Title 31A, Chapter 23, Insurance Marketing — Licensing Agents, Brokers [and], Consultants[,], and Reinsurance Intermediaries:

(a) solicit, negotiate, or procure liability insurance in this state from a risk retention group;

[(2) (a) A person may not] (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group [unless the person is licensed as an insurance agent or broker, or is exempt from licensure, in accordance with Title 31A, Chapter 23, Insurance Marketing — Licensing Agents, Brokers and Consultants.]; and

[(b) A person may not] (c) solicit, negotiate, or procure liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy [unless the person is licensed as an insurance agent or broker, or is exempt for licensure, in accordance with Title 31A, Chapter 23, Insurance Marketing — Licensing Agents, Brokers and Consultants].

[(c)] (2) A person may [not] solicit, negotiate, or procure liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state [unless the person] only if he is licensed as a surplus lines broker[,] or is exempt for licensure[, in accordance with] under Title 31A, Chapter 23, Insurance Marketing — Licensing Agents, Brokers [and], Consultants, and Reinsurance Intermediaries.

(3) The requirement of residence in this state does not apply for purposes of acting as an agent or broker for a risk retention group or purchasing group [pursuant to] under Subsections (1) and (2).

(4) On business placed with a risk retention [groups] group or written through a purchasing group, [every] each person licensed under this title shall [inform] provide to each prospective insured [of the provisions of] the notice required by Subsection 31A-15-204 (7) in the case of a risk retention group, and by Subsection 31A-15-209 (1) in the case of a purchasing group.

(5) Solicitation for membership in a purchasing group is not of itself a solicitation for insurance.

Section 11. Section Amended.

Section 31A-16-103, Utah Code Annotated 1953, as repealed and reenacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-16-103. Acquisition of control of or merger with domestic insurer — Required filings — Content of statement — Alternative filing materials — Approval by commissioner — Violations — Jurisdiction, consent to service of process.

(1)(a) Unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of securities if no offer or agreement is involved, the person has filed with the commissioner, and also provided copies of the statement to the insurer, a statement containing the information required by this section and the commissioner has approved the offer, request, invitation, agreement or acquisition:

(i) A person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

(ii) A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer.

(b) (i) For purposes of this section a domestic insurer includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(ii) The controlling person described in Subsection (i) shall file with the commissioner a preacquisition notification containing the information required in Subsection [~~31A-16-104(3)(a)~~] (2) 30 days prior to the proposed effective date of the acquisition. [~~Failure to file the notification is subject to an order of the commissioner under Subsection 31A-16-104(5).~~]

(iii) For the purposes of this section, "person" does not include any securities broker holding less than 20% of the voting securities of an insurance company or of any person which controls an insurance company in the usual and customary brokers function.

(iv) This [~~chapter~~] section applies to all domestic insurers and other entities licensed under [~~Title 31A,~~] Chapters 5, [~~6,~~] 7, 8, [and] 9, and 11.

(c) No agreement for acquisition of control or merger as contemplated by this subsection is valid or enforceable unless the agreement is in writing and includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter. A written agreement for acquisition or control which includes such a provision satisfies the requirements of this Subsection (1).

(2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and

(i) if the person is an individual, his principal occupation and a listing of all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past ten years;

(ii)(A) if the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser period as the person and any of its predecessors has been in existence;

(B) an informative description of the business intended to be done by the person and the person's subsidiaries;

(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and

(D) the list shall include for each such individual the information required by Subsection (a).

(b) (i) The source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control, a description of any transaction in which funds were or are to be obtained for that purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration.

(ii) If the source of the consideration under Subsection (i) is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(c) Fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period the acquiring party and any of its predecessors shall have been in existence, and similar unaudited information prepared within the 90 days prior to the filing of the statement.

(d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, merge or consolidate the insurer with any person, or to make any other material change in the insurer's business, corporate structure, or management.

(e) The number of shares of any security referred to in Subsection (1) which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1), and a statement as to the method by which the fairness of the proposal was arrived at.

The commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each security's proportional interest in the capital and surplus of the insurer with adjustments which reflect market conditions, business in force, and other intangible assets or liabilities of the insurer.

(f) The amount of each class of any security referred to in Subsection (1) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including the transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid for the purchase.

(i) A description of any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement or any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1), and, if distributed, of additional soliciting material relating to the same.

(k) The term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding.

(l) Any additional information the commissioner requires by rule, which he determines to be necessary or appropriate for the protection of policyholders of the insurer, or to be in the public interest.

(3)(a) If the person required to file the statement referred to in Subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that all the information called for by Subsection (2) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member.

(b) If any partner, member, or person referred to in Subsection (a) is a corporation, or if the person required to file the statement referred to in Subsection (1) is a corporation, the commissioner may require that the information called for by Subsection (2) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the filing person learns of such change.

(5) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may utilize copies of any registration or disclosure documents in furnishing the information called for by the statement.

(6) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, he finds that:

(a) after the change of control, the domestic insurer referred to in Subsection (1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in insurance;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders, or the interest of any remaining securityholders who are unaffiliated with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer, but this offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e) are disclosed to the securityholders and determined by the commissioner to be reasonable;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest; or

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control.

(7) The public hearing referred to in Subsection (6) shall be held within 30 days after the statement required by Subsection (1) is filed. At least 20 days notice of the hearing shall be given by the commissioner to the person filing the statement. Affected parties may waive the notice required by this subsection. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the commissioner. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments; they may also conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(8) At the acquiring person's expense and consent, the commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(9)(a) If a domestic insurer proposes to merge into another insurer, any securityholder electing to exercise a right of dissent may file with the insurer a written request for payment of the adjusted book value given in the statement required by Subsection (1) and approved under Subsection (6), in return for the surrender of his securities. The request shall be filed not later than ten days after the securityholder's meeting where the corporate action is approved. The securityholder is entitled to and the insurer is required to pay to the dissenting securityholder the specified value within 60 days of receipt of the security. Persons electing under this subsection to receive cash for their securities waive the dissenting shareholder and appraisal rights otherwise applicable under [~~Sections 16-10-75 and 16-10-76~~] Title 16, Chapter 10a, Part 13, Dissenters' Rights.

(b) Subsection (9)(a) provides an elective procedure for dissenting securityholders to resolve their objections to the plan of merger. This section does not restrict the rights of dissenting securityholders under Title 16, Chapter [10] 10a, Utah Revised Business [Corporations] Corporation Act, unless this election is made under Subsection (7)(a).

(10) All statements, amendments, or other material filed under Subsection (1), and all notices of public hearings held under Subsection (6), shall be mailed by the insurer to its securityholders within five business days after the insurer has received the statements, amendments, other material, or notices. Mailing expenses shall be paid by the person making the filing. As security for the payment of these expenses, that person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

(11) This section does not apply to any offer, request, invitation, agreement, or acquisition which the commissioner by order exempts from the requirements of this section as:

(a) not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or

(b) as otherwise not comprehended within the purposes of this section.

(12) The following are violations of this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1) through (3); or

(b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval to the acquisition or merger.

(13)(a) The courts of this state are vested with jurisdiction over:

(i) every person who files a statement with the commissioner under this section, and who is not resident, domiciled, or authorized to do business in this state; and

(ii) overall actions involving persons described in Subsection (a)(i) arising out of violations of this section.

(b) Each person described in Subsection (a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be his lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section.

(c) Copies of all lawful process described in Subsection (b) shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 12. Section Amended.

Section 31A-17-201, Utah Code Annotated 1953, as last amended by Chapter 203, Laws of Utah 1992, is amended to read:

31A-17-201. Qualified assets.

(1) Except as provided under Subsections (3) and (4), only the qualified assets listed in Subsection (2) may be used to satisfy the requirements of Section 31A-17-301, the compulsory surplus requirement of Section 31A-17-302, and the security surplus standard of Section 31A-17-304. Only these qualified assets may be considered in determining the financial condition of an insurer, except to the extent an insurer has shown to the commissioner under Section 31A-17-203 that the insurer has excess surplus, as defined in Subsection 31A-1-301 (76)(d).

(2) "Qualified assets" means:

(a) investments, securities, properties, and loans acquired or held in accordance with Sections 31A-18-105 and 31A-18-106, and the income due and accrued on these;

(b) the net amount of uncollected and deferred premiums for a life insurer which carries the full annual mean tabular reserve liability;

(c) premiums in the course of collection, other than for life insurance, not more than 90 days past due, less commissions payable on the premiums, with the 90-day limitation being inapplicable to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(d) installment premiums, other than life insurance premiums, in accordance with the rules adopted by the commissioner, or, in the absence of these rules, [~~then~~] in accordance with practices formulated or adopted by the National Association of Insurance Commissioners;

(e) notes and similar written obligations [~~which~~] that are not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves carried on the policies;

(f) amounts recoverable or receivable from reinsurers under a reinsurance contract [~~which~~] that qualifies for reserve credit under Section 31A-17-404;

(g) electronic and mechanical machines constituting a data processing and accounting system, the cost of which is depreciated in full over a period [~~not to exceed~~] of five years or less;

(h) tangible components of the health care delivery systems of insurers licensed under Chapter 7, with the cost of these assets having a finite useful life being depreciated in full over periods provided by rule;

(i) cash or currency; and

(j) other assets authorized by rule.

(3) Subject to Subsection (5), assets acquired in the bona fide enforcement of creditors' rights may be counted for the purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106, for five years after their acquisition if they are real property, and for one year if they are not real property, even if they could not otherwise be counted under this chapter. The commissioner may allow reasonable extensions of these periods, if disposal of the assets within the periods given is not possible without substantial loss. These extensions may not, as to any particular asset, exceed a total of five years.

(4) Subject to Subsection (5), assets acquired in connection with mergers, consolidations, or bulk reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in the same manner, and for the same periods as assets acquired under Subsection (3), even though under this chapter the assets could not otherwise be counted.

(5) Assets described under Subsection (3) or (4) may not be counted for the purposes of Subsection (1), except to the extent they are counted as assets in determining insurer solvency under the laws of the state of domicile of the creditor or acquired insurer.

Section 13. Section Amended.

Section 31A-17-402, Utah Code Annotated 1953, as last amended by Chapter 204, Laws of Utah 1986, is amended to read:

31A-17-402. Valuation of liabilities.

The commissioner shall adopt rules specifying the liabilities required to be reported by insurers in financial statements submitted under Section 31A-2-202 and the methods of valuing them. For life insurance, those methods shall be consistent with [~~Section 31A-17-403~~] Part 5 of this chapter, Standard Valuation Law. Title insurance reserves are provided for under Section 31A-17-408. In determining the financial condition of an insurer, liabilities include:

(1) the estimated amount necessary to pay all its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement of the loss or claim;

(2) for life, disability insurance, and annuity contracts:

(a) the reserves on life insurance policies and annuity contracts in force, valued according to appropriate tables of mortality and the applicable rates of interest;

(b) the reserves for disability benefits, for both active and disabled lives;

(c) the reserves for accidental death benefits; and

(d) any additional reserves which may be required by the commissioner by rule, or if no rule is applicable, then in a manner consistent with the practice formulated or approved by the National Association of Insurance Commissioners with respect to those types of insurance;

(3) for insurance other than life, disability, and title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed on a daily or monthly pro rata basis or other basis approved by the commissioner; provided that after adopting any one of the methods for computing those reserves, an insurer may not change methods without the commissioner's written consent;

(4) for ocean marine and other transportation insurance, reserves equal to 50% of the amount of premiums upon risks covering not more than one trip or passage not terminated, and computed upon a pro rata basis or, with the commissioner's consent, in accordance with methods provided under Subsection (3); and

(5) its other liabilities, including taxes, expenses, and other obligations due or accrued at the date of statement.

Section 14. Section Enacted.

Section 31A-17-501, Utah Code Annotated 1953, is enacted to read:

31A-17-501. Title.

This part is known as the "Standard Valuation Law."

Section 15. Section Enacted.

Section 31A-17-502, Utah Code Annotated 1953, is enacted to read:

31A-17-502. Reserve Valuation.

The commissioner shall annually value, or cause to be valued, the reserve liabilities (also called "reserves" in this part) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this part of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided in this part, and if the official of such state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Section 16. Section Enacted.

Section 31A-17-503, Utah Code Annotated 1953, is enacted to read:

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

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

(2) General: Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered to be necessary to its scope.

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

(a) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by Subsection (2), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under the expenses associated with the policies and contracts.

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

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

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

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

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

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

(b) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

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

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

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

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

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

(h) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, are considered protected records under Section 63-2-304 and may not be made public and are not subject to subpoena under Subsection 63-2-202(7), other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or rules promulgated under this section. However, the memorandum or other material may otherwise be released by the commissioner (i) with the written consent of the company or (ii) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited in its marketing or is cited before any governmental agency other than the department or is released to the news media, all portions of the memorandum are no longer confidential.

Section 17. Section Enacted.

Section 31A-17-504, Utah Code Annotated 1953, is enacted to read:

31A-17-504. Computation of minimum standard.

Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and 31A-17-513, the minimum standard for the valuation of all life insurance policies and annuity and pure endowment contracts issued prior to January 1, 1994, shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and 31A-17-513, the minimum standard for the valuation of all such policies and contracts issued on or after January 1, 1994, shall be the commissioner's reserve valuation methods defined in Sections 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-513, 3.5% interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1973, 4% interest for such policies issued prior to April 2, 1980, 5.5% interest for single premium life insurance policies, and 4.5% interest for all other such policies issued on and after April 2, 1980, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies: the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Subsection 31A-22-408(6)(a) (that is, the Standard Nonforfeiture Law for Life Insurance), the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of Subsection 31A-22-408(6)(a) and prior to the operative date of Subsection 31A-22-408(6)(d), provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of Subsection 31A-22-408(6)(d):

(a) the Commissioners 1980 Standard Ordinary Mortality Table;

(b) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(c) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies: the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Subsection 31A-22-408(6)(c), and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: such tables as may be approved by the commissioner.

Section 18. Section Enacted.

Section 31A-17-505, Utah Code Annotated 1953, is enacted to read:

31A-17-505. Computation of minimum standard for annuities.

(1) Except as provided in Section 31A-17-506, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined in Subsection (2), and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in Sections 31A-17-507 and 31A-17-508 and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to April 2, 1980, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and 6% interest for single premium immediate annuity contracts, and 4% interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after April 2, 1980, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 7.5% interest.

(c) For individual annuity and pure endowment contracts issued on or after April 2, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 5.5% interest for single premium deferred annuity and pure endowment contracts and 4.5% interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to April 2, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and 6.5% interest.

(e) For all annuities and pure endowments purchased on or after April 2, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule and promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and 7.5% interest.

(2) After June 1, 1973, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company, provided, if a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

Section 19. Section Enacted.

Section 31A-17-506, Utah Code Annotated 1953, is enacted to read:

31A-17-506. Computation of minimum standard by calendar year of issue.

(1) Applicability of Section 31A-17-506: The interest rates used in determining the minimum standard for the valuation shall be the calendar year statutory valuation interest rates as defined in this section for:

(a) all life insurance policies issued in a particular calendar year, on or after the operative date of Subsection 31A-22-408(6)(d);

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1994;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1994, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1994, in amounts held under guaranteed interest contracts.

(2) Calendar year statutory valuation interest rates:

(a) The calendar year statutory valuation interest rates, "I," shall be determined as follows and the results rounded to the nearer 1/4 of 1%:

(i) For life insurance:

I = .03 + W(R1 - .03) + W/2 (R2 - .09);

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

I = .03 + W(R - .03),

where R1 is the lesser of R and .09,

R2 is the greater of R and .09,

R is the reference interest rate defined in Subsection (4), and

W is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Subsection (ii), the formula for life insurance stated in Subsection (i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in Subsection (ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Subsection (ii) shall apply.

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Subsection (ii) shall apply.

(b) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2 of 1% the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d) becomes operative.

(3) Weighting factors:

(a) The weighting factors referred to in the formulas stated in Subsection (2) are given in the following tables:

(i) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50
More than 10, but less than 20:	.45
More than 20:	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Subsection (ii), shall be as specified in Tables (A), (B), and (C) below, according to the rules and definitions in (D), (E), and (F) below:

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factors for Plan Type		
	A	B	C
5 or less:	80	60	50
More than 5, but not more than 10:	75	60	50
More than 10, but not more than 20:	65	50	45
More than 20:	45	35	35
	Plan Type		
	A	B	C

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (I) above increased by: .15 .25 .05

	Plan Type		
	A	B	C

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (A) or derived in (B) increased by:

.05 .05 .05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of pur-

chase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only:

(I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (II) without such adjustment but installments over five years or more, or (III) as an immediate life annuity, or (IV) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder withdraw funds only:

(I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (II) without such adjustment but in installments over five years or more, or (III) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

(I) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is defined as follows:

(a) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (b), with guarantee duration in excess of ten years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Subsection (b), with guarantee duration of ten years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Subsection (b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

(5) Alternative method for determining reference interest rates: In the event that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published by Moody's Investors Service, Inc. or in the event that the National Association of Insurance Commissioners determines that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule promulgated by the commissioner, may be substituted.

Section 20. Section Enacted.

Section 31A-17-507, Utah Code Annotated 1953, is enacted to read:

31A-17-507. Reserve valuation method — Life insurance and endowment benefits.

(1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

(2) Provided that for any life insurance policy issued on or after January 1, 1997, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy anniversary calculated as described in Subsection (1) and the reserve as of such policy anniversary calculated as described in that subsection, but with (a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such excess first year premium, (b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (c) the policy being assumed to mature on such date as an endowment, and (d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 31A-17-504 and 31A-17-506 shall be used.

(3) Reserves according to the commissioner's reserve valuation method for: (a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under 26 U.S.C. Sec. 408, as amended; (c) disability and accidental death benefits in all policies and contracts; and (d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of Subsections (1) and (2).

Section 21. Section Enacted.

Section 31A-17-508, Utah Code Annotated 1953, is enacted to read:

31A-17-508. Reserve valuation method — Annuity and pure endowment benefits.

(1) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under 26 U.S.C. Sec. 408, as amended.

(2) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

Section 22. Section Enacted.

Section 31A-17-509, Utah Code Annotated 1953, is enacted to read:

31A-17-509. Minimum reserves.

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after January 1, 1994, be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-512 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by Section 31A-17-503.

Section 23. Section Enacted.

Section 31A-17-510, Utah Code Annotated 1953, is enacted to read:

31A-17-510. Optional reserve calculation.

(1) Reserves for all policies and contracts issued prior to January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date. Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after January 1, 1994, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided; provided, however, that, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by Section 31A-17-502 shall not be considered to be the adoption of a higher standard of valuation.

Section 24. Section Enacted.

Section 31A-17-511, Utah Code Annotated 1953, is enacted to read:

31A-17-511. Reserve calculation — Valuation net premium exceeding the gross premium charged.

(1) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 31A-17-504 and 31A-17-506.

(2) Provided that for any life insurance policy issued on or after January 1, 1997, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Section 31A-17-507, ignoring Subsection 31A-17-507(2). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 31A-17-507, including Subsection 31A-17-507(2), and the minimum reserve calculated in accordance with this section.

Section 25. Section Enacted.

Section 31A-17-512, Utah Code Annotated 1953, is enacted to read:

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

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

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

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

Section 26. Section Enacted.

Section 31A-17-513, Utah Code Annotated 1953, is enacted to read:

31A-17-513. Minimum standards for disability plans.

The commissioner shall promulgate a rule containing the minimum standards applicable to the valuation of disability plans.

Section 27. Section Amended.

Section 31A-21-104, Utah Code Annotated 1953, as last amended by Chapter 21, Laws of Utah 1991, is amended to read:

31A-21-104. Insurable interest and consent.

(1) No insurer may knowingly provide insurance to a person who does not have or expect to have an insurable interest in the subject of the insurance. No person may knowingly procure, directly, by assignment, or otherwise, an interest in the proceeds of an insurance policy unless he has or expects to have an insurable interest in the subject of the insurance. Any insurance provided in violation of this subsection is subject to Subsection (5).

(2) As used in this chapter:

(a) "Insurable interest" in a person means, for persons closely related by blood or by law, a substantial interest engendered by love and affection, or in the case of other persons, a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue. Policyholders in group insurance contracts need no insurable interest if certificate holders or persons other than group policyholders who are specified by the certificate holders are the recipients of the proceeds of the policies. [~~Every~~] Each person has an unlimited insurable interest in his own life and health. A shareholder or partner has an insurable interest in the life of other shareholders or partners for purposes of insurance contracts [~~which~~] that are an integral part of a legitimate buy-sell agreement respecting shares or a partnership interest in the business.

(b) "Insurable interest" in property or liability means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

(3) Except as provided in Subsection (4), no insurer may knowingly issue an individual life or disability insurance policy to a person other than the one whose life or health is at risk unless that person, who is 18 years of age or older and not under guardianship under Title 75, Chapter 5, Protection of Persons under Disability and their Property, has given written consent to the issuance of the policy. [~~Consent may be expressed~~] The person shall express consent either by signing an application for the insurance with knowledge of the nature of the document, or in any other reasonable way. Any insurance provided in violation of this subsection is subject to Subsection (5).

(4)(a) A life or disability insurance policy may be taken out without consent in the following cases:

(i) A person may obtain insurance on a dependent who does not have legal capacity.

(ii) A creditor may, at his own expense, obtain insurance on the debtor in an amount reasonably related to the amount of the debt.

(iii) A person may obtain life and disability insurance on immediate family members living with or dependent on the person.

(iv) A person may obtain a disability insurance policy on others that would merely indemnify the policyholder against expenses he would be legally or morally obligated to pay.

(v) The commissioner may adopt rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States who is in the public service of the United States, if the policyholder is related within the second degree by blood or by marriage to the person whose life or health is insured.

(b) Consent may be given by another in the following cases:

(i) A parent, a person having legal custody of a minor, or a guardian of the person under Title 75, Chapter 5, Protection of Persons under Disability and their Property, may consent to the issuance of a policy on a dependent child or on a person under guardianship under Title 75, Chapter 5, Protection of Persons under Disability and their Property.

(ii) A grandparent may consent to the issuance of life or disability insurance on a grandchild.

(iii) A court of general jurisdiction may give consent to the issuance of a life or disability insurance policy on an ex parte application showing facts the court considers sufficient to justify the issuance of that insurance.

(5) No insurance policy is invalid because the policyholder lacks insurable interest or because consent has not been given, but a court with appropriate jurisdiction may order the proceeds to be paid to some person who is equitably entitled to them, other than the one to whom the policy is designated to be payable, or it may create a constructive trust in the proceeds or a part of them on behalf of such a person, subject to all the valid terms and conditions of the policy other than those relating to insurable interest or consent.

(6) [~~Nothing in this~~] This section [~~shall~~] does not prevent any organization described under [~~Section 501(c)(3), 501(e), or 501(f) of the Internal Revenue Code of 1986~~] 26 U.S.C. Sec. 501(c)(3), (e), or (f), as amended, and the regulations promulgated thereunder, and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in life insurance on the life of the [~~donee~~] donor or [~~assignee~~] assignor or from enforcing payment of proceeds from that interest.

Section 28. Section Amended.

Section 31A-23-501, Utah Code Annotated 1953, as enacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-23-501. Licensure.

(1) A person, firm, association, or corporation may not act in the capacity of managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent

representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a producer in this state pursuant to this chapter. The license may be a nonresident license.

(3) The commissioner may require a bond in an amount he finds acceptable for the protection of [the] each insurer represented.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy or other security acceptable to the commissioner.

Section 29. Section Amended.

Section 31A-23-503, Utah Code Annotated 1953, as enacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-23-503. Duties of insurers.

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within 30 days [of] after entering into or [termination of] terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. [Notices] A notice of appointment of a managing general agent shall include:

(a) a statement of duties [which] that the applicant is expected to perform on behalf of the insurer[.];

(b) the lines of insurance for which the applicant is to be authorized to act[,]; and

(c) any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer, as defined by Subsection 31A-23-102(12), has become a managing general agent as defined in Subsection 31A-23-102(10). If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination. The insurer and producer [must] shall fully comply with the provisions of this chapter within 30 days.

(7) An insurer may not appoint [to its board of directors] officers, directors, employees, subproducers, or controlling shareholders of its managing general agents [such that these persons would constitute more than 25% of the] to its board of directors. This subsection does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter 23, Part 6, Broker Controlled Insurers, if it applies.

Section 30. Section Amended.

Section 31A-23-602, Utah Code Annotated 1953, as enacted by Chapter 258, Laws of Utah 1992, is amended to read:

31A-23-602. Minimum Standards.

(1) [(a) The provisions of this] This section [apply] applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled [insurers'] insurer's quarterly statement filed as of September 30 of the prior year.

[(b)] (2) Notwithstanding Subsection [(a)] (1), [the provisions of] this section [do] does not apply if:

[(i)] (a) the controlling broker[: (A)] places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance placed; [and]

[(B)] (b) the controlling broker accepts insurance placements only from nonaffiliated subbrokers, and not directly from insureds; and

[(ii)] (c) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling broker, a broker controlled by the controlled insurer, or a broker that is a subsidiary of the controlled insurer[; or].

[(iii) the controlled insurer is exempted by order of the commissioner upon his finding of no negative impact on the insurance buying public.]

[(2)] (3) A controlled insurer may not accept business from a controlling broker and a controlling broker may not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer [which] that specifies the responsibilities of each party[, which] and that has been approved by the board of directors of the insurer. The contract shall contain the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling broker.

(c) The controlling broker shall remit all funds due under the terms of the contract to the controlled insurer at least monthly. The due date shall be fixed so that premiums or premium installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance with applicable provisions of this title. However, funds of a controlling broker not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction.

(e) The controlling broker shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract may not be assigned in whole or in part by the controlling broker.

(g) The controlled insurer shall provide the controlling broker with its underwriting standards, rules, procedures, and manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker.

(h) The contract shall state the rates and terms of the controlling broker's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business and services placed with the controlled insurer by brokers other than controlling brokers. For purposes of this subsection and Subsection (g), examples of "comparable business and services" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned, and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Subsection (3).

(j) The contract shall include a limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit to each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer. However, the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

[~~(3) Every~~] (4) Each controlled insurer shall have an audit committee of the board of directors. The audit committee shall annually meet to review the adequacy of the insurer's loss reserves. The committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or any other independent loss reserve specialists acceptable to the commissioner.

[~~(4)~~] (5) (a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the commissioner. The opinion shall report loss ratios for each line of business written and shall attest to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer including losses incurred but not reported.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the broker, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance.

Section 31. Section Amended.

Section 31A-29-111, Utah Code Annotated 1953, as enacted by Chapter 232, Laws of Utah 1990, is amended to read:

31A-29-111. Eligibility — Limitations.

(1) Any person who has resided in this state for at least [~~one year~~] 12 consecutive months immediately preceding the date of application or who is a dependent child 24 years of age or less of such a person [~~who has resided in this state for at least one year~~] is eligible for pool coverage if the person pays the established premium and provides evidence of:

(a) a rejection or refusal by an insurer to issue health insurance coverage similar to the pool's coverage for reasons relating to health; or

(b) a refusal by an insurer to issue the insurance except at a rate exceeding the pool rate for reasons relating to health.

(2) The board shall promulgate a list of medical or health conditions for which a person is eligible for plan coverage without applying for health insurance coverage under Subsection (1). A person who demonstrates the existence or history of any medical or health condition on the list promulgated by the board is eligible to apply directly to the pool for coverage.

(3) A person is not eligible for coverage under this chapter if:

(a) at the time of pool application, the person is eligible for health care benefits under Medicaid or Medicare, except as provided in Section 31A-29-112;

(b) the person has terminated coverage in the pool, unless:

(i) 12 months have elapsed since the termination date; or

(ii) the person demonstrates that continuous other coverage has been involuntarily terminated for any reason other than nonpayment of premium;

(c) the pool has paid the maximum lifetime benefit to or on behalf of the person;

(d) the person is an inmate of a public institution; or

(e) the person is eligible for other public programs for which medical care is provided.

(4) In addition to other reasons for termination, if a person with pool coverage establishes residency outside Utah for three consecutive months, the person's coverage terminates.

[~~(4)~~] (5) (a) Any person whose health insurance coverage from a state health risk pool with similar coverage is terminated because of nonresidency in another state may apply for coverage under the pool.

(b) If the coverage is applied for within 31 days after the termination and if premiums are paid for the entire coverage period under the pool, the effective date of the pool's coverage shall be the date of termination of previous coverage.

(c) The waiting period of a person with a preexisting condition applying for coverage under this chapter shall be waived if the waiting period was satisfied under a similar plan from another state and that state's benefit limitation was not reached.

[~~(5)~~] (6) Although the pool is open to application from individual members of an employee group, the pool may not accept a person from a group that is capable of offering health insurance or a self-insurance arrangement to all of its employees or members and that has unreasonably excluded that person from eligibility in the group's plan. The board shall establish policies and guidelines to assist the pool administrator in evaluating applications from persons who are employees or members of a group that offers health insurance or a self-insurance arrangement to employees or members of the group.

[~~(6)~~] (7) The board may determine the total number of persons that shall be enrolled for coverage by the pool at any time for the purpose of controlling expenditures so they do not exceed available revenues and shall permit and prohibit enrollment in order to maintain the number authorized. Nothing in this subsection authorizes the board to prohibit enrollment for any reason other than to control the number of persons in the pool.

Section 32. Section Amended.

Section 59-9-105, Utah Code Annotated 1953, as last amended by Chapter 74, Laws of Utah 1991, is amended to read:

59-9-105. Tax on certain insurers to pay for relative value study.

[~~Every~~] (1) Each insurer providing coverage for motor vehicle liability, uninsured motorist, and personal injury protection shall pay to the State Tax Commission on or before March 31 of each year, a tax of [~~.0175%~~] .01% on the total premiums received for these coverages during the preceding calendar year from policies covering motor vehicle risks in this state.

(2) The taxable premium under this section shall be reduced by all premiums returned or credited to policyholders on direct business subject to tax in this state.

(3) All money received by the state under this section shall be deposited in the General Fund as a dedicated credit for the purpose of providing funds to pay for any costs and expenses incurred by the Insurance Department in conducting, maintaining, and administering the relative value study referred to in Section 31A-22-307.

Section 33. Repealer.

Section 31A-17-403, Standard Valuation Law, as last amended by Chapter 91, Laws of Utah 1987, is repealed.

CHAPTER 306
S. B. No. 267
Passed March 3, 1993
Approved March 23, 1993
Effective July 1, 1993

MINIMUM SCHOOL PROGRAM ACT AMENDMENTS

By Haven J. Barlow
Delpha A. Baird
Millie M. Peterson
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Craig A. Peterson

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING FOR STATE AND LOCAL FUNDING OF THE MINIMUM SCHOOL PROGRAM ACT WITH THE TOTAL STATE CONTRIBUTION TO THE MAINTENANCE AND OPERATION PORTION NOT TO EXCEED $951,738,377; ESTABLISHING THE VALUE OF THE WEIGHTED PUPIL UNIT AT $1,539; ESTABLISHING DISTRIBUTION FORMULAS; PROVIDING A $4,958,000 APPROPRIATION FOR THE SCHOOL BUILDING SUPPORTED PROGRAM AND A $4,000,000 APPROPRIATION FOR THE CAPITAL OUTLAY EQUALIZATION PROGRAM; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-16-104.5, AS ENACTED BY CHAPTER 292, LAWS OF UTAH 1992
53A-17A-103, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-104, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-108, AS ENACTED BY CHAPTER 72, LAWS OF UTAH 1991
53A-17A-111, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-112, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-113, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-114, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-116, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-118, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-119, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-120, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-121, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-123, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-124, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-124.5, AS ENACTED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-125, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-126, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-127, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-128, AS RENUMBERED AND AMENDED BY CHAPTER 72, LAWS OF UTAH 1991
53A-17A-129, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-130, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-131, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-132, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-133, AS LAST AMENDED BY CHAPTER 53, LAWS OF UTAH 1992
53A-17A-134, AS LAST AMENDED BY CHAPTER 108 AND RENUMBERED AND AMENDED BY CHAPTER 72, LAWS OF UTAH 1991

ENACTS:
53A-17A-131.1, UTAH CODE ANNOTATED 1953
53A-17A-131.3, UTAH CODE ANNOTATED 1953
53A-17A-131.5, UTAH CODE ANNOTATED 1953
53A-17A-131.7, UTAH CODE ANNOTATED 1953
53A-17A-131.9, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 53A-16-104.5, Utah Code Annotated 1953, as enacted by Chapter 292, Laws of Utah 1992, is amended to read:

53A-16-104.5. State contribution to foundation program.

(1) The state contribution toward the cost of the equalized capital outlay foundation program authorized in Section 53A-16-104 shall consist of an appropriation of [~~$2,000,000~~] $4,000,000 from the Uniform School Fund to the State Board of Education.

(2) The distribution shall be based on the formula distribution established under Subsection 53A-16-104(3).

(3) The appropriation under this section is in addition to any state appropriation for the school building aid program established in Title 53A, Chapter 21.

Section 2. Section Amended.

Section 53A-17a-103, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-103. Definitions.

As used in this chapter:

(1) "Basic state-supported school program" or "basic program" means [educational] public education programs for kindergarten, elementary, and secondary school students that are operated and maintained for the amount derived by multiplying the number of weighted pupil units for each district by [~~$1,490~~] $1,539, except as otherwise provided in this chapter.

(2) "Leeway program" or "leeway" means a state-supported voted leeway program or board leeway program authorized under Section 53A-17a-133 or 53A-17a-134.

(3) "Minimum basic tax rate" or "minimum basic rate" means the tax rate that each school district must impose to contribute to the cost of the basic program.

(4) "Pupil in average daily membership (ADM)" means a full-day equivalent pupil.

(5) "State-supported minimum school program" or "minimum school program" means public school programs for kindergarten, elementary, and secondary schools.

(a) The minimum school program established in the districts shall include the equivalent of a school term of nine months as determined by the State Board of Education.

(b) The board shall establish the number of days or equivalent instructional hours that school is held for an academic school year.

(c) The program shall be operated and maintained for the total of the following annual costs:

(i) the cost of a basic state-supported school program;

(ii) the amount appropriated in Section 53A-17a-123 for the local program;

(iii) the amount appropriated in Section 53A-17a-125 for retirement and social security;

(A) Each school district shall receive its share of retirement and social security monies based on its total weighted pupil units compared to the total weighted pupil units for all districts in the state.

(B) The monies needed to support retirement and social security shall be determined by taking the district's prior [year's] year allocation and adjusting it for student growth, for the percentage increase in the value of the weighted pupil unit, and the effect of any change in the rates for retirement, social security, or both;

(iv) the amount of the employer contribution required or made in behalf of employees under Sections 49-2-301 and 49-3-301;

(v) the amount of the employer contribution under Section 1400 of the Federal Insurance Contribution Act in accordance with Section 67-11-5 for local school boards;

(vi) the amount appropriated in Chapter 17a:

(A) for an incentives for excellence program;

(B) as a contingency fund for the State Board of Education;

(C) for state-supported transportation:

(D) for applied technology centers and applied technology programs in regions not served by the centers;

(E) for regional service centers;

(F) for [an awards for excellence program in the public schools] the educational technology initiative program; [and]

(G) for maintenance of the EDNET program;

(H) for the centennial schools program;

(I) for teachers' supplies and materials;

(J) for agencies coming together for children and youth at risk programs;

(K) for music in the schools programs; and

[(G)] (L) for experimental and developmental programs; and

(vii) the cost of a leeway program.

(d) The program includes school construction programs approved under the School Building Equalization Act of 1977 and subsequent amendments.

(6) "Weighted pupil unit or units" means the unit of measure of factors that is computed in accordance with this chapter for the purpose of determining the costs of a program on a uniform basis for each district.

Section 3. Section Amended.

Section 53A-17a-104, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-104. Amount of state's contribution toward minimum school program.

(1) The total contribution of the state toward the cost of the operation and maintenance portion of the minimum school program, as provided and defined in Section 53A-17a-103, may not exceed the sum of [$891,502,887] $951,738,377 for the [1992-93] 1993-94 school year.

(2) It is intended that the funds provided are for the following purposes and in the following amounts:

Estimated Weighted Pupil Units	Purpose	Estimated State and Local Funds at [$1,490] $1,539 Per Weighted Pupil Unit
	State Contribution	
[17,367] 18,737	Basic program - kindergarten.	[$26,876,830] $28,836,243
[412,479] 418,695	Basic program - grades 1-12.	[$614,593,710] $644,371,605
[37,212] 40,206	Basic program - professional staff.	[$55,445,880] $61,877,034
[1,840] 1,655	Basic program - administrative costs.	[$2,741,600] $2,547,045
[6,100] 5,700	Basic program - necessarily existent small schools and units for consolidated schools.	[$9,089,000] $8,772,300
[50,052] 50,893	Special education - regular program - [disabled] add-on WPU's for students with disabilities.	[$74,577,480] $78,324,327

[3,294] 3,340	Preschool Special Education program.	[$4,908,060]	$5,140,260
[10,276] 10,686	Self-contained regular WPU's.	[$15,311,240]	$16,445,754
[229] 232	Extended year program for severely disabled.	[$341,210]	$357,048
[1,303] 1,321	Special education - state programs.	[$1,941,470]	$2,033,019
[16,857] 17,091	Applied technology and technical education district programs.	[$25,116,930]	$26,303,049
[954] 967	Applied technology district set-aside.	[$1,421,460]	$1,488,213
[3,070] 3,299	Youth in custody programs.	[$4,574,300]	$5,077,161
[2,948] 2,989	Adult high school.	[$4,392,520]	$4,600,071
[1,765] 1,790	Accelerated learning programs.	[$2,629,850]	$2,754,810
[2,297] 2,471	At Risk Students.	[$3,422,530]	$3,802,869
[11,257] 11,413	Local programs.	[$16,772,930]	$17,564,607
[23,380] 23,705	Career ladder.	[$34,836,200]	$36,481,995
[2,946] 7,182	Class size reduction.	[$4,389,540]	$11,053,098
[605,626] 622,372	TOTAL OF ALL ABOVE PROGRAMS	[$902,382,740]	$957,830,508
	Social Security and retirement programs.	[$164,166,261]	$170,494,242
	Pupil Transportation to and from school.	[$28,847,700]	$33,480,401
	Contingency fund		$606,600
	Incentives for excellence	[$575,000]	$603,397
	Secondary Applied Technology education - ATC's.	[$2,218,000]	$2,719,200
	Regional service centers.	[$492,200]	$668,500
	[Awards for Excellence — $200,000]		
	Programs for regions not served by ATC's.	[$300,000]	$600,000
	Educational Technology Initiative.		$1,000,000
	EDNET.		$500,000
	Centennial Schools		$2,600,000
	Teachers' supplies and materials.		$3,000,000
	Children and youth at risk programs.		$3,215,460
	Music in the schools programs.		$34,000
	Experimental and Developmental Program.		$3,915,100
	State-supported voted leeway.	[$46,068,529]	$53,198,000
	State-supported board leeway.	[$19,222,963]	$19,459,057
	Total estimated contributions to school districts for all programs.	[$1,169,015,093]	$1,253,924,465
	Less estimated proceeds from state-supported local levies.	$277,512,206]	$302,186,088
	TOTAL STATE FUNDS	[$891,502,887]	$951,738,377

Section 4. Section Amended.

Section 53A-17a-108, Utah Code Annotated 1953, as enacted by Chapter 72, Laws of Utah 1991, is amended to read:

53A-17a-108. Weighted pupil units for administrative costs.

(1) [Each school district shall receive 46 additional weighted pupil units to assist in its administrative costs.] Administrative costs weighted pupil units are computed and distributed to districts in accordance with the following schedule:

Administrative Costs Schedule

School District Enrollment as of October 1	Weighted Pupil Units
1 - 2,000 students	53
2,001 - 10,000 students	48
10,001 - 20,000 students	25
20,001 and above	16

(2) The State Board of Education shall develop a statewide plan to increase the proportion of [funds] monies allocated to instruction and decrease the proportion of [funds] monies allocated to general district administration and business administration.

Section 5. Section Amended.

Section 53A-17a-111, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-111. Weighted pupil units for programs for students with disabilities — District allocation.

(1) There is appropriated to the State Board of Education an amount of [$97,079,460 (65,154] $102,300,408 (66,472 weighted pupil units) for allocation to local school board programs for students with disabilities.

(2) Included in the appropriation is an amount of [$74,577,480] $78,324,327 for add-on WPUs for students with disabilities enrolled in regular programs.

(3) The number of weighted pupil units for students with disabilities shall reflect the direct cost of programs for those students conducted in accordance with definitions, guidelines, rules, and standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) The State Board of Education shall limit a district's allocation under this section to 12.18% of the district's average daily membership.

(5) Disability program monies allocated to districts are restricted and shall be spent for the education of students with disabilities but may include expenditures for approved programs of services conducted for certified instructional personnel who have students with disabilities in their classes.

(6) The State Board of Education shall establish and strictly interpret definitions and provide standards for determining which students have disabilities and shall assist districts in determining the services that should be provided to students with disabilities.

(7) Each year the board shall evaluate the standards and guidelines that establish the identifying criteria for disability classifications to assure strict compliance with those standards by the districts.

(8) Each district shall receive its allocation of monies appropriated for programs for students with disabilities as provided in this subsection.

(a) The State Board of Education shall use the total number of special education weighted pupil units generated during fiscal year 1989-90 as a base for the appropriation.

(b) Each district shall receive a foundation allocation based on its special education weighted pupil units for fiscal year 1989-90 as compared to the state's total special education weighted pupil units for that year.

(9) If monies appropriated under this chapter for programs for students with disabilities do not meet the costs of districts for those programs, each district shall first receive the amount generated for each student with a disability under the basic program.

(10) When monies appropriated under this chapter fund the base weighted pupil units of 60,328, as outlined in Subsection (8), monies for growth shall be determined as follows:

(a) Student increase is computed on the increase in a district's growth factor based on the prior year S-3 count of students with disabilities as compared to the count of students with disabilities on the S-3 count of the previous year, not to exceed the official October total district growth factor.

(b) The increase is multiplied by 1.53 weighted pupil units for each new student and added to the foundation allocation to determine each district's total allocation.

Section 6. Section Amended.

Section 53A-17a-112, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-112. Preschool special education appropriation — Extended year program appropriation — Appropriation for special education programs in state institutions.

(1) Included in the [~~$97,079,460~~] $102,300,408 appropriation under Section 53A-17a-111 is an amount of [~~$4,908,060~~] $5,140,260 for preschool special education programs, an amount of [~~$15,311,240~~] $16,445,754 for self-contained regular WPU special education programs, an amount of [~~$341,210~~] $357,048 for extended year programs for the severely disabled, and an amount of [~~$1,941,470~~] $2,033,019 for special education programs in state institutions and for district impact aid.

(2) (a) The [~~$4,908,060 (3,294~~] $5,140,260 (3,340 weighted pupil units) appropriated for the preschool special education program is allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages three through five.

(b) The monies are distributed on the basis of a school district's previous year December 1 disabled preschool child count as mandated by federal law.

(3) The extended school year program for the severely disabled is limited to students with severe disabilities with education program goals identifying significant regression and recoupment disability as approved by the State Board of Education.

(4) (a) The monies appropriated for self-contained regular special education programs may not be used to supplement other school programs.

(b) Monies in any of the other restricted line item appropriations may not be reduced more than 2% to be used for purposes other than those specified by the appropriation, unless otherwise provided by law.

Section 7. Section Amended.

Section 53A-17a-113, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-113. Weighted pupil units for applied technology education programs — Program levels — Bonus payments.

(1) There is appropriated to the State Board of Education an amount of [~~$25,116,930 (16,857~~] $26,303,049 (17,091 weighted pupil units) to pay the added instructional costs of State Board for Applied Technology Education approved applied technology education programs in secondary schools, district applied technology centers, skills centers, and applied technology schools.

(a) Included in the [~~$25,116,930~~] $26,303,049 appropriation is an amount of [~~$601,960 (404~~] $629,451 (409 weighted pupil units) for summer [vocational] applied technology agriculture programs.

(b) These [funds] monies are allocated to eligible recipients as provided in Subsections (2), (3), and (4).

(2) Weighted pupil units are computed for pupils in approved programs according to annually updated weightings based on direct costs data from eligible recipients.

(a) The board shall cluster approved programs into three levels which represent costs of three general types.

(i) Level I consists of programs which require little equipment and can accommodate relatively large numbers of students at relatively low costs.

(ii) Level II consists of programs with a medium or average cost and number of students.

(iii) Level III consists of programs requiring rather expensive equipment and relatively small class sizes or both.

(b) (i) Approved programs shall meet placement and competency standards set by the state board to qualify for applied technology funding.

(ii) Programs which do not meet state board standards are reimbursed at the WPU level without applied technology add-on.

(c)(i) Programs that exceed the board's placement and competency standards for students may receive bonus payments.

(ii) The board may place an amount not to exceed 7.5% of the total add-on revenues into an incentive fund to provide for these bonus payments.

(iii) Bonus payments are distributed on a prorated basis for each individual who meets the board standard as a portion of the statewide total.

(d) Leadership organization funds shall constitute an amount not to exceed 1% of the total appropriation under this section, and are distributed to each local educational agency sponsoring applied technology student leadership organizations in a ratio representing the agency's share of the state's total membership in those organizations.

(e) The state board shall make the necessary calculations to establish costs, weightings, levels, and incentive payments, and may revise and recommend changes necessary for achieving equity and ease of administration in successive years of implementation.

(3)(a) Nine weighted pupil units are computed for each district, or 16 weighted pupil units may be computed for each district that consolidates applied technology administrative services with one or more other districts.

(b) Sixteen weighted pupil units are computed for each high school in a district conducting an approved program.

(c) Sixteen weighted pupil units may be computed for each district for a system of consolidated applied technology programs within a district.

(d) Forty weighted pupil units may be computed for each district for an approved district applied technology center.

(e) Seven weighted pupil units shall be computed for each summer applied technology agriculture program according to standards established by the State Board of Education.

(4)(a) All [funds] monies allocated under Subsection (1) are computed by using average daily membership in approved programs for the previous year.

(b) A district that has experienced student growth [~~of 1% or greater~~] in grades nine through 12 for the previous year shall have the growth factor applied to the previous year's weighted pupil units when calculating the allocation of [~~funds~~] monies under this subsection.

(5)(a) The State Board of Education shall establish by rule guidelines for the upgrading of high school applied technology education programs.

(b) The guidelines shall reflect technical training and actual marketable job skills in society.

(c) The guidelines shall include procedures to assist school districts to convert existing programs which are not preparing students for the job market into ones that will accomplish that purpose.

Section 8. Section Amended.

Section 53A-17a-114, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-114. Applied technology program alternatives.

(1) If a school district determines that a secondary student's applied technology education goals are better achieved at a district [~~vocational~~] applied technology center, an applied technology center, area applied technology school, or skills center, the student may attend that institution.

(2) (a) Funds allocated under Subsection (1) are for approved programs designed to meet performance criteria and guidelines established by the state board.

(b) Efforts shall focus upon placement of students into jobs or into further training in a directly related program.

(3) Students served under this section in an applied technology center, area applied technology school, skills center, or district applied technology center shall continue to be counted in the regular school program average daily membership of the sending school district.

Section 9. Section Amended.

Section 53A-17a-116, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-116. Weighted pupil units for applied technology set-aside programs.

(1) There is appropriated to the State Board for Applied Technology Education [~~$1,421,460 (954~~] $1,488,213 (967 weighted pupil units) for an applied technology set-aside program.

(2) Applied technology set-aside funds appropriated to the board are allocated by Request for Proposal (RFP) to provide a district minimum payment for applied technology education.

(3) Each district shall receive a guaranteed minimum allocation.

(4) The set-aside funds remaining after the initial minimum payment allocation are distributed by an RFP process to help pay for equipment costs necessary to initiate new programs and for high priority programs as determined by labor market information.

Section 10. Section Amended.

Section 53A-17a-118, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-118. Weighted pupil units for youth in custody programs.

(1) There is appropriated to the State Board of Education an amount of [~~$4,574,300 (3,070)~~] $5,077,161 (3,299 weighted pupil units) for programs for youth in custody.

(2) These monies are allocated to school districts which operate programs for youth in custody in accordance with standards established by the State Board of Education.

Section 11. Section Amended.

Section 53A-17a-119, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-119. Weighted pupil units for adult high school completion programs.

(1) There is appropriated to the State Board of Education an amount of [~~$4,392,520 (2,948)~~] $4,600,071 (2,989 weighted pupil units) for allocation to local school boards for adult high school completion programs.

(2) Each district shall receive its pro rata share of the appropriation based on the number of people listed in the latest official census who are over 18 years of age and who do not have a high school diploma and prior year participation.

(3) On February 1 of each school year, the State Board of Education shall recapture [~~funds~~] monies not used for an adult high school completion program for reallocation to districts that have implemented programs based on need and effort as determined by the State Board of Education.

(4) To the extent of [~~funds~~] monies available, school districts shall provide programs to adults who do not have a diploma and who intend to graduate from high school, with particular emphasis on homeless individuals who are seeking literacy and life skills.

(5) Overruns in adult education in any district may not reduce the value of the weighted pupil unit for this program in another district.

Section 12. Section Amended.

Section 53A-17a-120, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-120. Weighted pupil units for accelerated learning programs.

(1) There is appropriated to the State Board of Education an amount of [~~$2,629,850 (1,765)~~] $2,754,810 (1,790 weighted pupil units) for allocation to local school boards for accelerated learning programs in grades one through 12, which include programs for the gifted and talented, concurrent enrollment, and advanced placement.

(2) Districts shall spend monies for these programs according to standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 13. Section Amended.

Section 53A-17a-121, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-121. Weighted pupil units for at risk student programs.

(1) There is appropriated to the State Board of Education an amount of [~~$3,422,530 (2,297)~~] $3,802,869 (2,471 weighted pupil units) for allocation to local school boards for at risk student programs.

(2) Districts shall spend monies for these programs according to standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) Of the amount appropriated for at risk student programs, the board shall allocate [~~$701,730~~] $724,869 (471 weighted pupil units) for teenage pregnancy prevention programs.

(a) The board shall make the allocation to school districts on the basis of a district's total number of students enrolled in classes as of October 1 that teach a curriculum of teenage pregnancy prevention as compared to the total number of students enrolled in such programs in school districts throughout the state.

(b) The teenage pregnancy programs funded under this subsection shall require written consent from parents or guardians for student participation, involve parents or guardians of participating students in a substantial and consistent manner, and comply with the requirements of Sections 76-7-321 through 76-7-325.

(c) To qualify for participation in the program, a district shall demonstrate to the state board through prior research and pilot studies with similar student populations that those students attained and retained knowledge, values, attitudes, and behaviors that promote abstinence from sexual activity before marriage, and that the students had a lower pregnancy rate than comparison groups that did not participate in the program.

(d) Further qualification requires approval by the local board and state board of all teaching materials, handouts, media materials, audiovisual materials, textbooks, curriculum materials, and course outlines to be used in the program.

(e) The state board may not use a district's participation in the teenage pregnancy program as an offset against the district's historical proportionate share of the remaining fund balance.

(f) A school district may spend any additional at risk monies allocated under this section for teenage pregnancy prevention programs as long as the programs comply with the guidelines established in Subsections (3)(b), (c), and (d), if the need for such a program is greater than the allocation received under Subsection (a).

[~~(4) Of the amount appropriated for at risk student programs, the state board shall use $208,000 to~~

implement Title 63, Chapter 74, Coordinated Services for At-Risk Children and Youth Act.]

[(5)] (4) (a) Of the amount appropriated for at risk student programs under Subsection (1), the board shall distribute [$622,960] $924,939 (601 weighted pupil units) to school districts for homeless and minority students.

(b) Each district shall receive its allocation on the basis of:

(i) the total number of homeless students in the district;

(ii) added to 50% of the number of minority students in the district;

(iii) multiplying the total of Subsections (i) and (ii) by the value of the weighted pupil unit; and

(iv) prorating the amount under Subsection (iii) to the amount in Subsection [(5)] (4)(a).

[(6)] (5) (a) Of the amount appropriated for at risk programs under Subsection (1), the board shall distribute [$156,000] $164,673 (107 weighted pupil units) for mathematics, engineering, and science achievement programs, MESA programs, in the districts.

(b) The board shall make the distribution to school districts on a competitive basis by application under guidelines established by the board.

[(7)] (6) (a) Of the amount appropriated for at risk student programs under Subsection (1), the board shall distribute [$223,600] $238,545 (155 weighted pupil units) for involving families in the education system at the district or school level.

(b) The board shall make the distribution to school districts on a competitive basis by application under guidelines established by the board.

Section 14. Section Amended.

Section 53A-17a-123, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-123. State contribution for the local program.

(1) There is appropriated to the State Board of Education an amount of [$16,772,930 (11,257)] $17,564,607 (11,413 weighted pupil units) for allocation to school districts for the local program on the basis of each district's prior year weighted pupil units for grades K-12 and necessarily existent small schools.

(2) As an exception to Section 53A-17a-136 these monies may be used for the following purposes:

(a) maintenance and operation costs;

(b) capital outlay and debt service; or

(c) a combination of maintenance and operation costs and capital outlay and debt service.

Section 15. Section Amended.

Section 53A-17a-124, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-124. State contributions to career ladders — Distribution of appropriation — Performance bonus.

(1) There is appropriated to the State Board of Education an amount of [$34,836,200 (23,380)] $36,481,995 (23,705 weighted pupil units) for career ladders for distribution to school districts in accordance with career ladder guidelines provided by the state board and Title 53A, Chapter 9.

(a) The state board shall distribute the appropriation, upon application, to each local school board by a formula based on the average of equal weighting considerations for:

(i) a district's prior year average daily membership;

(ii) the total number of teachers employed by a district during the prior year; and

(iii) weighted pupil units allocated to the district.

(b) [Beginning July 1, 1992, the] The Legislature shall provide for an annual adjustment in the career ladder appropriation in proportion to:

(i) the increase in the value of the weighted pupil unit established in this chapter; and

(ii) the increase in the number of students in the state over the prior year.

(2) Each school district participating in the career ladder program may spend career ladder monies:

(a) to pay a performance bonus to teachers judged by the district as being outstanding in regular classroom performance;

(b) (i) for additional nonteaching days for teachers to devote to curriculum development, inservice training, preparation, and related activities;

(ii) a local board of education may specifically use from the career ladder appropriation an amount equivalent to $300 per eligible teacher per year for approved inservice costs, for daily stipends, for per diem expenses, and for eligible teacher trainers; and

(c) for negotiated additional teacher compensation for extending the length of the instructional day or the number of instructional days.

(3) (a) It is recommended that an independent evaluation be made on career ladder programs in the state to evaluate and determine the effectiveness of all of the aspects of such programs.

(b) The monies to perform such a study shall come from the Career Ladder Line Item and shall be administered by the State Office of Education.

Section 16. Section Amended.

Section 53A-17a-124.5, Utah Code Annotated 1953, as enacted by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-124.5. Appropriation for class size reduction.

(1)(a) There is appropriated to the State Board of Education an amount of [~~$4,389,540 (2,946~~] $11,053,098 (7,182 weighted pupil units) to reduce the average class size in [~~the first~~] kindergarten through the third grade in the state's public schools.

(b) Included in the appropriation is:

(i) $3,124,170 (2,030 weighted pupil units) for class size reduction in kindergarten;

(ii) $4,533,894 (2,946 weighted pupil units) for class size reduction in the first grade; and

(iii) $3,395,034 (2,206 weighted pupil units) for class size reduction in the second grade.

(2) Each district shall receive its allocation based upon the following:

(a) for kindergarten, the October 1 count of students in kindergarten in the district as compared to the total October 1 count for kindergarten students in the state;

(b) for the first grade, its projected number of students in the first grade as compared to the state total projected number of students in the first grade determined primarily from average daily membership in kindergarten during the prior school year; and

(c) for second grade, its projected number of students in the second grade as compared to the state total projected number of students in the second grade determined primarily from average daily membership in the first grade during the prior school year.

(3)(a) In districts where the average class size in [~~the first grade~~] kindergarten is 20 students or less, the district [~~shall~~] may use its kindergarten allocation to further reduce class size in [~~the first grade~~] kindergarten or to reduce class size in [~~other~~] the first through third grades [~~with first priority being given to kindergarten and grades two and three~~] unless an exception is granted by the State Board of Education.

(b) In districts where the average class size in the first or second grade is 20 students or less, the district may use its first or second grade allocation or both to further reduce class size in those grades or to reduce class size in kindergarten or the third grade or both or use its allocation in conjunction with centennial schools funding to reduce class size significantly below the one to 20 ratio.

(4) Schools may use nontraditional innovative and creative methods to reduce class sizes with this appropriation and may use part of their allocation to focus on class size reduction for specific groups, such as at risk students, or for specific blocks of time during the school day.

(5) A school district may use all or part of its proportionate share of the first $3,650,000 allocated under Subsection (1)(a) for capital facilities projects if such projects would help to reduce class size.

Section 17. Section Amended.

Section 53A-17a-125, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-125. Appropriation for retirement and social security.

(1) There is appropriated to the State Board of Education an amount of [~~$164,186,261~~] $170,494,242 for retirement and social security costs.

(2) The employee's retirement contribution shall be 1% for employees who are under the state's contributory retirement program.

(3) The employer's contribution under the state's contributory retirement program is determined under Section 49-2-301, subject to the 1% contribution under Subsection (2).

(4) The employer-employee contribution rate for employees who are under the state's noncontributory retirement program is determined under Section 49-3-301.

Section 18. Section Amended.

Section 53A-17a-126, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-126. State support of pupil transportation — Incentives to increase economy and productivity in student transportation.

(1) The state's contribution of [~~$28,847,700~~] $33,480,401 for state-supported transportation of public school students is apportioned and distributed in accordance with Section 53A-17a-127.

(2) Each district shall receive its approved transportation costs, except that if during the fiscal year the total transportation allowance for all districts exceeds the amount appropriated, all allowances shall be reduced pro rata to equal not more than that amount.

(3) The state's contribution for transportation includes [~~$110,000~~] $113,608 for the extended school year program for the severely [handicapped] disabled, limited to severely [handicapped] disabled students with education program goals identifying significant regression/recoupment disability as approved by the State Board of Education.

(4) Included in the [~~$28,847,700~~] $33,480,401 appropriation is an amount of [~~$173,400~~] $179,088 for transportation of students, as approved by the state board, for school districts that consolidate schools, implement double session programs at the elementary level, or utilize other alternatives to building construction that require additional student transportation.

(5)(a) Part of the state's contribution for transportation, not to exceed $200,000, may be used as an incentive for districts to increase economy and productivity in student transportation.

(b) This amount is distributed on a pro rata basis among districts which have achieved the most efficiency according to the state formula.

(c) Districts receiving the incentive funding may expend the monies at the discretion of the local school board.

(6) It is the intent of the Legislature that local school boards shall provide [higher] salary adjustments to employee groups that work with the transportation of students [in comparison to other district employee groups] comparable to those of classified employees authorized under Section 53A-17a-137, when dividing the weighted pupil unit for salary adjustment purposes.

Section 19. Section Amended.

Section 53A-17a-127, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-127. Eligibility for state-supported transportation — Approved bus routes — Additional local tax.

(1) A student eligible for state-supported transportation means:

(a) a student enrolled in kindergarten through grade six who lives 1-1/2 miles or more from school;

(b) a student enrolled in grades seven through 12 who lives two or more miles from school; and

(c) a student enrolled in a special program offered by a school district and approved by the State Board of Education for trainable, motor, [~~multiple-handicapped~~] multiple-disabled, or other [~~severely handicapped~~] students with severe disabilities who are incapable of walking to school or where it is unsafe for students to walk because of their handicapping condition, without reference to distance from school.

(2) If a school district implements double sessions as an alternative to new building construction, with the approval of the State Board of Education, those affected elementary school students residing less than 1-1/2 miles from school may be transported one way to or from school because of safety factors relating to darkness or other hazardous conditions as determined by the local school board.

(3)(a) Transportation monies shall be distributed to school districts based on three factors:

(i) an allowance per mile for approved bus routes;

(ii) an allowance per hour for approved bus routes; and

(iii) an annual allowance for equipment and overhead costs based on approved bus routes and the age of the equipment.

(b) In order for a bus to be considered for the equipment allowance, it must meet federal and state regulations and standards for school buses.

(c) The allowance per mile, the allowance per hour, and the annual equipment and overhead allowance shall be reviewed annually by the State Office of Education and adjusted to reflect current economic conditions.

(4)(a) Approved bus routes for funding purposes shall be determined on fall data collected by October 1.

(b) Approved route funding shall be determined on the basis of the most efficient and economic routes.

(5) A Transportation Advisory Committee with representation from local school superintendents, business officials, school district transportation supervisors, and the State Office of Education shall serve as a review committee for addressing school transportation needs, including recommended approved bus routes.

(6) A local school board may provide for the transportation of students who are not eligible under Subsection (1), regardless of the distance from school, from:

(a) general funds of the district; and

(b) a tax rate not to exceed .0002 per dollar of taxable value imposed on the district.

(7) Revenue from the tax may also be used to pay for transporting participating students to interscholastic activities, night activities, and educational field trips approved by the local school board and for the replacement of school buses.

Section 20. Section Amended.

Section 53A-17a-128, Utah Code Annotated 1953, as renumbered and amended by Chapter 72, Laws of Utah 1991, is amended to read:

53A-17a-128. Contingency fund for State Board of Education — Laboratory school at Utah State University.

(1) There is appropriated to the State Board of Education from the total amount of state funds listed in Section 53A-17a-104 the sum of $606,600 as a contingency fund to do the following:

(a) stabilize the value of the weighted pupil unit;

(b) maintain program levels in districts that may experience unanticipated and unforeseen losses of students;

(c) equalize programs in districts where a strict application of the law provides inequity;

(d) pay the added costs when Utah students attend school out of state; and

(e) assist in the operation of the laboratory school at Utah State University.

(2) The State Board of Education shall make a strict accounting of these funds and return any unused part to the Uniform School Fund at the close of each fiscal year.

(3) The state's contribution to the State Board of Education for the laboratory school at Utah State University is a part of the contingency fund.

(4) The contribution shall be used to indemnify school districts against loss of funds caused by release of students to the laboratory school and to promote programs at the school.

(5) There is established an advisory board for the school consisting of the following:

(a) the president of Utah State University or his designee;

(b) the state superintendent of public instruction or his designee;

(c) the dean of the College of Education at Utah State University or his designee;

(d) a local superintendent of schools;

(e) a staff member from the office of the State Board of Education;

(f) a staff member from a local school board;

(g) a staff member from the College of Education at Utah State University; and

(h) two lay citizens noted for their contribution to the improvement of education. The advisory board members in Subsections (d) through (h) are appointed by the State Board of Education for terms specified by that body.

(6) (a) The State Office of Education shall conduct an evaluation of the lab school during the 1993 interim to enable the State Board of Education to report to the Legislature on its findings during the 1994 General Session.

(b) The evaluation shall include an assessment of the role and mission of the school and how that role relates to the state's strategic plan for public education and fulfilling the mission of public education within the state.

Section 21. Section Amended.

Section 53A-17a-129, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-129. State contribution for incentives for excellence.

The state's contribution of [~~$575,000~~] $603,397 for the incentives for excellence program is appropriated to the State Board of Education for distribution to school districts according to guidelines established by the board.

(1) A school district shall use its allocation to promote a strong partnership between public education and private enterprise, to seek additional financial support from the business community, and to enhance its educational excellence.

(2) School districts are encouraged under this program to develop projects that rely on matching private and public monies to promote educational excellence.

Section 22. Section Amended.

Section 53A-17a-130, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-130. State contribution to regional service centers and music in the schools.

(1) The state's contribution of [~~$492,200~~] $668,500 for regional service centers is appropriated to the State Board of Education for distribution according to guidelines established by the board.

(2) The state's contribution of [~~$200,000 for awards for excellence~~] $34,000 for music in the schools is appropriated to the State Board of Education [~~for distribution to school districts under guidelines~~] to fund the Music Maker Pilot Program under rules established by the board.

[~~(a) (i) The governor and a volunteer task force appointed by the state board shall oversee the program.~~]

[~~(ii) The task force shall consist of representatives from education, parent organizations, and the business community.~~]

[~~(b) The governor and task force shall establish criteria for the receipt of $10,000 cash awards by 20 public schools selected as schools of excellence.~~]

[~~(c) The task force shall recommend schools for awards to the state board not only on the basis of excellence but also on improvement over past performance.~~]

Section 23. Section Amended.

Section 53A-17a-131, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-131. Appropriation for applied technology centers and regions not served by the centers.

(1) There is appropriated to the State Board of Education [~~$2,218,000~~] $2,719,200 for direct allocation to the applied technology centers.

(2) (a) The State Board of Education shall establish standards in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for membership hours and the placement level for approved programs.

(b) It is the intent of the Legislature that the State Board for Applied Technology Education, the Legislative Fiscal Analyst, and staff from the Governor's Office of Planning and Budget work together to develop a funding formula for the applied technology centers.

(3) (a) There is appropriated to the State Board of Education [~~$300,000~~] $600,000 for applied technology center type programs in those regions of the state that do not have applied technology centers.

(b) The appropriation shall be distributed according to guidelines established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) (a) In preparing its [~~1993-94~~] 1994-95 fiscal year budget, the State Board of Education shall recommend funding for applied technology educational programs in those regions of the state that do not have applied technology centers but want to offer ATC programs or services.

(b) Funding for those regions shall be on the same basis as funding for the applied technology centers.

(c) In preparing its recommendations, the board shall consider cooperative programs with the state system of higher education and using already developed facilities and programs.

Section 24. Section Enacted.

Section 53A-17a-131.1, Utah Code Annotated 1953, is enacted to read:

53A-17a-131.1. State contribution to the educational technology initiative.

(1) The state's contribution of $1,000,000 for maintaining the educational technology initiative programs is appropriated to the State Board of Education for distribution according to rules adopted by the board consistent with Title 53A, Chapter 1, Part 7, Educational Technology Programs.

(2) Monies received under this section may be used to maintain existing programs and for inservice programs required to implement the technology.

Section 25. Section Enacted.

Section 53A-17a-131.3, Utah Code Annotated 1953, is enacted to read:

53A-17a-131.3. State contributions to the EDNET program.

The state's contribution of $500,000 for ongoing maintenance and operation costs of EDNET sites serving the state's public education system is appropriated to the State Board of Education for distribution according to rules adopted by the board.

Section 26. Section Enacted.

Section 53A-17a-131.5, Utah Code Annotated 1953, is enacted to read:

53A-17a-131.5. State contribution for the Centennial Schools Program.

(1) The state's contribution of $2,600,000 for the Centennial Schools Program is appropriated to the State Board of Education for distribution under Section 53A-1a-303.

(2) The contribution is the appropriation referred to in Section 53A-1a-303.

Section 27. Section Enacted.

Section 53A-17a-131.7, Utah Code Annotated 1953, is enacted to read:

53A-17a-131.7. State contribution to teachers' supplies and materials.

(1) The state's contribution of $3,000,000 for teachers' supplies and materials is appropriated to the State Board of Education for distribution to school districts, the Schools for the Deaf and the Blind, and the applied technology centers.

(2) It is the intent of the Legislature that each school district, the Schools for the Deaf and the Blind, and the applied technology centers will be allocated $150 for each full-time equivalent (FTE) teacher.

(3) Each teacher will be allowed to determine how the teacher's proportional share of these monies will be expended for supplies, materials, and field trips under rules promulgated by the State Board of Education.

Section 28. Section Enacted.

Section 53A-17a-131.9, Utah Code Annotated 1953, is enacted to read:

53A-17a-131.9. State contribution to agencies coming together for children and youth at risk.

(1) There is appropriated $3,215,460 to the State Board of Education to implement Title 63, Chapter 75, Agencies Coming Together for Children and Youth At Risk Act.

(2) Of the amount appropriated under Subsection (1), the state board shall use $215,460 to continue funding the coordinated services for at risk children and youth pilot programs.

(3)(a) Of the amount appropriated under Subsection (1), the board shall distribute to the Department of Human Services, the Department of Health, and the Office of the Court Administrator amounts sufficient to fund their respective participation in the at risk programs authorized in H.B. 39, enacted during the 1993 General Session.

(b) The board shall establish a distribution formula in consultation with the state superintendent of public instruction, the executive director of the Department of Human Services, the executive director of the Department of Health, and the state court administrator.

(c) It is the intent of the Legislature that participation in the at risk programs funded under this section requires consent from a parent or legal guardian for the participant to receive initial or continuing services under the program.

(d) It is the intent of the Legislature that a participant's parent or legal guardian be actively involved in the program and that all applicable state and federal laws and regulations be observed by the entities and individuals providing the services.

Section 29. Section Amended.

Section 53A-17a-132, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-132. Experimental and developmental programs.

(1) The state's contribution of $3,915,100 for experimental and developmental programs is appropriated to the State Board of Education for distribution to school districts as follows:

(a) the board shall distribute the first part, 34% of the appropriation, equally among the state's 40 school districts;

(b) the board shall distribute the second part, 41% of the appropriation, to each district on the basis of its kindergarten through grade 12 average daily membership for the prior year as compared to the

prior year state total kindergarten through grade 12 average daily membership; and

(c) the board shall distribute 25% of the appropriation pursuant to standards established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) (a) A school district may fund a new experimental or developmental program with monies appropriated under Subsection (1) for a maximum of three consecutive years.

(b) After the third year, the district shall either fund the program with regular ongoing program monies or terminate the program.

(3) (a) The State Board of Education shall allocate $100,000 of the experimental-developmental appropriation for programs to improve the efficiency of classified employees in the public schools.

(b) The programs should include training components, classified staffing formulas, and preventative maintenance formulas.

(4) The State Board of Education shall allocate $150,000 of the appropriation for planning, development, and implementation of a 200-day school year, using certificated teachers, which are cooperative ventures that have demonstrated support of parents, the recognized teachers' organization, administrators, and students.

(5) Models for experimental activities similar to the nine district consortium activities are permissible under the experimental and developmental appropriation.

Section 30. Section Amended.

Section 53A-17a-133, Utah Code Annotated 1953, as last amended by Chapter 53, Laws of Utah 1992, is amended to read:

53A-17a-133. State-supported voted leeway program authorized — Election requirements — State guarantee — Reconsideration of the program.

(1) An election to consider adoption or modification of a voted leeway program is required if initiative petitions signed by 10% of the number of electors who voted at the last preceding general election are presented to the local school board or by action of the board.

(2) (a) To establish a voted leeway program, a majority of the electors of a district voting at an election in the manner set forth in Section 53A-16-110 must vote in favor of a special tax.

(b) The district may maintain a school program which exceeds the cost of the program referred to in Section 53A-17a-145 with this voted leeway.

(c) In order to receive state support the first year, a district must receive voter approval no later than December 1 of the year prior to implementation.

(d) The additional program is the state-supported voted leeway program of the district.

(3) (a) Under the voted leeway program, the state shall contribute an amount sufficient to guarantee [the following ~~$21~~] $21.50 per weighted pupil unit for each .0002 of the first .0004 per dollar of taxable value and $4.56 per weighted pupil unit for each additional .0002 per dollar of taxable value raised locally not to exceed .002 per dollar of taxable value.

[~~(i) The $21 shall increase to $22 for each .0002 of the first .0004 beginning July 1, 1993.~~]

[~~(ii)~~] (i) The [$22] $21.50 shall increase to $23 for each .0002 of the first .0004 beginning July 1, 1994.

[~~(iii)~~] (ii) The $23 shall increase to $24 for each .0002 of the first .0004 beginning July 1, 1995.

(b) The same dollar amount guarantee per weighted pupil unit for the .0004 per dollar of taxable value under Subsection (a) shall apply to the board-approved leeway authorized in Section 53A-17a-134, so that the guarantee shall apply up to a total of .0008 per dollar of taxable value if a school district levies a tax rate of up to .0004 in both programs.

(4) (a) An election to modify an existing voted leeway program is not a reconsideration of the existing program unless the proposition submitted to the electors expressly so states.

(b) A majority vote opposing a modification does not deprive the district of authority to continue an existing program.

(c) If adoption of a leeway program is contingent upon an offset reducing other local school board levies, the board must allow the electors, in an election, to consider modifying or discontinuing the program prior to a subsequent increase in other levies that would increase the total local school board levy.

(d) Nothing contained in this section terminates, without an election, the authority of a school district to continue an existing voted leeway program previously authorized by the voters.

Section 31. Section Amended.

Section 53A-17a-134, Utah Code Annotated 1953, as last amended by Chapter 108 and renumbered and amended by Chapter 72, Laws of Utah 1991, is amended to read:

53A-17a-134. Board-approved leeway — Purpose — State support — Disapproval.

(1) Each local school board may levy a tax rate of up to .0004 per dollar of taxable value to maintain a school program above the cost of the basic school program as follows:

(a) a local school board shall use the monies generated by the tax for class size reduction within the school district;

(b) if a local school board determines that the average class size in the school district is not excessive, it may use the monies for other school purposes but only if the board has declared the use for other school purposes in a public meeting prior to levying the tax rate; and

(c) a district may not use the monies for other school purposes under Subsection (b) until it has

certified in writing that its class size needs are already being met and has identified the other school purposes for which the monies will be used to the State Board of Education and the state board has approved their use for other school purposes.

(2)(a) The state shall contribute an amount sufficient to guarantee [$19.385] $21.50 per weighted pupil unit for each .0002 per dollar of taxable value.

(b) The guarantee shall increase in the same years and for the same amounts as provided for the voted leeway guarantee in Section 53A-17a-133.

(3) The levy authorized under this section is not in addition to the maximum rate of .002 authorized in Section 53A-17a-133, but is a board-authorized component of the total tax rate under that section.

(4) As an exception to Section 53A-17a-133, the board-authorized levy does not require voter approval, but the board may require voter approval if requested by a majority of the board.

(5) An election to consider disapproval of the board-authorized levy is required, if within 60 days after the levy is established by the board, referendum petitions signed by the number of legal voters required in Section 20-11-22, who reside within the school district, are filed with the school district.

(6) (a) A local school board shall establish its board-approved levy by April 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year except that if an election is required under this section, the levy applies to the fiscal year beginning July 1 of the next calendar year.

(b) The approval and disapproval votes authorized in Subsections (4) and (5) shall occur at a general election in even-numbered years, except that a vote required under this section in odd-numbered years shall occur at a special election held on a day in odd-numbered years that corresponds to the general election date. The school district shall pay for the cost of a special election.

(7) (a) Modification or termination of a voter-approved leeway rate authorized under this section is governed by Section 53A-17a-133.

(b) A board-authorized leeway rate may be modified or terminated by a majority vote of the board subject to disapproval procedures specified in this section.

(8) As an exception to Section 20-11-3, a board levy election does not require publication of a voter information pamphlet.

Section 32. Appropriation.

There is appropriated $3,464,550 from the Mineral Lease/Bonus Account and $1,493,450 from Uniform School Fund monies to the State Board of Education for the state's contribution to the school building supported program for the fiscal year ending July 1, 1994.

Section 33. Effective Date.

This act takes effect on July 1, 1993.

CHAPTER 307
H. B. No. 79
Passed March 3, 1993
(Passed into law without governor's signature)
Effective May 3, 1993

LIMITED NIGHT HUNTING

By Brad Johnson

AN ACT RELATING TO WILDLIFE RESOURCES; PROVIDING THAT SPOTLIGHTING MAY BE USED TO HUNT RED FOX, STRIPED SKUNK, COYOTE, AND RACCOON WHERE ALLOWED BY COUNTY ORDINANCE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
23-13-2, AS LAST AMENDED BY CHAPTER 27, LAWS OF UTAH 1992

ENACTS:
23-13-17, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 23-13-2, Utah Code Annotated 1953, as last amended by Chapter 27, Laws of Utah 1992, is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Aquatic wildlife" means species of fish, crustaceans, aquatic insects, or amphibians.

(2) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(3) "Big game" means species of hoofed protected wildlife.

(4) "Carcass" means the dead body of an animal or its parts.

(5) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board or Board of Big Game Control granting authority to engage in activities not covered by a license, permit, or tag.

(6) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(7) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is P.O.S.T. certified as a peace or a special function officer.

(8) "Division" means the Division of Wildlife Resources.

(9) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual and his family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual must:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(10) "Endangered" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(11) "Feral" means an animal which is normally domesticated but has reverted to the wild.

(12) "Fishing" means to take fish by any means.

(13) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(14) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(15)(a) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife.

(b) Assistance under Subsection (a) includes the provision of food, shelter, or transportation, or any combination of these.

(16) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(17) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(18) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of his duty.

(19) "License" means the primary document granting authority to engage in activities under:

(a) this title; or

(b) a rule or proclamation of the Wildlife Board or Board of Big Game Control.

(20) "Nonresident" means a person who does not qualify as a resident.

(21) "Open season" means the period of time during which protected wildlife may be legally taken.

(22) "Pecuniary gain" means the acquisition of money or something of monetary value.

(23) "Permit" means a secondary document, including a stamp, which:

(a) requires a license as a prerequisite to its issuance; and

(b) grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board or Board of Big Game Control.

(24) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(25) "Possession" means actual or constructive possession.

(26) "Possession limit" means the number of bag limits one individual may legally possess.

(27) "Private fish installation" means a body of water where privately owned, protected aquatic wildlife are propagated or kept.

(28) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and which restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(29) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(30)(a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (1), except as provided in Subsection (b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(31) (a) "Protected wildlife" means wildlife as defined in Subsection (43), except as provided in Subsection (b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(32) "Released to the wild" means to turn loose from confinement.

(33) (a) "Resident" means a person who:

(i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains his Utah residency if he leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) complies with Subsection (a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date he reports for duty under assigned orders in the state if he:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (a)(ii).

(ii) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if he:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(34) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(35) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers.

(36) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(37) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

[~~(37)~~] (38) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

[~~(38)~~] (39) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (a).

[~~(39)~~] (40) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

[~~(40)~~] (41) "Trapping" means taking protected wildlife with a trapping device.

[~~(41)~~] (42) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

[~~(42)~~] (43) "Water pollution" means the introduction of matter or thermal energy to waters within this state which:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

[~~(43)~~] (44) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish; and

(b) vertebrate animals living in nature, except feral animals.

Section 2. Section Enacted.

Section 23-13-17, Utah Code Annotated 1953, is enacted to read:

23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon — County ordinances - Permits.

(1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to this section.

(2) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(4) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(5) (a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) (i) A fee may be charged for a spotlighting permit.

(ii) Any permit fee shall be established by the county ordinance.

(iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount to pay for the costs of administering and enforcing the ordinance, provided this use of the permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.

(6) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(7) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in his official capacity under a memorandum of agreement with the division.

CHAPTER 308
H. B. No. 396
Passed March 3, 1993
(Passed into law without governor's signature)
Effective May 3, 1993

PUBLIC SCHOOL DISPUTE RESOLUTION ACT

By O. D. Carnahan

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING A METHOD OF DISPUTE RESOLUTION FOR CERTIFICATED EMPLOYEES IN THE PUBLIC SCHOOLS; PROVIDING FOR APPOINTMENT OF A MEDIATOR; AND PROVIDING FOR A HEARING PROCESS IN THE EVENT A MEDIATOR CANNOT RESOLVE THE DISPUTE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:
53A-6-401, UTAH CODE ANNOTATED 1953
53A-6-402, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 53A-6-401, Utah Code Annotated 1953, is enacted to read:

Part 4. Dispute Resolution

53A-6-401. Mediation of contract negotiations.

(1) The president of a professional local organization which represents a majority of the certificated employees of a school district or the chairman of a local school board may, after negotiating for 90 days, declare an impasse by written notification to the other party and to the State Board of Education.

(2) The party declaring the impasse may request the state superintendent of public instruction to appoint a mediator for the purpose of helping to resolve the impasse if the parties to the dispute have not been able to agree on a third party mediator.

(3) Within five working days after receipt of the written request, the state superintendent shall appoint a mediator who is mutually acceptable to the local school board and professional organization representing a majority of the certificated employees.

(4) The mediator shall meet with the parties, either jointly or separately, and attempt to settle the impasse.

(5) The mediator may not without the consent of both parties make findings of fact or recommend terms for settlement.

(6) Both parties shall equally share the costs of mediation.

(7) Nothing in this section prevents the parties from adopting a written mediation procedure other than that provided in this section.

(8) If the parties have a mediation procedure, they shall follow that procedure.

Section 2. Section Enacted.

Section 53A-6-402, Utah Code Annotated 1953, is enacted to read:

53A-6-402. Appointment of hearing officer — Hearing process.

(1) If a mediator appointed under Section 53A-1-401 is unable to effect settlement of the controversy within 15 working days after his appointment, either party to the mediation may by written notification to the other party and to the state superintendent of public instruction request that their dispute be submitted to a hearing officer who shall make findings of fact and recommend terms of settlement.

(2) Within five working days after receipt of the request, the state superintendent of public instruction shall appoint a hearing officer who is mutually acceptable to the local school board and professional organization representing a majority of the certificated employees.

(3) The hearing officer may not, without consent of both parties, be the same person who served as mediator.

(4) The hearing officer shall meet with the parties, either jointly or separately, may make inquiries and investigations, and may issue subpoenas for the production of persons or documents relevant to all issues in dispute.

(5) The State Board of Education and departments, divisions, authorities, bureaus, agencies, and officers of the state, local school boards, and the professional organization shall furnish the hearing officer, on request, all relevant records, documents, and information in their possession.

(6) If the final positions of the parties are not resolved before the hearing ends, the hearing officer shall prepare a written report containing the agreements of the parties with respect to all resolved negotiated contract issues and the positions that the hearing officer considers appropriate on all unresolved final positions of the parties.

(7) The hearing officer shall submit the report to the parties privately within ten working days after the conclusion of the hearing or within the date established for the submission of post-hearing briefs, but not later than 20 working days after the hearing officer's appointment.

(8) Either the hearing officer, the exclusive representative, or the local board may make the report public if the dispute is not settled within ten working days after its receipt from the hearing officer.

(9)(a) The state superintendent of public instruction may determine the majority status of any professional organization which requests assistance under this section.

(b) The decision of the superintendent is final unless it is clearly inconsistent with the evidence.

CHAPTER 309
S. B. No. 90
Passed March 3, 1993
(Passed into law without governor's signature)
Effective March 24, 1993

UTAH SCIENCE CENTER

By Ronald J. Ockey

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; ESTABLISHING AN INDEPENDENT STATE AGENCY TO CREATE AND MAINTAIN A SCIENCE CENTER; GRANTING BONDING AUTHORITY; AMENDING THE SUNSET LAWS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
63-55-209, AS ENACTED BY CHAPTER 241, LAWS OF UTAH 1992

ENACTS:
9-3-401, UTAH CODE ANNOTATED 1953
9-3-402, UTAH CODE ANNOTATED 1953
9-3-403, UTAH CODE ANNOTATED 1953
9-3-404, UTAH CODE ANNOTATED 1953
9-3-405, UTAH CODE ANNOTATED 1953
9-3-406, UTAH CODE ANNOTATED 1953
9-3-407, UTAH CODE ANNOTATED 1953
9-3-408, UTAH CODE ANNOTATED 1953
9-3-409, UTAH CODE ANNOTATED 1953
9-3-410, UTAH CODE ANNOTATED 1953
9-3-411, UTAH CODE ANNOTATED 1953

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

Section 1. Section Enacted.

Section 9-3-401, Utah Code Annotated 1953, is enacted to read:

9-3-401. Short title.

This part is know as the "Utah Science Center Authority."

Section 2. Section Enacted.

Section 9-3-402, Utah Code Annotated 1953, is enacted to read:

9-3-402. Legislative findings — State purpose.

(1) The Legislature finds and declares that:

(a) a Utah Science Center Authority can promote science, Utah's effort in high technology, the arts, culture, Utah's unique origins, and can enhance tourism and provide a valuable educational forum, and other benefits for Utah's citizens;

(b) fostering the development of science, arts, tourism, culture, and educational facilities is a state purpose affecting the welfare of all state citizens and the growth of the economy statewide.

(2) It is therefore the purpose of this part that the state provide a means to foster the development of science, arts, tourism, cultural, and educational facilities in order to further the welfare of the citizens of the state and its economic growth.

Section 3. Section Enacted.

Section 9-3-403, Utah Code Annotated 1953, is enacted to read:

9-3-403. Creation — Members — Chairman — Powers — Quorum — Per diem and expenses.

(1) There is created an independent state agency and a body politic and corporate known as the "Utah Science Center Authority."

(2) The authority shall be composed of 15 members as follows:

(a) three members of the Planetarium Board of Directors appointed in accordance with Section 17-37-2;

(b) one member of the county legislative body of Salt Lake County;

(c) one member of Salt Lake City Corporation;

(d) one member of the State Board of Education;

(e) one member of the Department of Community and Economic Development;

(f) one member of the Board of Travel Development;

(g) one member of the State Board of Regents;

(h) six public members representing Utah industry, rural Utah, and the public at large, appointed by the governor with the consent of the Senate.

(3) All members shall be residents of the state.

(4) The six public members shall be appointed for three-year terms beginning July 1 of the year appointed.

(5) Any of the six public members may be removed from office by the governor or for cause by an affirmative vote of any eleven members of the authority.

(6) Vacancies in the public membership of the authority shall be filled for the unexpired term of the vacant member by appointment by the governor and consent of the Senate.

(7) Each public member shall hold office for the term of his appointment and until his successor has been appointed and qualified.

(8) Any public member is eligible for reappointment, but may not serve more than two full consecutive terms.

(9) The governor shall appoint the chairman of the authority from among its members.

(10) The members shall elect from among their number a vice-chairman and other officers they may determine.

(11) The chair and vice-chair shall be elected for two year terms.

(12) The powers of the authority shall be vested in its members.

(13) Eight members constitute a quorum for transaction of authority business. An affirmative vote of at least six members is necessary for any action to be taken by the authority.

(14) Each of the public members shall receive a per diem and travel expenses.

Section 4. Section Enacted.

Section 9-3-404, Utah Code Annotated 1953, is enacted to read:

9-3-404. Executive director — Powers and duties.

(1) The members shall appoint an executive director who shall be an employee of the authority, but who may not be a member of the authority, and who shall serve at the pleasure of the members and receive compensation as set by the members and approved by the governor.

(2) The executive director shall:

(a) administer, manage, and direct the affairs and activities of the authority in accordance with the policies, control, and direction of the members;

(b) approve all accounts for allowable expenses of the authority or of any of its employees and expenses incidental to the operation of the authority;

(c) attend the meetings of the authority;

(d) keep a record of the proceedings of the authority;

(e) maintain and be custodian of all books, documents, and papers filed with the authority; and

(f) perform other duties as directed by the members in carrying out the purposes of this part.

Section 5. Section Enacted.

Section 9-3-405, Utah Code Annotated 1953, is enacted to read:

9-3-405. Member or employee — Disclosure of interest.

Any member or employee of the authority who has, will have, or later acquires an interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of that interest in writing to the authority as soon as the member has knowledge of the actual or prospective interest. This disclosure shall be entered upon the minutes of the authority. Upon this disclosure that member or employee may participate in any action by the authority authorizing the transaction.

Section 6. Section Enacted.

Section 9-3-406, Utah Code Annotated 1953, is enacted to read:

9-3-406. Officer or employee — No forfeiture of office or employment.

Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the authority or his service on it.

Section 7. Section Enacted.

Section 9-3-407, Utah Code Annotated 1953, is enacted to read:

9-3-407. Authority — Powers.

(1) The authority shall create, operate, and maintain a center that shall promote the purposes described in Section 9-3-402.

(2) The authority has perpetual succession as a body politic and corporate and may:

(a) adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;

(b) sue and be sued in its own name;

(c) maintain an office at any place or places within this state it may designate;

(d) adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the authority and the conduct of its business;

(e) purchase, lease, sell, and otherwise dispose of property and rights-of-way;

(f) employ experts, advisory groups, and other professionals it considers necessary;

(g) employ and retain independent legal counsel;

(h) make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its duties under this part to create, operate, and maintain a Science Center in Utah;

(i) procure insurance for liability and against any loss in connection with its property and other assets in amounts and from insurers it considers desirable;

(j) borrow money, receive appropriation from the Legislature, and receive other public moneys and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part subject to the conditions upon which the grants and contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(k) enter into agreements with any department, agency, or instrumentality or political subdivision of the United States or this state for the purpose of providing for the creation, operation, and maintenance of a Science Center in Utah; and

(l) to do any act necessary or convenient to the exercise of the powers granted by this part.

(3) All monies received by the authority under Subsection (2)(j) and from any other source shall be for the exclusive use of the authority to create, operate, maintain, improve, and provide for a Science Center in Utah. The monies received by the authority may not be used for any other purpose or by any other entity.

Section 8. Section Enacted.

Section 9-3-408, Utah Code Annotated 1953, is enacted to read:

9-3-408. Bond issues — Authority members and persons executing bonds not personally liable — Bonds and obligations not general obligation or debt — Negotiability.

(1) (a) The authority may:

(i) issue bonds for any of its corporate purposes; and

(ii) refund bonds for the purpose of paying or retiring bonds previously issued by it.

(b) The authority to issue or refund bonds under Subsection (a) is limited to the extent that the principal and interest of the bonds are payable:

(i) exclusively from the income and revenues of the Science Center financed with the proceeds of the bonds, or with such proceeds together with financial assistance from the state or federal government in aid of the Science Center;

(ii) from its revenues generally;

(iii) from any contributions or other financial assistance from the state or federal government; or

(iv) by any combination of these methods.

(2) Neither the members of the authority nor any persons executing the bonds are liable personally on the bonds by reason of their issuance.

(3) (a) The bonds and other obligations of any authority are not a general obligation or debt of the community, the state, or any of its political subdivisions.

(b) The community, the state, and any of its political subdivisions are not liable on the bonds or obligations, and the bonds or obligations do not give rise to a general obligation or liability of the community, the state, or any of its political subdivisions, or a charge against their general credit or taxing powers.

(c) The bonds or obligations are not payable out of any funds or properties other than those of the authority and this shall be stated on their face.

(d) The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(4) Bonds issued pursuant to this part are fully negotiable.

Section 9. Section Enacted.

Section 9-3-409, Utah Code Annotated 1953, is enacted to read:

9-3-409. Actions on validity or enforceability of bonds — Time for bringing action.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security for them, any such bond reciting in substance that it has been issued by the authority in connection with the Utah Science Center shall be conclusively deemed to have been issued for that purpose.

(2) For a period of 30 days after the publication of the resolution authorizing the bonds, or a notice of bonds to be issued by the authority containing those items described in Section 11-14-21 in a newspaper having general circulation in the area of operation, any person may contest the legality of the resolution authorizing any bonds, notice of bonds to be issued, or any provisions made for the security and payment of the bonds. After the 30-day period no one has any cause of action to contest the regularity, formality, or legality of the notice of bonds to be issued or the bonds for any cause whatsoever.

Section 10. Section Enacted.

Section 9-3-410, Utah Code Annotated 1953, is enacted to read:

9-3-410. Relation to certain acts.

(1) The authority is exempt from:

(a) Title 63, Chapter 38, Budgetary Procedures Act;

(b) Title 63, Chapter 1, Utah Administrative Services Act;

(c) Title 51, Chapter 5, Funds Consolidation Act;

(d) Title 63, Chapter 56, Utah Procurement Code; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority shall be subject to audit by the state auditor pursuant to Title 67, Chapter 3, and by the legislative auditor general pursuant to Section 36-12-15.

(3) The authority shall annually report to the Community and Economic Development Interim Committee concerning the authority's implementation of this part.

Section 11. Section Enacted.

Section 9-3-411, Utah Code Annotated 1953, is enacted to read:

9-3-411. Sales tax exemption.

The authority and its operators are exempt from sales and use tax imposed under Title 59, Chapter 12.

Section 12. Section Amended.

Section 63-55-209, Utah Code Annotated 1953, as enacted by Chapter 241, Laws of Utah 1992, is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 2, Department of Community and Economic Development, is repealed July 1, 1995.

(2) Title 9, Chapter 2, Part 2, Division of Business and Economic Development, is repealed July 1, 2002.

(3) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation, is repealed July 1, 2002.

(4) (a) Title 9, Chapter 3, Part 2, Division of Travel Development, is repealed July 1, 1999.

(b) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority is repealed July 1, 1999.

(5) Title 9, Chapter 4, Part 8, Homeless Coordinating Committee, is repealed July 1, 1993.

(6) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency, is repealed July 1, 1996.

(7) Title 9, Chapter 5, Division of Expositions, is repealed July 1, 1999.

(8) Title 9, Chapter 6, Part 2, Division of Fine Arts, is repealed July 1, 1999.

(9) Title 9, Chapter 7, Part 2, Division of State Library, is repealed July 1, 1995.

(10) Title 9, Chapter 8, Part 2, Division of State History, is repealed July 1, 1997.

(11) Title 9, Chapter 9, Division of Indian Affairs, is repealed July 1, 1995.

(12) The Office of Hispanic Affairs is repealed July 1, 1995.

Section 13. Effective Date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 310
S. B. No. 219
Passed March 2, 1993
(Passed into law without governor's signature)
Effective May 3, 1993

MUNICIPAL DISCONNECTION AMENDMENT

By Stephen J. Rees

AN ACT RELATING TO MUNICIPALITIES; MODIFYING THE REQUIREMENTS FOR TRIGGERING A MUNICIPAL DISCONNECTION; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
10-2-502, AS ENACTED BY CHAPTER 48, LAWS OF UTAH 1977

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

Section 1. Section Amended.

Section 10-2-502, Utah Code Annotated 1953, as enacted by Chapter 48, Laws of Utah 1977, is amended to read:

10-2-502. Court commissioners to adjust terms — Criteria.

If the district court finds that the petition was signed by a majority of the [registered voters] real property owners of the territory concerned and that the allegations of the petition are true and that justice and equity require the territory or any part thereof to be disconnected from the municipality, it shall appoint three disinterested persons as commissioners to determine:

(1) the liabilities of the municipality and territory to be disconnected [which] that have accrued during the time in which the territory was part of the municipality; and

(2) the mutual property rights of the municipality and the territory to be disconnected.

CHAPTER311
H. B. No. 337
Passed March 3, 1993
Approved March 23, 1993
Effective March 24, 1993

APPROPRIATIONS ACT II

By John L. Valentine

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING JULY 1, 1992 AND ENDING JUNE 30, 1993 AND FOR FISCAL YEAR BEGINNING JULY 1, 1993 AND ENDING JUNE 30, 1994 FOR THE USE AND SUPPORT OF CERTAIN STATE DEPARTMENTS AND AGENCIES OF STATE GOVERNMENT AND PROVIDE APPROPRIATE FUNDS FOR THE BILLS PASSED IN THE 1993 GENERAL SESSION WITH FISCAL IMPACT AND FOR OTHER PURPOSES AS IN THIS ACT PROVIDED; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 1993 and ending June 30, 1994. This is in addition to amounts appropriated in House Bill 336, 1993 General Session.

ITEM 1
To Legislature - Office of the Legislative Research and General Counsel
From General Fund $25,000

For Utah Law on Disc.

ITEM 2
To Governor - Administration
From General Fund 9,000

To implement provisions of House Bill 33, 1993 General Session.

ITEM 3
To Governor - Administration
From General Fund 80,000

To implement provisions of House Bill 67, 1993 General Session.

ITEM 4
To Governor - Office of Planning and Budget
From General Fund 150,000
Schedule of Programs
Information Technology 150,000

ITEM 5
To Governor - Office of Planning and Budget
From General Fund 8,600

To implement provisions of Senate Bill 165, 1993 General Session.

ITEM 6
To Governor - Council on Women and Families
From General Fund 10,000
Schedule of Programs
Women in Politics Book 10,000

ITEM 7
To Governor - Commission on Criminal and Juvenile Justice
From General Fund 1,000

To implement provisions of Senate Bill 10, 1993 General Session.

ITEM 8
To Governor - Commission on Criminal and Juvenile Justice

To implement provisions of Senate Bill 127, 1993 General Session.

ITEM 9
To Governor - Commission on Criminal and Juvenile Justice
From General Fund - Restricted - Crime Victim Reparation Trust Fund 2,000

To implement provisions of House Bill 151, 1993 General Session.

ITEM 10
To Attorney General - Administration
From General Fund 25,000

For Utah Law on Disc.

ITEM 11
To Attorney General - Abortion
From General Fund 30,000

To implement provisions of Senate Bill 60, 1993 General Session.

It is the intent of the Legislature that these funds are non-lapsing. In the event an appeal is avoided in the 24 hour waiting period under Senate Bill 60, 1993 General Session abortion matter, or funds are not otherwise needed for defending that abortion litigation, the Attorney General may use the $30,000 or any part thereof, after June 30, 1994, for child abuse and prevention programs for training of investi- gators and prosecutors of child abuse reports.

ITEM 12
To Attorney General - Child Abuse

It is the intent of the Legislature that the appropriation in Item 21, Chapter 305, Laws of Utah - 1992 be non-lapsing.

ITEM 13
To Attorney General
From General Fund 36,700

To implement provisions of House Bill 200, 1993 General Session.

ITEM 14
To Judicial Council/State Court Administrator
From General Fund 25,000

For Utah Law in Disc.

ITEM 15
To Judicial Council/State Court Administrator
From General Fund 17,300

To implement provisions of Senate Bill 262, 1993 General Session.

ITEM 16
To Judicial Council/State Court Administrator
From General Fund 44,000

To implement provisions of Senate Bill 243, 1993 General Session.

ITEM 17
To Judicial Council/State Court Administrator
From General Fund Restricted - Children's Defense 63,700

To implement provisions of Senate Bill 283, 1993 General Session.

ITEM 18
To Judicial Council/State Court Administrator
From General Fund 29,000

To implement the provisions of House Bill 24, 1993 General Session.

ITEM 19
To Judicial Council/State Court Administrator
From General Fund 122,800
Schedule of Programs
Judicial Salary 122,800

Under provisions of Section 67-8-2, the following annual salaries are approved for judicial officials for July 1, 1993 to June 30, 1994, District Court Judge $81,200.

Other judicial salaries will becalculated in accordance with the statutory formula and rounded to the nearest $50.00.

This supersedes the salary related intent language in Item 29, page 9 of House Bill 336, 1993 General Session.

ITEM 20
To Department of Corrections - Medical
From General Fund 2,500

To implement the provisions of House Bill 24, 1993 General Session.

ITEM 21
To Department of Corrections - Medical

It is the intent of the Legislature that the appropriation in Item 36, page 12, House Bill 336, 1993 General Session be Non-lapsing.

ITEM 22
To Department of Corrections - Institutional Operations
From General Fund 18,500

To implement the provisions of House Bill 24, 1993 General Session.

ITEM 23
To Department of Corrections - Institutional Operations
From General Fund 26,500

To implement the provisions of Senate Bill 101, 1993 General Session.

ITEM 24
To Department of Corrections - Field Operations
From General Fund 103,300

To implement the provisions of House Bill 210, 1993 General Session.

ITEM 25
To Department of Human Services - Division of Youth Corrections
From General Fund 1,000

To implement provisions of House Bill 151, 1993 General Session.

ITEM 26
Department of Agriculture - Marketing and Promotion
From Horse Racing Account 34,000

To implement the provisions of House Bill 354, 1993 General Session.

ITEM 27
To Department of Environmental Quality
From General Fund ..... (875,000)
From Federal Funds ..... (716,800)
From Dedicated Credits ..... (2,431,100)
To delete Item 59, House Bill 336.

ITEM 28
To Department of Environmental Quality
From General Fund 875,000
From Federal Funds 716,800
From Dedicated Credits 2,431,100
Schedule of Programs
Hazardous Waste 4,022,900
To increase Item 58, House Bill 336.

ITEM 29
To Department of Environmental Quality
From Dedicated Credits 493,500

To implement the provisions of Senate Bill 96, 1993 General Session.

ITEM 30
To Department of Commerce
From Commerce Service Fund 32,600

To implement the provisions of Senate Bill 4, 1993 General Session.

ITEM 31
To Department of Commerce
From Commerce Service Fund 57,600

To implement the provisions of House Bill 200, 1993 General Session.

ITEM 32
Department of Community and Economic Development - State History
From General Fund 23,000

To implement the provisions of Senate Bill 42, 1993 General Session.

ITEM 33 - VETOED
Department of Community and
Economic Development -
State History
From General Fund 9,900

To implement the provisions of House Bill 140, 1993 General Session.

ITEM 34
Department of Community and
Economic Development -
Community Development
From General Fund 132,000

To implement the provisions of House Bill 21, 1993 General Session.

ITEM 35
Department of Community and
Economic Development -
Community Development
From General Fund 213,400

To implement the provisions of House Bill 13, 1993 General Session.

ITEM 36
Department of Community and
Economic Development -
Community Development
From Homeless Trust Fund 150,000
Schedule of Programs
Homeless Committee 150,000

ITEM 37
Department of Community and
Economic Development -
Centennial Commission
From Dedicated Credits 500,000

To implement the provisions of House Bill 16, 1993 General Session.

ITEM 38
To Department of Administrative Services -
Division of Facilities Construction and
Management

It is the intent of the Legislature that the Division of Facilities Construction and Management use the funding as necessary from the 1994 Capital Improvement allocation for installation of a Local Area Network within the legislative offices and chambers.

ITEM 39
To Department of Administrative Services -
Division of Finance
From Dedicated Credits 53,000

To implement the provisions of Senate Bill 97, 1993 General Session.

ITEM 40
To Department of Administrative Services -
Division of Administrative Rules
From General Fund 2,000

To implement the provisions of Senate Bill 11, 1993 General Session.

ITEM 41
To State Retirement Board - Administration
From Retirement Fund 30,000

To implement the provisions of House Bill 92, 1993 General Session.

ITEM 42
To Tax Commission - Tax Administration
Revenue Collection
From General Fund 10,000

To implement the provisions of Senate Bill 112 Substitute, 1993 General Session.

ITEM 43
To Tax Commission - Tax Administration
Revenue Collection
From General Fund 36,000

To implement the provisions of Senate Bill 87, 1993 General Session.

ITEM 44
To Department of Human Services - Division of
Family Services
From General Fund 50,000
From Federal Funds 16,700

To implement provisions of Senate Bill 246, 1993 General Session.

ITEM 45
To Department of Human Services -
Office of Recovery Services
From Dedicated Credits 250,000
Schedule of Programs
Child Support Enforcement 250,000

To implement provisions of Senate Bill 204, 1993 General Session.

ITEM 46
To Department of Health - Medical Assistance
From General Fund - Restricted - Provider
Temporary Assessment Account 8,800,000
From Federal Funds 25,818,400
Schedule of Programs
Medicaid - Special Seeding 34,618,400

To implement provisions of House Bill 204, 1993 General Session.

ITEM 47
To Department of Health - Executive Director
From General Fund 7,000
Schedule of Programs
State Laboratory 7,000

To implement provisions of House Bill 151, 1993 General Session.

ITEM 48
To Department of Health - Division of Health Care
Resources
From General Fund 9,400
Schedule of Programs
Emergency Medical Services 9,400

To implement provisions of House Bill 299, 1993 General Session.

ITEM 49
To Department of Health - Division of Health Care
Resources
From General Fund 19,300
Schedule of Programs
Emergency Medical Services 19,300

To implement provisions of House Bill 409, 1993 General Session.

ITEM 50
To Department of Health – Division of Community Health Services
From General Fund 61,000
Schedule of Programs
Health Promotion and Risk Reduction .. 9,000
Environmental Health Services 52,000

To implement provisions of Senate Bill 67, 1993 General Session.

ITEM 51
To State Board of Regents
From General Fund ..... (100,000)

This appropriation amends Item 147 in Senate Bill 212, 1993 General Session.

ITEM 52
To State Board of Education – Minimum School Program
From Uniform School Fund 400,000
Schedule of Programs
Class Size Reduction 400,000

This amount of funding for Class Size reduction is in addition to funds appropriated in Senate Bill 267, "Minimum School Program Act Amendments", Section 16 of 53A–17a–124.5 for class size reduction.

It is the intent of the Legislature that this appropriation be subject to the same provisions enumerated in Section 16; 53A–17a–124.5 of Senate Bill 267.

ITEM 53
To State Board of Education

Of the amount appropriated in Uniform School Funds in Item 203 of House Bill 336, "Appropriations Act", 1993 General Session, an amount of $25,000 shall be allocated to the "We the People" Program.

ITEM 54
To State Board of Education
From Uniform School Fund 343,582

To implement the provisions of Senate Bill 25, 1993 General Session.

ITEM 55
To State Board of Education
From Uniform School Fund 37,500

To implement the provisions of House Bill 212, 1993 General Session.

ITEM 56
To Uniform School Fund
From General Fund 11,500,000

The amount of money appropri– ated in this item, or so much thereof as may be necessary, is appropriated to complete the funding of the State's portion of the Minimum School Program.

ITEM 57
To Department of Natural Resources – Division of Parks and Recreation
From General Fund 2,000
Schedule of Programs
Administration 2,000

To implement the provisions of Senate Bill 5, 1993 General Session.

ITEM 58
To Department of Natural Resources – Division of Parks and Recreation
From Dedicated Credits 60,000
Schedule of Programs
Operations and Maintenance 60,000

To implement the provisions of House Bill 27, 1993 General Session.

ITEM 59
To Department of Natural Resources – Division of Energy
From General Fund ..... (505,000)
From Federal Funds ..... (2,505,200)
From Oil Overcharge ..... (2,701,100)

To implement the provisions of House Bill 464, 1993 General Session.

ITEM 60
To Department of Natural Resources – Rent, Utilities, Fixture Payments, Security
From General Fund ..... (20,000)

To implement the provisions of House Bill 464, 1993 General Session.

ITEM 61
To Department of Natural Resources – Department Administration
From General Fund 441,300
From Oil Overcharge 1,500,000

To implement the provisions of House Bill 464, 1993 General Session.

ITEM 62
To Department of Community and Economic Development – Energy Programs
From General Fund 40,000
From Federal Funds 2,500,100
From Oil Overcharge 1,196,600

To implement the provisions of House Bill 464, 1993 General Session.

ITEM 63
To Department of Public Safety – Driver License
From Transportation Fund 74,500

To implement the provisions of House Bill 25, 1993 General Session.

ITEM 64
To Department of Public Safety – Driver License
From Transportation Fund 154,100

To implement the provisions of House Bill 112, 1993 General Session.

ITEM 65
To Department of Public Safety – Highway Patrol
From General Fund 5,000

To implement the provisions of Senate Bill 27, 1993 General Session.

ITEM 66 - VETOED
To Department of Public Safety -
Driver License
From Transportation Fund 531,000

To implement the provisions of House Bill 217, 1993 General Session.

This is as complete of funding as the Legislature can provide as provided by 63-49-19(2) Utah Code Annotated.

ITEM 67
To Department of Public Safety -
Law Enforcement Services
From General Fund 112,500

To implement the provisions of House Bill 153, 1993 General Session.

ITEM 68
To Department of Public Safety - Fire Marshall
From General Fund 100,000

To implement the provisions of House Bill 155, 1993 General Session.

Section 2. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 1992 and ending June 30, 1993.

ITEM 69
To Legislature - Office of the Legislative Research and General Counsel
From General Fund 30,000

To implement the provisions of Senate Bill 11 and House Bill 53, 1993 General Session.

ITEM 70
To Legislature - Senate
From General Fund 9,600

To implement the provisions of Senate Bill 11 and House Bill 53,1993 General Session.

ITEM 71
To Legislature - House of Representative
From General Fund 9,600

To implement the provisions of Senate Bill 11 and House Bill 53, 1993 General Session.

ITEM 72
To Department of Environmental Quality
From General Fund 800,000
From Thrift Account ..... (800,000)

ITEM 73
To Department of Natural Resources - Water Resources - Conservation and Development
From General Fund 800,000
From Thrift Account ..... (800,000)

ITEM 74
To Department of Community and Economic Development - Division of Business and Economic Development
From Thrift Account 1,800,000
Schedule of Programs
Special Opportunity Fund - Salt Lake Baseball Field 1,800,000

It is the intent of the Legislature that these monies are appropriated for the purpose of facilitating the development of professional baseball in this State through the construction of a professional baseball stadium that will promote economic development in the State and enhance the image of Utah on a national level as the promoter of professional as well as amateur athletics.

ITEM 75
To Department of Community and Economic Development - Community Development
From General Fund 150,000
Schedule of Programs
HOME Program 150,000

ITEM 76
To Department of Community and Economic Development - State History
From General Fund 20,000
Schedule of Programs
Office of Preservation 20,000

It is the intent of the Legislature that these funds be non-lapsing

ITEM 77
To University of Utah Medical Center
From General Fund 750,000
From Division of Facilities Construction and Management - Capital Project Fund - Capital Improvements ..... (750,000)

Section 3. This act takes effect upon approval by the Governor, or the day following the constitutional time limit of Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override.

TEACHER INSERVICE RESOLUTION

H. C. R. NO. 1
Passed February 15, 1993
Effective February 25, 1993

By Jordan Tanner
Grant D. Protzman
Beverly Ann Evans
Ronald J. Greensides
Patricia B. Larson
Nancy S. Lyon
Kurt E. Oscarson
Neal B. Hendrickson
Phil H. Uipi
Michael G. Waddoups
Rob W. Bishop

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR REQUESTING THE STATE BOARD OF EDUCATION AND THE STATE BOARD OF REGENTS FORM AN AD HOC COMMITTEE TO DEVELOP TEACHER PRESERVICE AND INSERVICE PROGRAMS STRUCTURED TO MEET THE EDUCATIONAL NEEDS OF THE 21ST CENTURY.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS the Legislature has formally recognized in the Utah Strategic Planning Act for Educational Excellence that public education's mission in the state is to assure Utah the best educated citizenry in the world and each individual the training to succeed in a global society;

WHEREAS the State Board of Education and the State Board of Regents have been given a charge to review and revise teacher certification requirements to be consistent with teacher preparation for participation in personalized education programs within the public schools;

WHEREAS a number of recent state and national projects and programs such as America 2000, A Shift in Focus, and the Utah Strategic Planning Act for Educational Excellence have clearly indicated a renewed impetus to attract and retain excellent teachers for every classroom in order to provide quality instruction based on the personal needs of each student;

WHEREAS in the past the State Board of Education and the State Board of Regents have formed ad hoc committees such as the Collaboration Committee for Teacher Preparation to explore ways in which public and higher education could work more closely to benefit the preservice and inservice training of teachers;

WHEREAS the introduction of technology into the state's public education system on a large scale through such programs as the Educational Technology Initiative has raised additional concerns over the need to have teachers adequately trained to not only utilize but be able to maximize the potential of that technology in the classroom;

WHEREAS while much has been done to provide quality teacher preservice and inservice programs at both the state and local level, a perception exists that much more could be done through coordinated ongoing efforts by public and higher education;

WHEREAS the State Collaboration Committee for Teacher Preparation is currently involved in a review of preservice and inservice processes and content; and

WHEREAS a subcommittee formed through the Education Interim Committee of the Legislature has determined that while much has been done with teacher inservice programs throughout the state, there is a critical need to consider restructuring both inservice processes and content to meet the ever changing needs of both teachers and students in the classroom:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah, the Governor concurring therein, request the State Board of Education and the State Board of Regents to form an ad hoc committee to develop recommendations for teacher preservice and inservice programs structured not only to help accomplish the mission of public education in the state but also to meet the state's educational needs for the 21st Century and report its recommendation to the Education Interim Committee and the Governor prior to the 1994 General Session.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the State Board of Education, the State Superintendent of Public Instruction, the State Board of Regents, the Commissioner of Higher Education, and the State Collaboration Committee for Teacher Preparation.

SCHOOL TRUST LANDS INHOLDINGS EXCHANGE RESOLUTION

H. C. R. NO. 2
Passed January 29, 1993
Effective February 9, 1993

By Melvin R. Brown
Kevin S. Garn
Grant D. Protzman
John B. Arrington
Beverly Ann Evans
Ronald J. Greensides
Patricia B. Larson
Nancy S. Lyon
Kurt E. Oscarson
Jordan Tanner
Neal B. Hendrickson
Michael G. Waddoups
Rob W. Bishop
Gerry A. Adair

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR MEMORIALIZING CONGRESS TO PASS LEGISLATION THAT WOULD AUTHORIZE EXCHANGES OF SCHOOL TRUST LAND INHOLDINGS DESCRIBED IN THE "UTAH SCHOOLS AND LANDS IMPROVEMENT

EXCHANGE ACT" THAT WAS CONSIDERED DURING THE 2ND SESSION OF THE 102ND CONGRESS.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS upon its achieving statehood in 1896, Utah received four sections of land in every township from the federal government as trust lands for the support of the state's common schools;

WHEREAS the state's obligations concerning the administration of these trust lands are governed by its Enabling Act and Constitution;

WHEREAS the Enabling Act and Constitution have created a solemn compact between the United States and the State of Utah, with the state assuming trust administration responsibilities over these lands;

WHEREAS in its capacity as trustee, the state has a duty of undivided loyalty to the trust beneficiaries and an obligation to prudently manage the trust assets while seeking to maximize revenues, consistent with the balancing of short-term and long-term interests;

WHEREAS while a portion of Utah's trust lands has been sold or exchanged since statehood, approximately 3.7 million acres of surface and 4.6 million acres of subsurface trust lands remain as trust assets, geographically represented by several thousand parcels of land scattered throughout the state, many of which are located within federal reserves such as national parks, military installations, wilderness study areas, and Indian reservations;

WHEREAS state trust lands located within federal reserves generate little if any revenue for the trust beneficiaries and the potential for future development of those lands to generate any significant revenues is, at best, remote;

WHEREAS Utah continues to have critical funding needs for its ever-expanding student population in public and higher education;

WHEREAS the scattering of trust lands throughout the state has, in many instances, hindered the state in fulfilling its fiduciary responsibilities to the beneficiaries;

WHEREAS the inholdings issue has been a problem the state has struggled with for many years and efforts to overcome this problem in the past have, in large part, met with little or no success;

WHEREAS during the 2nd Session of the 102nd Congress the Utah Congressional delegation introduced bills in both the United States Senate and House of Representatives, collectively titled the "Utah Schools and Lands Improvement Act of 1992", designed to exchange approximately 200,000 acres of school trust lands that lie within National Parks, Indian Reservations, and National Forest Lands for equitable federal lands or interests in lands;

WHEREAS the Act was written in close cooperation with the appropriate federal agencies and had the full support of the U.S. Forest Service, the Bureau of Land Management, the National Park Service, and the Office of Management and Budget as well as those affected in Utah at the state and local level, and represented a major effort on the part of all concerned interests to move forward with positive action;

WHEREAS during the 2nd Session, the House of Representatives passed, HR 5118, and the Senate subsequently passed an amended version; and

WHEREAS just prior to final approval of the amended changes in the legislation the Congress adjourned sine die, thereby precluding final action on the Act;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah, the Governor concurring therein, memorialize Congress to give its final approval through legislative action to the provisions embodied in the "Utah Federal Lands Exchange Act of 1992" during the 1st Session of the 103rd Congress to provide for the exchanges anticipated in the Act.

BE IT FURTHER RESOLVED THAT copies of this resolution be sent to the U.S. Department of the Interior, to the U.S. Department of Agriculture, to Utah's Congressional delegation, to the leadership of the United States Senate and the United States House of Representatives, and to the President of the United States.

UTAH TOMORROW RESOLUTION

H. C. R. NO. 3
Passed February 4, 1993
Effective February 24, 1993

By Kim R. Burningham
Norm Nielsen
Kurt E. Oscarson
Michael G. Waddoups
Rob W. Bishop
Martin R. Stephens
Christine R. Fox
Frank R. Pignanelli
Kelly C. Atkinson
Grant D. Protzman

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR ENCOURAGING THE IMPLEMENTATION OF CERTAIN LONG-RANGE AND INTERMEDIATE GOALS AND THE CONSIDERATION OF THOSE GOALS IN APPROPRIATIONS AND OTHER LEGISLATIVE PROCESSES AND IN ADMINISTRATIVE AND OTHER EXECUTIVE PROCESSES.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS the UTAH TOMORROW Strategic Planning Committee, working extensively with executive, legislative, and judicial branches of government and their agencies, local governments, organizations, and the public at large, has developed a vision statement and goals for the future of Utah,

which are set forth in the committee's 1992 annual report;

WHEREAS these goals can materially help Utah incorporate more foresight, achieve economic efficiencies, and move away from reactive thinking in administering state government;

WHEREAS cooperation and coordination in state planning and budgeting activities must be encouraged wherever possible;

WHEREAS government should be encouraged to incorporate the goals and vision of UTAH TOMORROW in planning activities, although their ultimate implementation cannot be guaranteed;

WHEREAS the goals of UTAH TOMORROW can serve as a measuring standard during times of tight fiscal restraint; and

WHEREAS the Governor has identified five key objectives of his administration: (1) World Class Education, (2) Quality Jobs and Business Climate, (3) Better Government, (4) Quality of Life, and (5) Self-Reliance; and the goals of UTAH TOMORROW can help in achieving these five objectives:

NOW, THEREFORE, BE IT RESOLVED that the Legislature and Governor adopt the following goals and encourage their implementation and consideration in appropriations, administrative, and other government processes:

UTAH TOMORROW
Goals for EDUCATION

Educate our citizens by providing an environment that supports life-long learning and occupational skills and that enables Utahns of all ages to reach their potential as productive and responsible individuals.

PUBLIC EDUCATION

(1) Utah's public education system will be accountable and outcome-based.

(a) Advance students on the basis of demonstrated competency rather than by credit hours or seat time.

(b) Promote concepts of quality vs quantity, depth vs breadth, subject integration and application, applied thinking skills, character development, and a global perspective.

(c) Diversify student assessment instruments to include more authentic testing.

(2) Utah will increase autonomy and flexibility to allow for increased parent and student involvement and adaptation.

(a) Establish a school choice system which allows parent and student initiated transfers between schools.

(b) Provide greater latitude to schools in the use of funds.

(c) Support site-based shared decision making.

(d) Encourage strategic planning by districts and schools.

(e) Provide support for each student to develop a Student Education Occupation Plan (SEOP).

(f) Expand opportunities for student occupational preparation.

(3) Utah's teaching staff will be professional, highly motivated, and well-trained.

(a) Implement a competitive, performance-based compensation package.

(b) Provide professional growth opportunities and expanded inservice training.

(4) Utah will increase the efficiency and effectiveness of educators by the use of technology in the education system.

(a) Provide a baseline of computer technology for each teacher with statewide networking.

(b) Provide a database of curriculum, assessment instruments, and classroom management programs software.

(5) Utah will encourage instructional research and innovation.

(a) Provide a state research and development clearinghouse to receive and disseminate information on effective education practices.

(b) Provide support for research and development projects primarily at the school level.

(c) Encourage experimentation and risk taking.

(6) Utah will encourage partnerships between businesses and schools to include industry and keep instructional content relevant to work force needs.

POSTSECONDARY EDUCATION

(7) All Utahns will have access to appropriate postsecondary education.

(a) Further differentiate admissions standards and tuition levels between various types of institutions.

(b) Increase the proportion of postsecondary students attending community colleges and applied technology centers.

(c) Maximize the benefits of alternative delivery systems including telecommunication strategies.

(d) Establish nonresident tuition that covers full educational costs.

(e) Establish more restrictive residency status requirements for undergraduates.

(f) Improve and increase applied technology programs and enrollments.

(g) Actively recruit women and minority students and students with disabilities.

(h) Establish a system for periodic evaluation of regional postsecondary education needs.

(i) Encourage cooperation between private and public institutions to help achieve access to postsecondary education.

(8) All postsecondary education students will exit with appropriate lifelong learning, critical thinking, and marketable employment skills.

(a) Increase the number of students prepared for economic self-sufficiency.

(b) Maximize institutional effectiveness and efficiency in facilitating student progress toward learning goals.

(c) Enhance lifelong learning and critical thinking skills, cultural awareness and appreciation, and civic responsibility.

(9) Utah's postsecondary education institutions will have qualified faculties, adequate facilities, computer technologies, libraries, and academic support to provide a quality education.

(a) Recruit and retain quality faculty members, including appropriate representation of women and minorities.

(b) Provide adequate instructional, research, and library facilities.

(c) Provide adequate academic support, such as library holdings and technology, instructional equipment, computers, departmental resources, and student services.

(d) Provide quality courses and programs consistent with institutional roles and missions.

(10) Utah's universities will continue to expand research and technology transfer efforts; community colleges will expand market-driven applied technology training programs.

(a) Advance and complement state economic development goals through faculty expertise, research, training, and technology transfer.

(b) Enhance and build undergraduate and graduate level education in order to prepare students to meet economic and societal needs.

(11) All colleges and universities will continue to provide public service programs and activities.

(12) Utah's postsecondary education institutions will be efficient, effective, and accountable.

(a) Assess student outcomes to enhance effectiveness.

(b) Conduct ongoing curriculum reviews to promote quality.

(c) Provide faculty productivity reports and teaching evaluations.

(d) Schedule, manage, and utilize facilities efficiently.

(13) Public schools and postsecondary education institutions will cooperate and communicate effectively with one another.

(a) Inform secondary school administrators, teachers, counselors, parents, and students about academic program requirements and career information to encourage early student preparation.

(b) Coordinate common issues such as: concurrent enrollment, teacher education, applied technology, telecommunications, special education, minority education, literacy, remedial education, drug abuse, economic development, and shared facilities.

(14) Utah colleges and universities will foster effective partnerships with government and the private sector.

UTAH TOMORROW Goals for ECONOMIC DEVELOPMENT

Build a statewide economy and infrastructure that supports a broad spectrum of opportunity for all citizens while advancing the standard of living and maintaining a high quality of life.

(15) Utah will increase employment, income, and employee morale throughout the state.

(a) Increase the total employment in Utah.

(b) Increase the employment in rural regions of the state.

(c) Increase the number of new business entities incorporated or registered in Utah.

(d) Increase the employment in all geographic regions of the state.

(e) Increase the number of new jobs and their average annual wage.

(f) Increase the average household income as a percent of the U.S. average.

(g) Increase the average income per job.

(h) Decrease the poverty rate as a percent of the U.S. average.

(i) Involve local governments and other public entities in economic development.

(j) Promote responsible employer-employee relations, employment that is reasonably accessible to individuals with disabilities, and work conditions that are free from sexual harassment and discrimination of any kind.

(16) Utah will encourage its growth industries.

(a) Increase the number of corporate headquarters located in Utah.

(b) Increase visitor length of stay and total spending by tourists.

(c) Increase tax revenues from tourism.

(d) Increase income generated per research dollar spent.

(e) Increase the number of new jobs and their average annual wage in growth industries.

(f) Develop alternate capital sources.

(g) Increase the amount of acreage available for industrial development.

(h) Encourage the prudent and responsible exploration and development of natural resources.

(i) Increase the dollar amount of federal and commercial contracts awarded to Utah firms.

(j) Increase the number of new companies emerging from new technology.

(k) Increase the number of Utah companies actively exporting products to world markets.

(l) Increase the dollar amount of exports as a percentage of Utah Gross State Product.

(m) Increase focus on technical sectors recognized as Utah strengths, including aerospace manufacturing, biomedical and biotechnology, information technology, and natural resources including agribusiness.

(n) Increase strategic business alliances between Utah and foreign companies.

(17) Utah will adjust to a changing national economic climate.

(a) Increase the number and percentage of displaced workers who receive retraining and obtain employment.

(b) Increase the number of market-driven partnerships between business and education.

(c) Provide adequate job training programs.

(d) Increase private sector investment in employee training and retraining.

(18) Utah will contain the cost of doing business.

(a) Decrease workers' compensation insurance costs while maintaining benefits and solvency.

(b) Increase worker productivity.

(c) Improve the competitiveness of gas and electric utility rates to encourage growth.

(d) Maintain Utah's low cost of government.

(e) Encourage freight cost savings through regional regulatory standardization.

UTAH TOMORROW Goals for INFRASTRUCTURE

Build a statewide economy and infrastructure that supports a broad spectrum of opportunity for all citizens while advancing the standard of living and maintaining a high quality of life.

(19) Transportation networks will be safe and efficient.

(a) Decrease the number and severity of traffic accidents.

(b) Provide adequate access for Utah's rural population and resources.

(c) Encourage development of interstate and international transportation corridors to enhance Utah's standing in the global marketplace.

(d) Improve the condition of highways and streets.

(e) Improve assistance to the traveling motorist.

(f) Reduce traffic congestion in Utah's urban areas.

(g) Increase the use of alternative transportation modes.

(h) Provide greater access to air services.

(i) Develop an equitable collection formula for highway infrastructure maintenance and construction inclusive of all sources.

(j) Provide an equitable distribution mechanism for all transportation infrastructure providers.

(20) Public facilities and services will meet the needs of a growing economy.

(a) Provide state-of-the-art telecommunications access to all Utahns.

(b) Reduce the percentage of seismically vulnerable structures in the high-risk zones of Utah.

(c) Develop an Integrated Emergency Management System coordinated at all levels of government and the private sector to protect life, health, and property.

(d) Adequately maintain all state-owned facilities.

(e) Consider community masterplans in the placement of state facilities.

(f) Increase utilization of existing state facilities in order to minimize the growth of new space.

(g) Increase both the availability and reliability of utility services including electric, gas, telecommunications, and water.

(h) Ensure adequate public facilities for drinking water collection, treatment, storage, and delivery.

(i) Ensure adequate public facilities for wastewater treatment and disposal.

(j) Determine and monitor risk and mitigate major losses from natural and technological hazards.

(k) Maintain and improve the quality of drinking water in all public systems in Utah.

(l) Maintain and improve public wastewater treatment facilities, methods, and procedures.

UTAH TOMORROW Goals for ENVIRONMENT AND NATURAL RESOURCES

Enhance our local and global environment by balancing the development of our natural resources with the protection of our air, water, land, forests, wildlife, and magnificent scenery.

(21) Utahns will understand the interrelationships between the environment, natural resources, the economy, and quality of life.

(22) Utahns will achieve and maintain air quality to protect public health and the environment.

(a) Achieve National Ambient Air Quality Standards on the Wasatch Front and minimize degradation of air quality in areas of the state that are better than those standards.

(b) Improve coordination of air quality monitoring and data collection.

(c) In evaluating industries, Utah will consider impact on air quality, economic impact, and cost and benefits of maintaining air quality.

(d) Eliminate exposure to environmental tobacco smoke.

(23) Natural resources will be used and invested wisely.

(a) Identify renewable and nonrenewable resources.

(b) Decide what, how much, and when to protect.

(c) Achieve sustainable rates of use of renewable resources.

(d) Minimize waste in harvesting natural resources.

(e) Mitigate the environmental effects of development and encourage reclamation to reduce or eliminate those effects.

(f) Protect, conserve, and develop Utah's agricultural and natural resources.

(g) Encourage partnerships between those who develop and utilize renewable and nonrenewable resources: industries, organizations, and natural resources agencies.

(h) Conserve and efficiently use our energy resources.

(i) Develop alternative sources of energy.

(24) Utahns will incorporate environmental concerns with wise multiple use through comprehensive land use planning.

(a) Maintain land management flexibility.

(b) Prioritize land use and ownership decisions.

(c) In establishing planning and land use policies, identify environmental consequences and resolve conflicts in the overall best interest of the people in Utah.

(d) Manage trust lands effectively, assuring that the interests of schools and other beneficiaries are paramount.

(e) Maintain a technical assistance resource capability, in cooperation with private enterprise, sufficient for multiple use planning.

(25) Utahns will assure clean and sufficient statewide water supplies to protect public health and preserve beneficial water uses through conservation, development, and pollution control.

(a) Prevent contamination of drinking water sources.

(b) Maintain or improve the quality of Utah's surface water and ground water.

(c) Protect from releases of storage tank contaminants.

(d) Encourage water conservation and wise management practices.

(e) Coordinate local, state, and federal water related planning and management activities.

(f) Identify and develop water supplies to provide ample, good quality water for present and future needs.

(g) Protect Utah's diverse water interests through interdisciplinary recognition of balanced economic, social, aesthetic, recreational, wildlife, and ecological values.

(h) Improve or maintain water quality and reduce violations of state water quality standards.

(26) Waste generation will be minimized and waste management procedures will be improved.

(a) Develop a statewide waste management strategy.

(b) Improve the timeliness and increase the efficiency of site cleanup and emergency response.

(c) Protect the public and the environment from exposure to contamination caused by the improper management of solid, radioactive, and hazardous waste.

(d) Discourage and diminish the importation of hazardous, solid, and nuclear waste.

(e) Reduce individual, commercial, and industrial hazardous and solid waste generation.

(f) Minimize the amount of radiation exposure and environmental contamination from radioactive materials.

(27) Recreational opportunities will increase in accessibility and quality.

(a) Increase the amount of Class I and II stream and lake fisheries.

(b) Adopt and implement the National Recreation and Parks Association Guidelines on open space.

(c) Increase the capacity and user resources of state and private park systems by upgrading the facilities while maintaining the integrity of the park experience.

(d) Increase the availability of recreational trails.

UTAH TOMORROW Goals for HEALTH AND SAFETY

Promote personal well-being by encouraging healthy lifestyles and disease prevention, and by supporting access to quality health care at an affordable cost for all Utahns.

(28) All Utahns will have access to high quality, affordable health care.

(a) Develop a basic health benefits package to be used by all providers.

(b) Increase the proportion of the population with health benefits coverage.

(c) Develop a minimum insurance package of primary and preventive health care services.

(d) Increase the number of Utahns who have access to and appropriately utilize primary and preventive health care services.

(e) Reduce the rate of increase of health care costs.

(f) Improve and ensure health care quality through ongoing development and use of health care measures and standards.

(g) Reduce infant mortality in high risk areas.

(h) Expand the use of appropriate and cost-effective disease detection methods.

(i) Increase the number of Utah's children who are adequately immunized.

(j) Establish and monitor comprehensive health status indicators to include but not be limited to the Centers for Disease Control Healthy People 2000 indicators.

(29) Utahns will achieve a higher quality of life by adopting safe, healthy lifestyles.

(a) Reduce the disability and death due to injury.

(b) Increase vehicle safety restraint use.

(c) Reduce tobacco use.

(d) Increase the number of Utahns who maintain normal blood pressure, desirable blood cholesterol levels, recommended weight-to-height ratios, and who exercise aerobically for 20 minutes at least three times a week.

(e) Reduce the spread of HIV infection.

(f) Improve the diet and nutrition of Utah's children.

(g) Promote a safe and healthful workplace free from recognized hazards.

(h) Provide a fire-safe environment through research and a proactive approach toward fire protection and prevention.

(i) Reduce driving while impaired due to the influence of alcohol and drugs.

(j) Decrease the teen pregnancy rate.

(k) Decrease the number of intentional injury related deaths (homicide and suicide).

(l) Reduce firearms related morbidity and mortality rates.

(m) Provide increased safety for emergency service providers when dealing with hazardous material.

(n) Protect the general public, property and environment before, during, and after the storage and on-site incineration of chemical and biological weapons.

(o) Reduce the misuse of prescription drugs, tobacco, alcohol, and the availability and use of illicit drugs.

(p) Increase the proportion of young people who are drug-free of alcohol, marijuana, and tobacco.

(q) Increase the percent of mothers who are free of alcohol and other drug use during pregnancy.

UTAH TOMORROW Goals for CULTURE

Broaden our understanding and celebration of the human experience by supporting opportunities in our communities and institutions for artistic and cultural expression, and by nurturing and protecting our diverse cultural, historic, and artistic heritage.

(30) All Utahns will have access to arts, culture, history, and humanities.

(a) Increase the number of arts, culture, history, and humanities activities and resources within communities throughout the state.

(b) Increase the number of participants in and visits to arts, culture, history, and humanities events and sites.

(c) Provide access to and increase the use of Utah's public library and museum resources.

(d) Strengthen public education for arts, culture, history, and humanities.

(e) Preserve Utah's heritage and cultural resources and sites for future generations.

(f) Develop and encourage grass roots community action in preservation of local customs, cultures, and traditions.

(g) Increase the number of educational programs provided by arts, culture, history, and humanities institutions.

(31) The quality of arts, culture, history, and humanities programs will continue to improve.

(a) Increase the availability and awareness of technical assistance and training for arts, culture, history, and humanities programs.

(b) Increase the number of arts, culture, history, and humanities institutions and groups meeting state or nationally recognized professional standards.

(32) Effective partnerships between the business sector, government, and Utah citizens will nurture Utah's arts, culture, history, and humanities.

(a) Increase the number of volunteer hours contributed to arts, culture, history, and humanities programs and institutions.

(b) Increase the number of community-based arts, culture, history, and humanities councils.

(c) Increase the number of arts, culture, history, and humanities programs and institutions sponsored through partnerships.

(d) Encourage private funding for arts, culture, history, and humanities.

(e) Increase cooperation, advocacy, communication, and resource sharing for arts, culture, history, and humanities.

UTAH TOMORROW Goals for HUMAN SERVICES

Encourage self-sufficiency while helping those with special needs to lead productive, fulfilling lives.

(33) The proportion of Utahns who are self-sufficient will increase.

(a) Create incentives to encourage self-sufficiency.

(b) Reduce disincentives that discourage self-sufficiency.

(c) Increase personal, family, and community responsibility for self-sufficiency.

(d) Decrease the number of children born into poverty where only one parent accepts legal responsibility for support.

(e) Ensure the availability of sufficient, affordable dependent care for all Utahns requiring it.

(f) Ensure the availability of quality, affordable housing.

(34) Utahns will help those with special needs to lead lives that are as productive and fulfilling as possible.

(a) Provide services in the least restrictive and most enabling settings.

(b) Provide opportunities for work and supported employment to all those with special needs who are capable of work.

(c) Develop opportunities for volunteer work.

(d) Support families who choose to care for their children with severe disabilities, adults with disabilities, and elderly members in the home.

(e) Ensure adequate levels and types of community based services are available to reduce the need for institutional care.

(f) Promote community acceptance and integration of persons with special needs.

(g) Ensure adequate care in public institutions serving the special needs population.

(h) Provide needed mental health services for mentally ill adults and children.

(i) Increase the number of housing units serving homeless, chronically mentally ill Utahns.

(j) Increase the number of housing units available to Utahns with disabilities.

(k) Decrease the number of individuals needing housing in homeless shelters throughout the state.

(35) Utahns who are at risk of being abused, neglected, or exploited will be protected from harm.

(a) Encourage the qualities of nurturing and caring in Utah families.

(b) Reduce the risk factors leading to abuse, neglect, or exploitation of children, adults, and the elderly.

(c) Respond promptly to children, adults, and the elderly who are in abusive or neglectful situations.

(d) Enable children who have experienced abuse or neglect to remain with their families and be free of abuse.

UTAH TOMORROW Goals for JUSTICE

Protect our society by supporting a legal system that allows us to enjoy a quality lifestyle.

(36) Utah will provide a more fully integrated judicial system.

(a) Increase the use of technological systems where they will achieve long-term cost savings and increased efficiency.

(b) Integrate all automated systems within the justice community.

(c) Establish an ongoing, institutional procedure for rationally incorporating technological change.

(37) Utah will enforce its laws fairly, efficiently, and effectively.

(a) Reduce discrimination at all levels of society.

(b) Provide equal access to criminal justice data bases for all law enforcement agencies.

(c) Assure adequate law enforcement personnel to staff proactive and preventive programs.

(d) Encourage consolidation, cooperation, and interjurisdictional approaches where appropriate to cross-jurisdictional issues, such as drug and narcotic investigations, gangs, white collar crime, and major felony investigations.

(e) Provide effective standards, training, and certification for law enforcement officers.

(f) Consider decriminalizing traffic and minor criminal offenses.

(g) Provide professional laboratory and technological services to all Utah criminal justice agencies.

(38) The Utah court system will provide an independent, accessible forum for just and efficient dispute resolution.

(a) Consider cases filed in the court system quickly and efficiently.

(b) Maximize productivity of each judge, reducing the number of new judges needed.

(c) Attract and retain qualified career jurists.

(d) Standardize court system practices and procedures throughout the state.

(e) Provide greater access to efficient, affordable, state-sanctioned conflict resolution services.

(f) Provide easy access to information about the structure and operations of the court system.

(g) Improve sentencing by criteria clarification and standardization.

(h) Maximize the efficient disposition of cases on appeal.

(i) Provide a safe court environment for bar members, litigants, court personnel, witnesses, and the public.

(39) Utah will provide for independent, efficient, and fair prosecution and defense of criminal cases.

(a) Attract and retain qualified prosecutors and defenders.

(b) Minimize ethical conflicts for prosecutors and defenders.

(c) Continue to upgrade prosecutor and defender training.

(d) Establish an effective and uniform case management and reporting system.

(e) Minimize trauma to victims and witnesses.

(40) Utah's correctional system will protect society and promote rehabilitation of offenders.

(a) Reduce the percent of repeat offenders through use of rehabilitation programs.

(b) Reduce the rate of growth in prison population through the use of alternatives to incarceration.

(c) Improve transition of inmates returning to society.

(d) Address the needs of the seriously mentally ill offender.

(e) Provide adequate mental health services and protect against the premature release of criminal mentally ill inmates.

(f) Continue to emphasize victim restitution.

(g) Provide effective supervision of offenders in the community on probation and parole and adequate pre-sentence services.

(41) Utah will provide appropriate juvenile justice programs to give at-risk youths the opportunity to become productive members of society.

(a) Increase the treatment and sentencing options for juvenile offenders with a chronic offense history or a current first degree charge pending.

(b) Upgrade early intervention efforts for juvenile offenders.

(c) Insure adequate representation for juvenile offenders who have significant freedoms at risk.

(d) Expand community service and victim restitution programs statewide.

(e) Provide immediate treatment intervention for victims and offenders in cases involving sexual or physical abuse.

(f) Develop innovative, humane, and cost-effective community-based alternatives to secure confinement for specialized juvenile offender populations.

(g) Provide facilities to meet the minimal needs for detention, shelter care, observation and assessment, and secure facilities.

(h) Provide specialized treatment and supervision for mentally handicapped and mentally ill juvenile offenders as soon as their illness or handicap is identified.

(i) Implement uniform statewide secure detention admissions guidelines.

(j) Reduce the disparity of representation of minority youth in the juvenile justice system.

(k) Minimize the impact of criminal gang activity on Utah's youth and communities.

UTAH TOMORROW Goals for GOVERNMENT

Assure open, just, and accountable government.

(42) Governments in Utah will be open.

(a) Require disclosure of conflicts of interest by all elected and appointed officials.

(b) Require public disclosure of lobbying activities.

(c) Ensure availability of all appropriate government records.

(d) Protect and enforce the open meetings law.

(e) Adopt "plain language" requirements for all legislation.

(f) Require disclosure of salaries of all governmental employees.

(43) Governments in Utah will be accountable.

(a) Increase the voter turn-out in each general election.

(b) Simplify the voter registration system.

(c) Increase the number of registered voters.

(d) Establish requirements for concurrent performance and financial audits of public entities.

(e) Include all costs in fiscal notes and budget requests from all levels of government, namely, city, county, state, and federal.

(f) Streamline the state budget process.

(g) Ensure adequate protections for legitimate whistle-blowers at all government levels.

(h) Strengthen the public school curriculum in state and local government process and civic responsibilities.

(i) Provide appropriate orientation and training regarding duties and responsibilities for all new public officials and employees.

(j) Provide a fair and efficient administrative law process.

(44) Governments in Utah will recruit, develop, and retain quality and effective personnel.

(a) Provide employee job development and growth resulting in improved efficiency, morale, creativity, teamwork, and quality service.

(b) Require fair employment practices to protect the civil rights of all employees and prospective employees.

(c) Provide a work environment that is drug-free and free from prohibited discrimination and sexual harassment.

(d) Recruit and retain employees who are representative of Utah's available work force.

(e) Adapt to the changing skill requirements, available labor force, and employment patterns, and encourage diversity in the work force.

(f) Ensure competitive compensation, benefits, and incentive plans to attract and promote excellence in public employment.

UTAH TOMORROW Goals for FREE ENTERPRISE AND REGULATORY SYSTEMS

Strengthen our free enterprise system while providing a reasonable regulatory environment that protects our citizens.

(45) Utah will streamline its regulatory programs for greater efficiency and responsiveness without compromising the health and safety of the public.

(a) Ensure fair, fast, and efficient state and local regulatory licensing and permit issuance.

(b) Ensure that permits are accurate, timely, and easy to understand.

(c) Achieve access to issuance of licenses and permits by mail or FAX except where verification or security considerations override convenience.

(d) Allow payment of taxes and fees by credit or debit cards.

(e) Review state and local regulatory licensing and permit procedures on a regular basis.

(f) Assure consumers that products and services are clean, safe, wholesome, and properly labeled and measured or weighed.

(46) Utah will eliminate unnecessary public competition with private providers of the same services.

(a) Privatize state and local services where the private sector can effectively and appropriately provide the function at or below the present government cost.

(b) Support the efforts of the Utah privatization policy board to identify appropriate areas for privatization.

(47) Utahns will be prepared to succeed in the free enterprise marketplace.

(a) Increase education of Utahns regarding entrepreneurship, free enterprise, investments, and consumer protection.

(b) Survey and publish the demand for, and requirements of, short and long range employment needs.

(c) Achieve a sufficient number of appropriately trained workers.

1993 UTAH SUMMER GAMES RESOLUTION

H. C. R. NO. 7
Passed March 3, 1993
Effective March 18, 1993

By DeMar Bowman

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR DESIGNATING JUNE 18-26, 1993, AS UTAH SUMMER GAMES WEEK; COMMENDING THE UTAH SUMMER GAMES FOUNDATION AND CEDAR CITY FOR SPONSORING THE 1993 UTAH SUMMER GAMES; ACKNOWLEDGING THE REGIONAL HOST COMMUNITIES OF LOGAN, PARK CITY, OREM, RICHFIELD, AND SALINA; AND RECOGNIZING AND COMMENDING THE GAMES' INFLUENCE IN PROMOTING AMATEUR ATHLETICS.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS on June 18-26, 1993, the Eighth Annual Utah Summer Games Finals will be held in Cedar City;

WHEREAS the Utah Summer Games encourage wholesome athletic sports in Utah and bring public recognition to dedicated amateur athletes;

WHEREAS the Utah Summer Games take advantage of the current interest in physical fitness and wellness and provide competition in a variety of sports that appeal to all segments of the population;

WHEREAS the Utah Summer Games promote preventive medicine by making lifetime participation in sports feasible and fun, thus contributing to physical well-being;

WHEREAS the Utah Summer Games are part of a nationwide movement stimulated by the National Sports Festivals conducted by the United States Olympic Committee, and by the surge of interest in amateur sports promoted by the Olympic games;

WHEREAS the Utah Summer Games Foundation is a member of the National Congress of State Games and is a charter state of this national organization;

WHEREAS the National Congress of State Games enjoys a class "B" membership in the United States Olympic Committee;

WHEREAS the Utah Summer Games Foundation, a nonprofit corporation, has been established to sponsor the event annually in the state of Utah;

WHEREAS Cedar City is Utah's host city for this annual event; and

WHEREAS thousands of volunteers from our state are involved in planning and organizing the statewide sports festivals:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, designate the week of June 18-26, 1993, as Utah Summer Games Week.

BE IT FURTHER RESOLVED that the Legislature and the Governor commend the Utah Summer

Games Foundation and the community of Cedar City for their respective contributions in developing the Utah Summer Games and involving the regional host communities of Logan, Park City, Orem, Richfield, and Salina in Utah's sports festivals.

BE IT FURTHER RESOLVED that the Legislature and the Governor extend their best wishes to the athletes who will journey to their regional and final sites this summer and who will make the Utah Summer Games the premier amateur sporting event in the Beehive State.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Summer Games Foundation and to the mayors of Logan, Park City, Orem, Richfield, Salina, and Cedar City.

RESOLUTION PROTESTING INCREASED FEDERAL GRAZING FEES

H. C. R. NO. 8
Passed March 3, 1993
Effective March 19, 1993

By Brad Johnson
Tim Moran
J. Reese Hunter
R. Mont Evans
R. Lee Ellertson
Dan Q. Price
Bill Wright
Doyle M. Mortimer
Arlo D. James
Met Johnson
Beverly Ann Evans
Stephen M. Bodily
Irby N. Arrington
Clark L. Reber
Kevin S. Garn
Jeff Alexander
Russell A. Cannon
Nancy S. Lyon
DeMar Bowman
Nora B. Stephens
Martin R. Stephens
Christine R. Fox
Melvin R. Brown
Rob W. Bishop
James Gowans
Phil H. Uipi
O. D. Carnahan
Evan L. Olsen
Eli H. Anderson
Norm Nielsen
Jordan Tanner
Don E. Bush
John William Hickman
Tom Matthews
Gerry A. Adair
J. Brent Haymond
Michael R. Styler
Fred R. Hunsaker
David Ure
Marda Dillree
Brent H. Goodfellow
M. Keele Johnson

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR ENCOURAGING CONTINUATION OF A FAIR GRAZING FEE FORMULA FOR CONTINUED LIVESTOCK GRAZING ON FEDERAL LANDS.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS agriculture is one of Utah's most important industries;

WHEREAS livestock production is the catalyst for over $1 billion of economic activity annually which is critical to the health of our economically stressed rural communities;

WHEREAS the federal land resource which represents nearly two-thirds of the land area of Utah plays an important part in combining enough private and public land to create economically viable ranching operations;

WHEREAS the fee collected from grazing the federal lands pays an inordinately high portion of the multiple use costs of administering the public lands;

WHEREAS there is consistency between the economic activity on the public land as well as its multiple use and the material well being of the range and the animal and plant species on it;

WHEREAS contrary to popular theory if public land is left to run wild it would deteriorate over time, create fire hazards, and bring an end to species diversity;

WHEREAS over several generations public lands ranchers have developed the confidence to invest in fencing, water development, roads, and forage quality which provides an outdoor experience for public use and increased wildlife populations;

WHEREAS the cost of purchasing the permit and its associated non-fee costs such as lower productivity, larger land area needs, predatory animal losses, and more herders need to be taken into account when comparing public land grazing fees and private land leases; and

WHEREAS there is a movement among radical environmental groups and some members of the United States Congress to increase the grazing fee to levels that would seriously threaten the stability of Utah's livestock industry:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, support the continuation of an equitable fee structure as is embodied in the Public Rangeland Improvement Act fee formula that preserves confidence and integrity over time and provides benefits to all Americans through multiple use of the federal lands including livestock grazing.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the United States Secretary of Agriculture,

the United States Secretary of the Interior, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

RESOLUTION APPROVING WASTE DISPOSAL

H. C. R. NO. 10
Passed March 3, 1993
Effective March 17, 1993

By Beverly Ann Evans

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR GRANTING THE GENESIS PRODUCTION COMPANY AUTHORITY TO OPERATE AS A COMMERCIAL SOLID WASTE DISPOSAL FACILITY.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS the Genesis Production Company desires to convert a Class II injection well located within Duchesne County to a Class I Nonhazardous injection well, which would be a commercial solid waste disposal facility;

WHEREAS the Department of Environmental Quality finds it has jurisdiction over this site; and

WHEREAS Section 19-6-108 of the Utah Code requires that an entity receive permission from the Utah State Legislature and the Governor of the State as part of the approval process necessary to receive permission to operate a commercial solid waste disposal facility in Utah.

NOW, THEREFORE, BE IT RESOLVED that the Legislature, with the Governor concurring therein, gives the Genesis Production Company authority as required under Section 19-6-108 to operate a Class I Nonhazardous injection well located within Duchesne County as a commercial solid waste disposal facility.

RESOLUTION ON CENTRAL UTAH WATER PROJECT

H. C. R. NO. 14
Passed February 19, 1993
Effective February 22, 1993

By Martin R. Stephens
Gerry A. Adair
Kelly C. Atkinson
Steve Barth
Rob W. Bishop
DeMar Bowman
Afton B. Bradshaw
Judy Ann Buffmire
Mary Carlson
O.D. Carnahan
Blake D. Chard
Marda Dilree
R. Lee Ellertson
Sara Eubank
Christine R. Fox
Brent H. Goodfellow
Ronald J. Greensides
Neal B. Hendrickson
John William Hickman
Fred R. Hunsaker
Arlo D. James
Shirley V. Jensen
Brad Johnson
Met Johnson
M. Keele Johnson
David M. Jones
Darrell L. Jorgensen
Robert H.M. Killpack
Tim Moran
Doyle M. Mortimer
Lowell A. Nelson
Kurt E. Oscarson
Douglas S. Peterson
Frank R. Pignanelli
Karen B. Smith
Nora B. Stephens
Michael R. Styler
Jordan Tanner
Daniel H. Tuttle
Phil H. Uipi
John L. Valentine
Michael G. Waddoups
Bill Wright
James F. Yardley

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING THEIR INTENT REGARDING THE COMPLETION AND FUNDING OF THE CENTRAL UTAH WATER PROJECT.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS in 1964, people of vision and foresight created the Central Utah Water Conservancy District to administer the development of the various proposed units of the Central Utah Project;

WHEREAS the purpose of the project was and is to develop Utah's portion of the upper Colorado River water for the benefit of 12 Utah counties in central and south-central Utah;

WHEREAS Utah's Congressional delegation has fought for the authorizations and appropriations necessary to begin and continue construction of the project;

WHEREAS delivery of Central Utah Project water is vital to the continued long-term prosperity of the state;

WHEREAS Congress approved the Central Utah Project Completion Act in 1992;

WHEREAS the 1992 Completion Act represents a new era in the process by which these projects are constructed, requiring, as a condition to the federal government's further participation, that those who will receive the benefits of the project contribute a significant percentage (35 to 50%) of the up front costs of the design and construction costs on a concurrent or "as needed" basis;

WHEREAS the district and the state must find new sources of funding, because the district's existing funding sources are committed to current debt and operating expenses;

WHEREAS new sources of funding are as difficult for the district and the state as they are for the federal government;

WHEREAS the district and the state will want to be assured that each individual feature of the project is wanted and needed, meets the test of economic and environmental viability, and that the people are willing to pay for each individual feature of the project under the new payment scheme;

WHEREAS many varied financing tools and combinations of tools are available to fund the district's and state's portion of the project, including bonding, property taxes, appropriations, water and power rate revenues, water development funds or loans, and other similar financing tools;

WHEREAS the district and the state must evaluate the environmental and economic effects of project features and receive federal appropriations within five years, or the authorizations contained in the Completion Act expire;

WHEREAS the Secretary of the Interior must enter into a cost sharing agreement with the district within 120 days of passage of the Completion Act;

WHEREAS that 120 day period expires in early March 1993; and

WHEREAS the district will cover the nonfederal match for the first year's federal appropriation and the district will make the mitigation account contributions for the first year:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, strongly express to the U.S. Congress and the Secretary of the Interior that they support continuation of the Central Utah Project as offered by the federal government in the Central Utah Project Completion Act.

BE IT FURTHER RESOLVED that the district and the state will meet the cost-sharing obligations contained in the Completion Act for portions of the project that meet the tests of economic and environmental viability.

BE IT FURTHER RESOLVED that the cost-sharing agreement with the Secretary of the Interior provide that matching funds for future federal appropriations will be obtained from some or all of the financial tools available to the district and the state, as determined by a broad-based review to be completed this year.

BE IT FURTHER RESOLVED that the Governor appoint a broad based commission to: recommend, in 1993, the long term financing plan for the nonfederal share of costs; consider the use of all available funding methods; match the project features to a particular funding method; and review the methods of public oversight over any increase in taxing authority that may be considered.

BE IT FURTHER RESOLVED that the lieutenant governor mail copies of this resolution to the President of the United States, Secretary of the Interior, Chairs of the Appropriations Committees in the U.S. Senate and House of Representatives, and members of the Utah Congressional delegation.

FEDERAL MINERAL LEASE AND FOREST RECEIPTS RESOLUTION

H. C. R. NO. 16
Passed February 19, 1993
Effective February 22, 1993

By Brad Johnson

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING OPPOSITION TO ANY PROPOSAL TO DEDUCT ADMINISTRATIVE AND OPERATING COSTS FROM GROSS RECEIPTS FOR FEDERAL MINERALS, NATIONAL FORESTS, AND OTHER CONGRESSIONALLY AUTHORIZED STATE AND COUNTY SHARED RECEIPTS.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS state and local government shares of federal mineral, timber, grazing, recreation, and other public land resource related receipts were designed to compensate public land states for the continued federal ownership of land and mineral resources and the concurrent tax base diminishment and development restraints created by that ownership;

WHEREAS state shared receipt programs were basic to the congressional compromise which led to the retention of significant federal land and mineral interests in the western states;

WHEREAS state and county shared receipts are an important revenue source for impact assistance such as education, roads and highways, sewer and water, and other public facilities and programs needed to support the industries and work forces engaged in development activities on federal lands;

WHEREAS western state and local governments expend significant amounts of their own-source revenues for the planning, accommodation, and regulation of federal land and mineral resource development and management activities;

WHEREAS congressional authorizations for state and local shares of federal receipts have historically and consistently been interpreted to mean gross receipts and not net receipts, nor receipts less administrative costs;

WHEREAS current appropriations legislation requires that half of the federal administrative costs be deducted from gross federal onshore mineral leasing receipts before dividing the remainder between the federal and affected state governments;

WHEREAS this policy contradicts the position of the authorizing committees and means a loss of over $38 million to the western states in this fiscal year;

WHEREAS in previous years there have been proposals that an even larger share of the costs be deducted from both mineral and timber revenues before dividing them between the federal government and the state or counties; and

WHEREAS although the return from state audits of federal mineral royalties from oil, gas, coal, and geothermal leases has far exceeded the costs, contracts for states to audit coal and geothermal leases were abruptly canceled without an adequate explanation from the Department of the Interior:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, express opposition to any proposal to deduct administrative and operating costs from gross receipts for federal minerals, national forests, and other congressionally authorized state and county shared receipts.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the president of the United States, the director of the Office of Management and Budget, the Secretary of the Interior, the Secretary of Agriculture, the chairman and ranking minority members of both the authorizing and appropriations committees of the United States Congress, and Utah's congressional delegation.

RESOLUTION URGING TAX EQUITY FOR NONCOMMUNITY PROPERTY STATES

H. J. R. NO. 5
Passed February 8, 1993
Effective February 8, 1993

By Fred R. Hunsaker

A JOINT RESOLUTION OF THE LEGISLATURE URGING THE UNITED STATES CONGRESS TO AMEND THE INTERNAL REVENUE CODE TO ENSURE TAX EQUITY IN THE DETERMINATION OF THE TAX BASIS ON THE PROPERTY OF DECEDENTS REGARDLESS OF WHETHER THE STATE IS A COMMUNITY PROPERTY OR COMMON LAW JURISDICTION.

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

WHEREAS Section 1014(b)(6) of the Internal Revenue Code provides a tax benefit for citizens of community property states that common law states do not receive;

WHEREAS in community property states, the tax basis on property received from a decedent is determined by applying a stepped-up basis to the entire community interest;

WHEREAS in common law states, the tax basis is determined by applying the stepped-up basis only to the portion of the property actually received;

WHEREAS this inequity between community property and common law states can be removed by amending Section 1014(b)(6) to extend the tax benefit currently enjoyed by community property states to common law states; and

WHEREAS any tax benefit as significant and basic as that derived from the treatment of the property of decedents should be equally applied to all Americans regardless of where they live:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge the United States Congress to amend Section 1014(b)(6) of the Internal Revenue Code to provide that the current determination of tax basis on the property of decedents that is applied in community property states be extended to common law states to ensure tax equity for all Americans.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the majority and minority leadership of both houses of the United States Congress and Utah's congressional delegation.

JOINT RULES RESOLUTION - PROCEDURAL CHANGES

H. J. R. NO. 7
Passed January 21, 1993
Effective January 21, 1993

By Michael G. Waddoups
Jeff Alexander
Stephen M. Bodily
Afton B. Bradshaw
R. Lee Ellertson
R. Mont Evans
Christine R. Fox
Kevin S. Garn
Raymond W. Short
James F. Yardley
Gene Davis
Haynes R. Fuller
David M. Jones
Kurt E. Oscarson
Allan C. Rushton

A JOINT RESOLUTION OF THE LEGISLATURE REVISING JOINT RULES; PROVIDING FOR PREPARATION OF AMENDMENTS AND SUBSTITUTES; PROVIDING FOR AMENDED FISCAL NOTES; CLARIFYING FISCAL NOTE PROCESS; REFINING BILL REQUEST PRACTICE; CHANGING DEADLINE FOR BILL REQUESTS; CLARIFYING CONFERENCE COMMITTEE PROCEDURE AND THE CREATION OF SUBCOMMITTEES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS a revision of the Joint Rules of the 50th Legislature of the state of Utah is necessary to clarify bill processes and committee practices:

NOW, THEREFORE, BE IT RESOLVED that the following amendments to Joint Rules of the 50th Legislature be adopted:

Section 1. JR-03.02 is amended to read:

JR-3.02 Joint Appropriations Committee.

(1) The Joint Appropriations Committee of the Legislature consists of all the members of the Legislature.

(2) (a) The members of the Joint Appropriations Committee shall be divided into the following subcommittees:

[(a)] (i) Business, Labor, [and] Agriculture, and Environmental Quality;

[(b)] (ii) Community and Economic Development;

[(c)] (iii) Executive Offices, Courts, Corrections, and Legislature;

[(d)] (iv) General Government and Capital Facilities;

[(e)] (v) Higher Education;

[(f)] (vi) Natural Resources and Energy;

[(g)] (vii) Public Education;

[(h)] (viii) Human Services and Health; and

[(i)] (ix) Transportation and Public Safety.

(b) The President of the Senate and Speaker of the House shall appoint their respective members to each subcommittee.

(3) (a) A majority of any committee or subcommittee constitutes a quorum for the transaction of business. If a member of a committee fails, without giving prior notice of the reason for his absence, to attend two consecutive meetings of the committee or subcommittee of which he is a member, his membership in the committee or subcommittee may not be counted in determining a quorum in any subsequent meeting that the committee member misses.

(b) In determining a committee or subcommittee quorum, a majority is at least 50% in one house and more than 50% in the other.

(c) In all decisions of the subcommittees, a majority vote will prevail. A majority vote is at least 50% of the members of one house and more than 50% in the other house in attendance.

(4) (a) There shall be an Appropriations Executive Committee consisting of 18 members composed of:

(i) the majority leadership of the Senate (four members) and the House (four members)[, and];

(ii) the minority leadership of the Senate (three members) and the House (three members)[;];

(iii) the chairman of the Senate and the House Appropriations Committee[;]; and

(iv) one member from the minority party of each house as appointed by the minority leader of that house.

(b) In all decisions of the Appropriations Executive Committee, a majority vote prevails. When a division is requested, that vote must include at least 50% of the members of one house and more than 50% of the members of the other house in attendance.

(5) With the approval of the Appropriations Executive Committee, time schedules for subcommittee meetings will be determined so that no conflict exists with the annual general sessions or standing committee meetings of the Legislature. No appropriations subcommittees shall meet while the Senate or House is in session without special leave from the Speaker of the House and the President of the Senate.

(6) It is the duty of the appropriations chairman of each house to receive the reports of the subcommittees and to forward the reports to the Appropriations Executive Committee. The Appropriations Executive Committee shall combine the reports into a total appropriations bill.

(7) All proposed items of expenditure to be included in the final appropriations bill, including appropriations for the Legislature and its committees and staff, shall be submitted to one of the subcommittees named in this rule for consideration and recommendation.

(8) After receiving and reviewing subcommittee reports, the Appropriations Executive Committee shall refer the report back to an appropriations subcommittee with any guidelines the Appropriations Executive Committee considers necessary to assist the subcommittee in producing a balanced budget. The subcommittee shall meet to review the new guidelines and report the adjustments to the chairmen of the Appropriations Executive Committee as soon as possible.

(9) After receiving the reports, the appropriations chairmen will report them to the Appropriations Executive Committee. That committee shall make any further adjustments necessary to balance the budget and complete the final appropriations bill.

Section 2. JR-04.22 is amended to read:

JR-4.22 Copies and Distribution of Bills.

(1) A member desiring to introduce a bill shall file a Request for Legislation with the [Chief Clerk of the House or the Secretary of the Senate, or their designees, three typewritten or printed copies of the bill which must be signed by at least] Office of Legislative Research and General Counsel. The request shall designate the chief sponsor. A bill may have two types of sponsors:

(a) a chief sponsor who is knowledgable about and responsible for providing pertinent information as the bill is processed; and

(b) supporting [sponsors] legislators who wish to [express their support for] cosponsor the bill.

(2) When a member files a [bill, the Chief Clerk of the House or the Secretary of the Senate, or their designee shall immediately furnish one copy of the numbered bill to] Request for Legislation, the Office of Legislative Research and General Counsel[. (3) The Office of Legislative Research and General Counsel] shall review the request and any accompanying bill and, with the approval of the sponsor,

shall [make] prepare the legislation for introduction by making any changes necessary to:

(a) insure that it is in proper legal form;

(b) remove any ambiguities;

(c) avoid constitutional or statutory conflicts;

(d) insure a uniform system of punctuation, capitalization, numbering, and wording;

(e) eliminate duplication and repeal of laws directly or by implication;

(f) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of existing statutes;

(g) eliminate all obsolete and redundant words; and

(h) correct obvious errors and inconsistencies in punctuation, capitalization, numbering, and wording. Legislative General Counsel shall indicate on the first page of the bill [his] the drafting attorney's approval of the bill.

[(4)] (3) The Office of Legislative Research and General Counsel shall reproduce 20 copies of the approved bill and deliver them to the Chief Clerk [of the House] or the Secretary [of the Senate]. The Chief Clerk or the Secretary shall distribute three copies of the approved bill to the Legislative Fiscal Analyst, four copies to the Governor, one copy to the Attorney General, one copy to the State Auditor, one copy to the State Treasurer, one copy to the Lieutenant Governor, and two copies to the State Archives.

[(5)] (4) The Director of the Office of Legislative Research and General Counsel shall note on any bill recommended by an interim committee that the bill is the product of the interim committee. The director shall also [make a] include any retirement committee note on any bill proposing changes in any retirement system or benefits to which the state contributes. The note shall state whether the bill has been reviewed by an interim committee [or by the retirement board] and shall state the findings, if any, of the committee [or the board].

[(6) If a bill is] (5) Any Request for Legislation filed directly with the Office of Legislative Research and General Counsel, [it] with an accompanying bill, shall be reviewed and approved by it within three legislative days. [If the bill is filed with the Secretary of the Senate or the Chief Clerk of the House, the Secretary or Chief Clerk shall send the bill to the Office of Legislative Research and General Counsel. The Office of Legislative Research and General Counsel then has three days from its receipt of the bill to review and approve it. An attorney] A legislative review letter shall be attached to the bill, together with any interim committee note [or retirement board note], and returned to the chairman of the rules committee of the originating house within three legislative days. This three day deadline may be extended if the Director of the Office of Legislative Research and General Counsel [or the Legislative Fiscal Analyst] requests it and states the reasons for the delay.

(6) When the Legislative Fiscal Analyst receives the approved bill, that office has three legislative days to review the bill and provide a fiscal note to the sponsor of the legislation. The fiscal note may be printed 24 hours after the sponsor receives it unless the sponsor receives the fiscal note on a Friday, in which case the 24-hour period does not expire until the following Monday. The sponsor may direct an earlier release of the fiscal note for printing. This three day deadline may be extended if the Legislative Fiscal Analyst requests it and states the reasons for the delay.

(7) The reports of the Legislative Fiscal Analyst and the Office of Legislative Research and General Counsel shall be attached to the original copy of the bill. The report is not an official part of the bill.

Section 3. JR-04.23 is amended to read:

JR-4.23 Amended Fiscal Note or Amended Legislative Review Letter.

(1) If an amendment or a substitute to a bill appears to substantively change the fiscal impact of the bill or the bill's constitutionality, an amended fiscal note or amended [attorney] legislative review letter may be requested by a legislator. This request shall be by a motion in a standing committee or on the floor[;] and shall be approved by a majority vote. This bill shall then be reviewed by the rules committee of the respective house. The rules committee shall refer the matter to the Legislative Fiscal Analyst, Legislative General Counsel, or shall determine that no amended fiscal note or amended [attorney] legislative review letter is necessary and refer the bill back to the standing committee or the floor. Once this determination has been made by the rules committee, no further motion for an amended fiscal note or amended [attorney] legislative review letter is in order unless the bill is subsequently amended or a substitute bill filed. If an amended fiscal note or amended [attorney] legislative review letter is requested by the rules committee, when the amended note or letter is complete, rules committee shall refer the bill back to its originating standing committee or give this bill priority for floor action in preparing the calendar.

(2) The sponsor of a bill may request an amended fiscal note or an amended [attorney] legislative review letter and obtain it without further legislative approval.

Section 4. JR-04.27 is amended to read:

JR-4.27 Prefiling of Bills.

(1) Any legislator may prefile a bill commencing 60 days after each annual general session during any year when no election is pending for that legislator.

(2) An incumbent legislator who is undefeated in his primary election may prefile bills, after the primary election results are final.

(3) A legislator-elect may prefile a bill commencing on November 15 of each even-numbered year.

(4) To prefile a bill, a legislator or legislator-elect shall deliver [either] to the [Secretary of the Senate

~~or the Chief Clerk of the House, or their designees, three copies~~] Office of Legislative Research and General Counsel a copy of the bill in the form required by these rules for introduction during the session. The bill shall be given a number which it shall retain throughout the following annual general session.

(5) If an incumbent legislator is defeated in the general election, that legislator is ineligible to prefile any bills as of that date. Any bills prefiled by [such] the legislator prior to that time shall be withdrawn unless within 30 days after the general election another member of the Legislature assumes sponsorship of that bill.

(6) If, for any reason, the sponsor of a prefiled bill is unavailable to serve in the next annual general session, the bill shall be withdrawn unless within 30 days another member of the Legislature assumes sponsorship of that bill.

Section 5. JR-04.31 is amended to read:

JR-4.31 Report of Rules Committee; Reference to Standing or Interim Committee.

(1) During an annual general or special session, a rules committee report may contain matters which, in the opinion of the committee, should be called to the attention of the sponsor of the bill. When the report of the rules committee has been read, the presiding officer shall refer the bill to a standing committee.

(2) A rules committee may only amend or substitute a bill which originates in its house and has the sponsor's written request to amend or substitute the bill.

(3) During the interim, a rules committee report may contain only the assignment of legislation to an interim committee.

Section 6. JR-04.34 is amended to read:

JR-4.34 Bill Transmitted to Other House.

Each bill which passes third reading shall be certified by the Secretary or Chief Clerk and sent to the other house. The date [~~and time~~] of transmission shall be entered on the records of the Secretary [~~of the Senate~~] or Chief Clerk. Any bill which has passed one house with amendments shall be retyped or reprinted in such type and on the color paper determined by each house before being transmitted to the other house.

Section 7. JR-04.37 is amended to read:

JR-4.37 No Request for Legislation May be Made Without the Approval of the Rules Committee After the Eighteenth Day.

No request for legislation may be made in either house after the [20th] 18th day of the annual general session without the approving vote of a majority of the House Rules Committee, if the bill is to be introduced in the House, or a majority of the Senate Rules Committee, if the bill is to be introduced in the Senate. The decision of either rules committee may be overturned with a motion approved by the House or Senate where the bill is to be introduced.

Section 8. JR-04.39 is enacted to read:

JR-04.39 Distribution of Resolutions.

If either the House or the Senate, or both, enact a resolution urging United States House of Representatives, Senate, or congressional action, the resolution may only be sent to:

(1) the Utah congressional delegation;

(2) the Speaker of the United States House of Representatives;

(3) the Vice President of the United States as President of the United States Senate; and

(4) at the request of the legislative sponsor, any member of the appropriate U.S. House or U.S. Senate committee or subcommittee.

Section 9. JR-05.01 is amended to read:

JR-5.01 Secretary and Chief Clerk to Keep Records of Action.

(1) The Secretary [~~of the Senate~~] and the Chief Clerk [~~of the House of Representatives~~] or their designees shall [~~keep a register in which they shall~~] record every action taken by the Senate and House of Representatives on every bill jacket.

(2) The journals of each house shall be continuous during the legislative session, with pages numbered in consecutive order.

Section 10. JR-05.02 is amended to read:

JR-5.02 Action on Bills.

The Secretary [~~of the Senate~~] and Chief Clerk [~~of the House~~] or their designees shall [~~endorse on every bill a statement of~~] note every action taken on every bill by the Senate and House of Representatives. Senate amendments shall be inserted in the bill on goldenrod paper after the third reading and the House amendments on lilac paper after the third reading.

Section 11. JR-07.02 is amended to read:

JR-7.02 Disagreement; Conference Committee.

(1) If the Senate refuses to concur in the House amendments [~~(if it is~~] to a Senate bill[~~), or the House refuses to concur in the Senate amendments (if it is a House bill)~~], the Secretary [~~or the Chief Clerk~~] shall notify the [~~house making the amendments~~] House of the refusal[~~;~~] and ask [~~that it~~] the House to recede from its amendments. If [it] the House refuses to recede, the [~~presiding officer~~] Speaker shall appoint a conference committee of three. No more than two members of the conference committee may be members of the majority party. If the [~~presiding officer in the house that refuses to recede~~ from its amendments] Speaker does not immediately appoint a conference committee, the [~~presiding officer in the other house~~] President may appoint a confer-

ence committee. In either event, the Secretary or Chief Clerk shall immediately notify the other house of the action taken[;] and request the appointment of a like committee. A conference committee of three shall then be appointed by the presiding officer of the other house.

(2) If the House refuses to concur in the Senate amendments to a House bill, the Chief Clerk shall notify the Senate of the refusal and ask the Senate to recede from its amendments. If the Senate refuses to recede, the President shall appoint a conference committee of three. No more than two members of the conference committee may be members of the majority party. If the President does not immediately appoint a conference committee, the Speaker may appoint a conference committee. In either event, the Secretary or Chief Clerk shall immediately notify the other house of the action taken and request the appointment of a like committee. A conference committee of three shall then be appointed by the presiding officer of the other house.

Section 12. JR-07.05 is amended to read:

JR-7.05 Presentation of Conference Report.

[~~The conferees of the Senate if~~] If it is a House bill [~~or of the House if it is a Senate bill~~], the conferees of the Senate shall present the report of the committee [~~to their house~~] first to the Senate. If it is a Senate bill, the conferees of the House shall present the report of the committee first to the House. After adopting the conference committee report, the bill shall be put at the top of the third reading calendar in that house for its consideration. When that house has acted on the bill, it shall transmit the bill and the report to the other house, with a message, certifying its action. Every report of a conference committee shall be read in each house, before a vote is taken on the report.

Section 13. JR-08.01 is amended to read:

JR-8.01 Certification.

When a bill has passed both houses, the house of its origin shall certify its final passage by the endorsement of the Secretary or Chief Clerk. This certification shall show the dates [~~and times~~] at which the bill passed the Senate and House, respectively, the number of votes cast for and against it in each house, and the number of absentees.

Section 14. JR-08.03 is amended to read:

JR-8.03 Enrollment.

(1) After a bill which has passed both houses has been signed by the presiding officers, it shall be enrolled and examined by the Office of Legislative Research and General Counsel and any technical errors corrected. The statutory authorization of Legislative General Counsel to correct technical errors includes:

(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

(b) eliminating duplication and repealing laws directly or by implication, including renumbering when necessary;

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of existing statutes;

(d) eliminating all obsolete and redundant words; and

(e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, and wording.

(2) The enrolled bill shall then be certified by the Secretary or Chief Clerk.

(3) After a bill or resolution has passed both houses and has been certified, endorsed, and enrolled, three copies of the enrolled bill shall be distributed as follows: one shall be filed with the Secretary or Chief Clerk, one shall be given to the chief sponsor of the bill, and one shall be given to the [~~Lieutenant Governor~~] legislative bill room. The Secretary [~~of the Senate~~] or Chief Clerk [~~of the House~~] may distribute other copies of the enrolled bills upon request.

(4) Any bill which has passed both houses and has not been enrolled before the Legislature adjourns, shall be enrolled by the Office of Legislative Research and General Counsel after adjournment and shall be examined by the Secretary or Chief Clerk of the house where it originated. [~~The Secretary or Chief Clerk, with the approval of the presiding officer, shall correct any errors and certify the enrolled bill to the Lieutenant Governor.~~]

(5) Legislative General Counsel may correct technical errors in the code in finalizing the database for publication.

Section 15. JR-08.04 is amended to read:

JR-8.04 Sent to Governor.

After a bill has been signed by the presiding officers of both houses, it shall be enrolled without delay. The enrolled and certified bill[~~, together with a written message,~~] shall be sent immediately by the certifying Secretary or Chief Clerk to the Governor for his approval.

Section 16. JR-12.01 is amended to read:

JR-12.01 Mailing Lists.

(1) Both houses shall cooperate in establishing a joint mailing list. All persons, firms, or corporations, who regularly receive copies of the bills and journals of the Legislature or who wish to be put on the mailing list for these materials, shall pay [a ~~sum~~] an amount as determined by the President of the Senate and the Speaker of the House for such service for each legislative session. This rule does not apply to the following parties which [~~request copies~~] may each have one free copy of bills and journals:

[~~(1) members and officers of the Legislature;~~]

[~~(2)~~] (a) schools;

[(3)] (b) public libraries;

[(4)] (c) political subdivisions;

[(5)] (d) state agencies;

[(6)] (e) news dispensing agencies such as newspapers, radio stations, and television stations; or

[(7)] (f) the chairman of state and county political parties.

(2) All [sums] monies received for this service shall be promptly deposited with the State Treasurer, credited to the Office of Legislative Printing.

(3) Legislators may have additional copies of bills without charge, upon request.

Section 17. JR-13.01 is amended to read:

JR-13.01 Annual General Sessions.

Annual general sessions of the Legislature shall be held at the State Capitol in Salt Lake City beginning on the [second] third Monday in January. An annual general session may not exceed 45 calendar days, except in cases of impeachment. Utah Const. Art. VI, Sec. 2.

Section 18. JR-13.06 is amended to read:

JR-13.06 Compensation.

The Legislature shall provide by law for the Governor's appointment of a Citizen's Salary Commission to make recommendations to the Legislature concerning the salaries of the members of the Legislature. The Legislature shall by law accept, reject, or lower the salary recommended by the commission, but may not increase the recommendations. The Legislature shall also provide by law for the expenses of its members. Legislators shall receive compensation of [$65] $85 per day and expenses and mileage as provided by Joint Rule. Utah Const. Art. VI, Sec. 9 and Utah Code Ann. Sec. 36-2-2 [(1953)] (1992).

Section 19. IR-01.02 is amended to read:

IR-1.02 Creation and Organization of Subcommittees.

(1) [Subcommittees may be established on motion or by resolution, approved by] On the recommendation of a majority vote of the interim committee members, and upon the approving vote of the Legislative Management Committee, a committee may direct the creation of a subcommittee by motion, designating the object of the subcommittee. The chairmen shall appoint to the subcommittee as legislative members [of] only legislators on the interim committee [to serve on] which created the subcommittee. A subcommittee of an interim committee shall be comprised of at least four legislators. The chairman of a subcommittee shall be a legislator. No interim committee shall have more than two subcommittees actively engaged in study at any time without the approval of the Legislative Management Committee. An interim committee may not create a subcommittee unless the per diem and expenses of the subcommittee members can be adequately covered within the budget of the interim committee.

(2) Unless approved by Legislative Management Committee, a task force, commission, or committee may not create a subcommittee unless:

(a) the legislation creating the task force, commission, or committee authorizes the creation of a subcommittee; and

(b) the per diem and expenses of the subcommittee members can be adequately covered within the task force, commission, or committee budget.

Section 20. IR-02.02 is amended to read:

IR-2.02 Committee Quorum.

A majority of any committee or subcommittee constitutes a quorum for the transaction of business. If a member of the committee fails[, without giving notice of the reason for the absence,] to attend two consecutive meetings of [the] a committee or subcommittee [of which he is a member, his], that legislator's membership in the committee or subcommittee [shall not be] is not counted in determining a quorum [at any future meeting during that current calendar year that the committee member misses], except for meetings the legislator actually attends.

Section 21. Effective Date.

This act takes effect upon approval by a constitutional two-thirds vote of all the members of the Senate and House of Representatives.

RESOLUTION URGING DCED TO ASSIST YWCA

H. J. R. NO. 9
Passed March 3, 1993
Effective March 3, 1993

By R. Mont Evans

A JOINT RESOLUTION OF THE LEGISLATURE ENCOURAGING THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO PROVIDE $10,000 TOWARD THE CONSTRUCTION OF A $190,000 ELEVATOR FOR THE YWCA OF SALT LAKE CITY'S BATTERED WOMEN'S FACILITY.

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

WHEREAS the YWCA of Salt Lake City has offered services statewide for women and their families since 1906;

WHEREAS the YWCA operates the largest Battered Women's Shelter in the state which serves women and children throughout the state who are fleeing domestic violence;

WHEREAS women and children seeking shelter at the YWCA are homeless and without immediate access to services;

WHEREAS there is no handicapped accessibility to the Battered Women's Shelter for women whose injuries are so severe that they cannot climb stairs;

WHEREAS the YWCA has already secured $153,000 in funds, including $33,000 from Salt Lake City and $35,000 from Salt Lake County, to construct an elevator at the approximate cost of $190,000;

WHEREAS the Department of Community and Economic Development has statutory responsibility for community and economic development within the state; and

WHEREAS the Battered Women's Shelter is a significant community responsibility that the Department of Community and Economic Development could assist in developing:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourage the Department of Community and Economic Development to provide $10,000 from grants or other funds and not from the General Fund, to the YWCA of Salt Lake City to assist in the construction of an elevator at its Battered Women's Shelter.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Joseph A. Jenkins, Director of the Department of Community and Economic Development, and to Jane H. Edwards, Executive Director of the YWCA of Salt Lake City.

JOINT RESOLUTION - COMPENSATION OF IN-SESSION EMPLOYEES

H. J. R. NO. 11
Passed January 22, 1993
Effective January 22, 1993

By J. Brent Haymond

A JOINT RESOLUTION OF THE LEGISLATURE FIXING THE COMPENSATION FOR LEGISLATIVE IN-SESSION EMPLOYEES; AND PROVIDING RETROSPECTIVE OPERATION.

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

WHEREAS the Legislature acting under the authority of Section 36-2-2, Utah Code Annotated 1992, is required to fix the compensation of its in-session employees by joint resolution:

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah that the compensation of legislative in-session employees for actual hours worked be fixed as follows:

Employees working for the Legislature for the first time shall be paid under the "Step 1" scale. Employees working a second session for the Legislature may be paid under the "Step 2" scale. Employees working three or more sessions for the Legislature may be paid under the "Step 3" scale.

Senate employees are designated with an "S". House of Representative employees are designated with an "H".

	Step 1	Step 2	Step 3
Leadership Secretary (H-S)	7.96	8.20	8.44
Minority Secretary (H-S)	7.96	8.20	8.44
Computer Clerk (H-S)	7.14	7.35	7.57
Docket Clerk (H-S)	7.14	7.35	7.57
Page Supervisor (H-S)	6.95	7.16	7.37
Sergeant-at-Arms (H-S)	6.95	7.16	7.37
Secretarial Supervisor (H-S)	8.25	8.50	8.75
Reading and Amending Clerk (H)	7.14	7.35	7.57
Assistant Page Supervisor (H)	6.76	6.96	7.17
Assistant Sergeant-at-Arms (H-S)	6.76	6.96	7.17
Assistant Docket Clerk (H)	6.76	6.96	7.17
Receptionist and Legislative Aide (S)	6.40	6.59	6.79
Bill Status and Calendar Clerk (S)	7.14	7.35	7.57
Bill Status Clerk (H)	7.14	7.35	7.57
Committee Secretaries (H-S)	7.96	8.20	8.44
Secretary to Third House (H)	7.96	8.20	8.44
Public Information Officer (H-S)	6.40	6.59	6.79
Calendar Clerk (H)	6.06	6.24	6.43
Legislative Aide (H-S)	6.40	6.59	6.79
Legislative Tour Guide (H-S)	6.06	6.24	6.43
Pages (H-S)	6.23	6.42	6.61
Public Address Operator (H-S)	6.06	6.24	6.43
Public Information Officer Assistant (H)	6.25	6.44	6.63
Security (H-S)	6.23	6.42	6.61
Telephone Operators (H-S)	6.00	6.18	6.37
Custodian (H-S)	5.44	5.60	5.77
Hostess & Aide to Third House (H-S)	5.74	5.91	6.09
Supply Clerks (H)	5.74	5.91	6.09

The above schedule of compensation has retrospective operation to January 18, 1993.

RESOLUTION URGING ESTABLISHMENT OF MEDICAL CARE SAVINGS ACCOUNTS

H. J. R. NO. 22
Passed February 26, 1993
Effective February 26, 1993

By Evan L. Olsen

A JOINT RESOLUTION OF THE LEGISLATURE URGING THE UNITED STATES CONGRESS TO CHANGE FEDERAL TAX LAW TO PERMIT THE ESTABLISHMENT OF A MEDICAL CARE SAVINGS ACCOUNT PROGRAM AS A COST-EFFECTIVE METHOD OF PROVIDING AFFORDABLE HEALTH CARE FOR ALL AMERICANS; AND RECOMMENDING THAT BUSINESSES AND INDIVIDUALS STUDY SUCH PROGRAMS.

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

WHEREAS health care costs in the United States are quickly spiraling out of control;

WHEREAS the solutions to this crisis currently under the scrutiny of the United States Congress consist basically of private or market-based reforms, mandated employer coverage, and government-sponsored national health insurance;

WHEREAS a market-based solution the United States Congress should consider is a Medical Care Savings Account program based on the idea that one of the main reasons for the high cost of health insurance is the high cost of processing small claims;

WHEREAS under this program participating employers provide an amount which is deposited into a Medical Care Savings Account for each employee to

pay for routine medical bills each year and buys a policy providing 100% catastrophic coverage for each employee and their family;

WHEREAS providing both the set amount for routine care and purchasing catastrophic coverage may be more cost effective for the employer;

WHEREAS if employees lose or change jobs they retain the unused balance deposited into the medical care savings account for that year;

WHEREAS at the end of the year any unused portion of the account is retained by the employee and can be spent subject to the required income taxes or kept and invested like an IRA;

WHEREAS since no new taxes are needed to pay for the establishment of the Medical Care Savings Account program, businesses and individuals may benefit greatly by establishing such programs; and

WHEREAS the program may be an economically sound proposal to overhaul our crumbling health care cost system:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge the United States Congress to change federal tax law to allow the establishment of Medical Care Savings Account programs throughout the United States as an efficient and effective method of resolving the nation's health care cost crisis.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, President of the United States Senate, the Speaker of the House of Representatives, and the members of Utah's congressional delegation.

MASTER STUDY RESOLUTION

H. J. R. NO. 35
Passed March 3, 1993
Effective March 3, 1993

By Martin R. Stephens

A JOINT RESOLUTION OF THE LEGISLATURE DIRECTING THE LEGISLATIVE MANAGEMENT COMMITTEE TO ASSIGN TO THE APPROPRIATE INTERIM COMMITTEE ITEMS OF STUDY; AND REQUESTING A REPORT TO THE 50TH LEGISLATURE IN THE 1994 GENERAL SESSION.

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

WHEREAS the Legislative Management Committee is created by law as a permanent committee to provide management direction for the interim study of the Legislature; and

WHEREAS the 50th Legislature has determined that certain legislative problems require additional investigation and study:

NOW, THEREFORE, BE IT RESOLVED that the 50th Legislature of the state of Utah direct the Legislative Management Committee to assign to the appropriate interim committee the duty to study and make recommendations for legislative action they consider necessary to the 50th Legislature in the 1994 General Session, or earlier if indicated, from the following items of study.

BE IT FURTHER RESOLVED that the Legislative Management Committee, in making study assignments from this list and in approving study requests for individual committees, give due regard to the available time of legislators and the budget and capacity of staff to respond adequately to the number and complexity of the assignments given.

1. Budget and Fiscal Reform – to study reforms in the budget and fiscal analysis process.

2. Lease Oversight – to study the expansion of the lease oversight responsibilities of the Division of Facilities Construction and Management.

3. Local Government Fiscal Analysis – to study analytical needs for local government fiscal information and the development, maintenance, and access to a database providing this information.

4. Salaries – to study the salaries of school teachers, private industry, other state employees, and federal employees.

5. Setting Salaries of Legislators – to study the process of setting legislator salary levels. (SB 150)

6. Special Revenues Fund – to study procedures related to the Special Revenue Fund. (HB 118)

7. Travel Fee Equity Between Rural and Urban Schools – to study whether rural schools should receive more student travel money because they must travel a greater distance to athletic and other events than their urban counterparts.

8. Zero Based Budget System – to study and review all departments according to a zero based budget plan.

9. Advertising Liquor – to study whether to amend restrictions on advertising liquor.

10. Antidiscrimination Act – to study revisions to the Antidiscrimination Act. (Sub HB 228)

11. Antidiscrimination Advisory Council – to study the establishment of an advisory council for the Utah Antidiscrimination Division.

12. Auto Insurance Spot Checking – to study Los Angeles' approach to spot checking auto insurance.

13. Bottle and Can Deposits – to study issues related to bottle and can deposits.

14. Contractor Equipment Indentification – to study whether to require construction trade licensees to display their license numbers on vehicles, heavy equipment, and business equipment. (HB 423)

15. To study the licensure of mental health care providers in the state.

16. Credit Reporting – to study current state credit reporting laws.

17. Department of Commerce Reorganization – to study the reorganization and consolidation of Department of Commerce services and divisions.

18. Domestic Animal Refuges – to study potential provisions regulating private kennels, catteries, and animal refuges.

19. Employment Discrimination – to study discrimination in employment of people with disabilities. (Sub HB 228)

20. Employment Security Amendments – to study modifications to the Employment Security Act.

21. Family Leave – to study whether to prohibit employers from discriminating against employees for taking emergency family leave. (Sub SB 81)

22. Financial Institutions Code – to study revisions to the Financial Institutions Code.

23. Franchise Law – to study whether Utah should have a "right of first refusal" in its franchise laws.

24. Home Inspectors – to study the licensure of home inspectors.

25. Impact of Rules on Small Business – to study the economic impact of state executive branch rules on small businesses. (SB 269)

26. Independent Contractor Definition – to study the definition of "independent contractor" for purposes of workers' compensation. (HB 257)

27. Industrial Assistance Fund – to study and review the Industrial Assistance Fund.

28. Information Data Banks – to study provisions designed to regulate the dissemination of information collected on citizens and shared among information data banks.

29. Insurance Department Revisions – to study recommendations from the Department of Insurance for changes to the insurance code.

30. Insurance Exclusions – to study household exclusion in auto insurance.

31. Insurance Fraud – to study and define the elements of insurance fraud.

32. Insurance Investment Amendments – to study whether to amend requirements under which an insurer's investment securities may be held.

33. License Requirements by Rule – to study the appropriateness of setting continuing education, work experience, and other professional licensure requirements by administrative rule.

34. Licensing of Asbestos Workers – to study whether asbestos workers should be licensed by the state.

35. Licensing of Painters – to study whether painters should be licensed by the state.

36. Licensing of Professions – to study whether to reduce the number of professions licensed by the Division of Occupational and Professional Licensing.

37. Limited Liability Company – to study whether to add "limited liability company" to laws dealing with partnerships and corporations where applicable.

38. Long Term Care Insurance – to study asset protection as an incentive for individuals to buy long term care insurance.

39. Low Income Housing – to study issues related to low income housing.

40. Male/Female Pay Inequity – to study how to increase pay equity for female workers. (HCR 4, HB 296)

41. Mental Health Care Licensure – to study a consistent, industry-wide approach to mental health care licensure.

42. Minors Access to Tobacco – to study whether to prohibit the sale of tobacco products by any self-service means. (SB 399)

43. Night Club Hours – to study the hours of operation of night clubs.

44. OSHA Inspectors on Construction Projects – to study the possible use of local retired contractors to conduct occupational safety and health inspections on construction projects.

45. Occupational and Professional Licensing Boards – to study the composition, duties, and powers of occupational and professional licensing boards.

46. Penalties for Bad Checks – to study whether to provide civil liability for issuers of bad checks. (HB 420)

47. Plumber Installation into Culinary and Wastewater Systems – to study whether to require that water heaters and other devices that connect to culinary or wastewater systems be installed only by licensed plumbers. (HB 250)

48. Professional Licensing – to study whether to require pro bono service for M.D.'s after graduation.

49. Proof of Assertions – to study whether to require insurance companies to prove "reasonable and customary" fee assertions.

50. Registration of Heavy Equipment – to study the registration of heavy construction equipment coming into the state temporarily for use at a Utah construction site.

51. Regulation of Hypnotists – to study the prevention of unqualified persons from practicing psychology, medicine, or dentistry by hypnosis; the improper use of the terms "doctor," "therapist," or "hypnotherapist;" and the hypnosis of minors.

52. Rental Rate Increases – to study amending landlord-tenant law to require justification for certain rent increases affecting existing tenants. (SB 271)

53. Rental and Lease Relations Act – to study the legislation dealing with rights and responsibilities under a rental agreement.

54. Sales Commissions – to study the regulation of sales commissions.

55. Self-insured Workers' Compensation Benefits – to study whether to include collectively bargained trust funds as an eligible group to provide self-insured workers' compensation benefits. (HB 344)

56. State Securities Law Modifications – to study changes to state securities regulation related to federal "Regulation D" allowing the offering of certain securities without registration.

57. Timely Reimbursement – to study whether to require insurers either to reimburse in a timely fashion or pay interest and penalties.

58. Tree and Shrub Services – to study rules for ornamental tree and shrub services.

59. Uniform Partnership Act – to study and review the 1992 Uniform Partnership Act as prepared by the National Conference of Commissioners on Uniform State Laws.

60. Volunteer Liability – to study liability protection for volunteers. (HB 427)

61. Workers' Compensation – to study the nondischargeability of workers' compensation in bankruptcy.

62. Workers' Compensation Rates – to study the nature of workers' compensation rate increases.

63. Division of Business and Economic Development Investments – to study the return on investment of programs within the Division of Business and Economic Development.

64. Economic Development Program Funding – to study an appropriate formula for the use of a fixed percentage of annual surplus to go to short and long term "black ink" economic development programs.

65. Economic Development Through Investment – to study the formulation of a public policy of directing financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of Utah's citizens.

66. Effectiveness of Utah's Travel Development Advertising – to study and evaluate the advertising methods, markets, and procedures, their impact on the industry, and review the coordination, if any, with other state advertising efforts.

67. Nonrecourse Revenue Bonds – to study the use of nonrecourse revenue bonds to fund economic development projects.

68. Rural Utah Economic Development – to study an effective way to organize, staff, and fund a major improvement of rural Utah economic development.

69. Tourism Development – to study the barriers to statewide growth and effective management of tourism development and recommendations to remove these barriers.

70. Utah Export Finance Program – to study the creation of a Utah Export Finance Program.

71. Utah Housing Trust Fund Sources – to study the use of investment income or interest on state investment funds to provide an additional source of funding for the Utah Housing Trust Fund. (HB 448)

72. Utah Tourism Coordinating Council – to study the establishment of a Utah Tourism Coordinating Council and ways to expand the tourism industry.

73. Utah Travel Council Funding – to study alternative sources and methods of funding the Utah Travel Council.

74. Adjunct Faculty – to study the use of adjunct faculty as they relate to quality education in the higher education system.

75. Applied Technology Center Credit – to study the transferability of credit earned at the state's applied technology centers as applied to two year associate degrees or four year degrees at the state's public higher education institutions.

76. Area Technology Centers – to study the effectiveness, enrollment, and fund utilization of area technology centers.

77. Assessment Programs – to study assessment programs to screen students in remediation and do the training in secondary rather than in post-secondary institutions.

78. Board of Education Hearing Authority – to study whether to provide the State Board of Education with authority to hold a hearing regarding any offense which allegedly occurred while an individual held a certificate issued by the board, regardless of whether the certificate is still in effect at the time of the hearing. (HB 415)

79. Board of Regents Position Classification – to study whether to require the State Board of Regents, as part of its master planning effort, to adopt rules for the preparation, maintenance, and revision of a uniform position classification plan for nonfaculty positions. (SB 189)

80. Career Counseling – to study career counseling and helping track students into careers based on aptitudes, abilities, and academic performance.

81. Centennial Schools Expansion – to study whether to expand the centennial schools concept with more authority to site-based boards, including parents.

82. Class Size Reduction Appropriations – to study the utilization of funds earmarked for class size reduction in the past.

83. EDNET Programming – to study EDNET programming to see if it is offering courses needed in professions and career training such as LPN rather than general education classes.

84. EDNET System – to study the use of EDNET system in educational programs.

85. Educational Neglect – to study student attendance problems associated with truancy or educational neglect. (HB 76, HB 39)

86. Education needs of Sensory Impaired Students – to study how to provide services to sensory

impaired students to meet their needs while avoiding ADA suits.

87. Extracurricular Activities in the Public Schools – to study the amount of time students in rural schools are out of class due to travel to and from athletic activities.

88. Four Day School Week – to study the effectiveness of those Utah schools on the four day school week schedule.

89. Full-time Matriculation – to study and review ways and means of assisting post-secondary students to matriculate on a full-time basis where they are capable of completing programs.

90. Mandatory Teacher and Parent Conferences – to study whether to require parents to attend a conference with the teacher of a student who fails to achieve a specific level of performance. (SB 266)

91. Master Plan for Vocational Technical Training – to study the feasibility of putting all technical training under one department.

92. Orderly Termination – to study whether to expand the scope of the Orderly Termination Procedures Act to include educators employed by the applied technology centers and the schools for the deaf and the blind. (Sub HB 94)

93. Parental Leave for Crisis Intervention – to study the granting of hourly leave to parents for the purpose of crisis intervention for their children. (HJR 28, HB 29)

94. Position Classification Plan – to study whether to require the State Board of Regents to make rules for the preparation, maintenance, and revision of a uniform position classification plan for nonfaculty positions. (SB 189)

95. Post Secondary Student Incentives – to study incentives for students to complete programs in post secondary institutions within five years.

96. Provisional School Employee Termination – to study and review the possibility of including provisional school employees in the Orderly Termination Procedures Act.

97. Public School Liability – to study an interstate liability compact for public school athletic teams.

98. Research and Teaching – to study and review the balance between university research and undergraduate teaching and determine if recommendations should be made to shift more emphasis to teaching.

99. School Building Inspections – to study a requirement that schools be inspected by a licensed inspector, and that all school districts comply with the state building code. (HB 425)

100. School Building Equalization – to study issues related to school building equalization.

101. School Fee Waiver – to study whether to eliminate the fee waiver on remediation programs.

102. School Fee Waiver Issues – to study various means in which to deal with school fee waiver issues.

103. School Fees for Core Curriculum – to study whether to require that fees may not be charged in secondary schools for classes and programs that are part of the academic core curriculum. (Sub HB 439)

104. Seat Belts on School Buses – to study the feasibility of requiring seat belts on school buses.

105. State College Savings Program – to study the creation of a state college savings program through means of a prepaid tuition program or combined trust fund and prepaid endowment fund tuition plan.

106. Stay in School Incentives – to study ways to put incentives into staying in the classroom.

107. Strategic Plan – to study Utah's strategic plan and how it fits into the national goals and agenda.

108. Student/Teacher Ratio Reduction – to study the possibility of using noncertificated employees as an economical means to reduce student/teacher ratios in overcrowded classrooms.

109. Subject Specific Certification Requirements – to study whether current policies regarding subject specific certification are creating an unnecessary hardship on public schools, especially small rural schools.

110. Teacher Inservice – to study the need to provide teacher inservice or retraining.

111. Third Board of Education – to study the creation of a Third Board of Education that would supervise applied technology and occupational training. (HB 321)

112. Trust Lands – to study the management of Utah's Trust Lands.

113. Underground Cables – to study a requirement that all utility cables around schools be placed underground. (HB 428)

114. Uniform Salary Schedule – to study the Uniform Salary Schedule for teachers and administrators.

115. "Universal Feeding" School Meals Program – to study the integration of school nutrition into the total education process by providing school meals for students without regard for the income of a student's family.

116. University Teacher Preparation Programs – to study and evaluate the effectiveness of university teacher preparation programs.

117. Use of Mineral Lease Appropriations – to study mineral lease appropriations to higher education and their compliance with the intent of the Legislature and federal law.

118. Vocational and Technical Training – to study the coordination of all vocational and technical training under one governance program.

119. Youth at Risk Programs – to study the expansion of the Coordinating Services for Children and Youth at Risk Programs.

120. Access to Public Land – to study how to improve access to public lands that are surrounded by private land.

121. Alternative Fuels – to study alternative fuels for cars – especially natural gas.

122. Big Game Amendments – to study whether to increase the compensation allowed for damage to crops by big game. (HB 109)

123. Big Game Depredation – to study the management of the Division of Wildlife Resources as it relates to big game depredation.

124. CUP Funding – to study CUP funding as well as funding for other water projects.

125. Coal Reclamation Administrative Procedures – to study ways to conform administrative procedures in the Coal Reclamation Act to those in the Administrative Procedures Act.

126. Elk Habitat – to study regulation of the elk winter and spring habitat.

127. Parks and Recreation Powers – to study the law enforcement powers of the Division of Parks and Recreation. (HB 370)

128. Provo Canyon Trail – to study issues related to the Provo Canyon Trail.

129. Spring Bear Hunt – to study the authorization of a spring bear hunt. (HB 58)

130. Sustainable Development – to study policies on sustainable development. (HCR 5)

131. Trust Land and Revenue Management – to study the effectiveness of the Division of State Lands and Forestry in the management of Youth Corrections Trust Lands and Revenues.

132. Use of Private Rangeland – to study the use of private rangeland by elk and other big game.

133. Water Craft Safety – to study the creation of a water craft safety program.

134. Wildlife Damage – to study wildlife damage to farmers and ranchers.

135. Wildlife Habitat License – to study the creation of a wildlife license whose fees would be dedicated to habitat protection, preservation, and management.

136. Wildlife License Fraud – to study fraud and misappropriation of wildlife license sales and purchases.

137. Wildlife Licenses – to study the restructure of wildlife licenses.

138. Adding Hydrocodone Bitartrate – to study the addition of Hydrocodone Bitartrate to schedule II. (HB 379)

139. Alternative Health Care Providers – to study whether to authorize the practice of alternative health care providers in Utah.

140. Audit Implementation – to study how best to implement recommendations of a recent legislative audit regarding radioactive and hazardous wastes. (HB 318)

141. Chlorine Emissions – to study standards for chlorine emissions into the air. (HB 131)

142. Commission on Health Care – to study the creation of a commission on health care to recommend appropriate prices for procedures. (SB 282)

143. Controlled Chemicals and Gases – to study handling and use of controlled chemicals and gases. (HB 401)

144. Delivery of Animals – to study whether making permissive the delivery of animals to institutions would interfere with research and if so, whether this is outweighed by the interests of the county health departments. (SB 286)

145. Environmental Tobacco Smoke – to study the effectiveness of current law and recommendations for legislation. (HB 53)

146. HIV Testing for Public Safety Workers Placed At Risk – to study the appropriateness of providing for court ordered HIV testing for the purpose of informing a public safety or emergency medical services provider who is significantly exposed in the course of his duties. (HB 189)

147. Hazardous Waste Risk Pool – to study the feasibility of providing owners of tanks containing dry cleaning solvents and other hazardous chemicals with financial assistance through a risk pool in the event a major release occurs.

148. Hazardous Waste Fees – to study various fee structures, fee comparisons with western states, and a uniform system for the designation of hazardous wastes.

149. Health Care Cost Review Commission – to study the creation of a cost review commission, similar to the public service commission, that approves or disapproves costs of services at hospitals and similar health care facilities.

150. Health Care Reform – to study issues related to health care reform.

151. Health Services and Costs Commission – to study the possible creation of a Utah Health Services Cost Review Commission.

152. Imported Waste – to study the establishment of an imported waste task force.

153. Infant Care Outreach – to study the creation of a volunteer council to evaluate and recommend effective programs for providing services to parents of infants. (HB 302)

154. Medical Assistance for Minors – to study inclusion of minors in the Utah Medical Assistance Program. (HB 295)

155. Medical Care Savings Accounts – to study the viability of medical care savings accounts as an alternative method of managing health care costs.

156. Operator Certification – to study the certification of wastewater treatment operators.

157. PCBs – to study how best to regulate, assess, and categorize PCBs.

158. Physician Assistants – to study whether to allow qualified chiropractors to practice as physician assistants in specified areas. (SB 254)

159. Rural Medical Services and Hospitals – to study whether to require rural hospitals to maximize the availability and scope of practice of allied health care providers. (SB 252)

160. State Funding for Local Health Departments – to study and examine the need for establishing annual incremental increases in state general health pass-through funds to local health departments.

161. Underground Storage Tank Fund – to study whether to allow tank installers to receive financial assurance as part of the Underground Storage Tank Fund.

162. Underground Storage Tank Issues – to study various aspects of Utah's underground storage tank regulation. (HB 432)

163. Wholesale Pharmaceutical Pricing – to study whether to amend the commerce provision to prohibit unfair pricing of drugs. (HB 125)

164. Woodburning Stoves – to study the feasibility of further restricting the use of wood and coal burning stoves and fireplaces.

165. Adoption Information – to study whether to allow an intermediary to search for adoption information.

166. Assistance Levels – to study whether new residents of Utah should receive the same level of financial assistance as in their prior state of residence.

167. Battered Women's Syndrome – to study "battered women's syndrome" and other domestic violence issues.

168. Child Care References – to study the policies of Human Services' Office of Licensing relative to providing evaluative information about child care.

169. Child Support Compliance for Issuance of License – to study whether to require that child support payments be current for the issuance of licenses. (HB 350)

170. Child Support Provisions in Divorce Decrees – to study whether divorce decrees should contain an order assessing child support collection costs against the obligor. (SB 285)

171. Child Welfare – to study the Department of Human Services child welfare system.

172. Department of Human Services Job Training Programs – to study the coordination of job training offered by the Department of Human Services.

173. Discretionary Trusts – to study the use of discretionary trusts to provide supplemental income to disabled persons without affecting eligibility or the amount of services or support received from government. (SB 244)

174. Divorce/Child Custody Issues – to study issues remaining from the Divorce/Child Custody Task Force including (1) Alimony Awards – to study the theory and practice behind the alimony awards, (2) Child Abduction – to study issues of child abduction, (3) Child Support Noncompliance – to study how to close loopholes enabling noncompliance with child support, (4) Court Commissioner System – to study the effectiveness and efficiency of the court commissioner system for those seeking divorce, (5) Divorce Education and Mediation – to study and monitor divorce education and mediation pilot programs and assess results, (6) Divorce Education – to study and examine whether statewide divorce education is feasible, (7) Divorce Language – to study the language of divorce and determine if current language is derogatory and if so whether improvements are available, (8) Divorce Modifications – to study how to reduce costs of initial divorce and post divorce modifications, (9) Domestic Small Claims Court – to study the option of a domestic small claims court for the enforcement of divorce decrees, (10) Family Courts – to study family courts in other states and determine whether a family court option would be advisable for Utah, (11) Jurisdiction to Enforce Court Orders – to study implications of allowing peace officers jurisdiction to enforce court orders, (12) Material Change of Circumstances – to study the impact of the current "material change of circumstances" test on the best interest of the child, (13) Maternal Presumption – to study the maternal presumption and determine whether it is biasing custody decisions, (14) Mediators – to study the feasibility of court-appointed mediators, (15) Name Transfer – to study and determine if transferring married name to maiden name can be simplified, (16) Pro Se Divorce – to study pro se divorce procedures used in other states, (17) Relocation of Minor Children After Divorce – to study issues associated with the relocation of minor children after divorce, (18) Report Card on Judges – to study the creation of a public report card of judges on all issues, including domestic relations cases, and (19) Sexual Abuse Allegations – to study the procedure of child abuse and child sexual abuse allegations, the impact on divorce proceedings, and codify penalties for false allegations.

175. Domestic Violence Shelter Funding – to study the need to develop guidelines and provide technical assistance to help communities find the financial resources needed to construct domestic violence shelters.

176. False Reporting of Child Abuse – to study the implications of the false reporting of child abuse and ways to prevent it.

177. Family Planning Service for Adults – to study whether requiring county health departments to provide family planning for adults will be a benefit to the state, and whether federal funding would be attracted. (SB 278)

178. Family Planning Instruction – to study changing the statute that requires parental consent in situations using public funds to teach family planning on contraception education to requiring parents to ask for an exemption from the instruction.

179. Health Education and Teen Pregnancy Prevention – to study the expansion of the use of current funds aimed at reducing teen pregnancy in Utah.

180. Home Child Care Inspections – to study the feasibility and desirability of requiring licensing to conduct random and unannounced inspections of home childcare facilities.

181. Incentives for the Disabled – to study the creation of incentives for the disabled population to work.

182. Infant Care Outreach – to study ways to provide help and support particularly to high risk infants. (SB 162)

183. Long Term Care – to study the feasibility of expanding the availability of long term care insurance.

184. Low Income Housing – to study ways the Department of Human Services can provide more low income housing.

185. Medicaid Reform – to study issues related to Medicaid reform.

186. Rebuttable Presumption of Custody – to study the designation of custody of children in cases of separation or divorce. (HB 451)

187. Responsibility for Transferred Indigents – to study whether Utah can hold another state responsible for the costs of an indigent, such as food, shelter, medical expenses, etc., if the surrounding state paid the indigent's bus ticket to come to Utah.

188. Services for Runaway Youth – to study the needs for social services for runaway youth.

189. Uniform Interstate Family Support Act – to study the National Conference of Commissioners on Uniform State Laws "Uniform Interstate Family Support Act."

190. Wellness Advisory Council – to study the need for a Parent and Infant Wellness Outreach Advisory Council. (HB 303)

191. Access to Gang Information – to study whether persons other than law enforcement personnel should have access to information on known gang members.

192. Age of Adult Prosecution – to study the lowering of the age for adult prosecution for violent crimes to 16.

193. Appellate Court Authority – to study whether to provide statutory authority for an appellate court to recall its mandate. (SB 323)

194. Attorney's Fees Award – to study whether to provide an award of attorney's fees to the prevailing party in civil actions.

195. Authorizing Courts to Require Ignition Interlock – to study the feasibility of authorizing courts to require ignition interlock systems as a condition of probation. (SB 131)

196. Auto Collision Penalty – to study and review the criminal penalty and civil liability of individuals convicted of operating a vehicle which collides with another vehicle stopped or traveling cautiously in the same direction because of reduced vision caused by heavy fog, blizzards, or other inclement weather.

197. Bail Bonding – to study bail bond requirements versus personal recognizance release.

198. Bailiff Services and Court Security – to study the contents of the contract with the county sheriff for providing bailiff and security services. (SB 145)

199. Battered Women's Defense – to study legislation to permit use of battered women's syndrome as a defense in violent crimes. (HB 454)

200. Board of Pardons and Parole Powers – to study whether there should be some limits on the power of the Board of Pardons and Parole to extend sentences.

201. Community Property Rights – to study the uniform disposition of community property rights at death. (HB 196)

202. Confinement of Youth – to study the inappropriate confinement of youths in psychiatric institutions without due process.

203. Court Commissioners – to study and evaluate the court commissioner system in the judiciary. (HB 330)

204. Court Consolidation – to study consolidation proposals and issues relating to circuit courts, justice courts, and the powers of magistrates and court commissioners.

205. Court Ordered Restitution – to study the use of debt collection to recover court ordered restitution.

206. Criminal Offenses Against the Elderly – to study the enhancing of penalties for crimes against the elderly.

207. Criminal Solicitation – to study issues related to criminal solicitation. (HB 326)

208. Detention of Minors – to study and evaluate the placement of minors in detention. (HB 452)

209. District Court Proceedings – to study the record of district court proceedings. (HB 129)

210. Dual Sentencing – to study whether to eliminate dual sentencing by courts and the Board of Pardons and Parole.

211. Electronic Monitoring of Inmates – to study the use of electronic devices to monitor inmates under house arrest.

212. Emancipation of Minors – to study the issues and procedures regarding the emancipation of minors. (Sub. SB 50)

213. Garnishment Procedures – to study the amending of rules governing garnishment procedures in order to streamline the process and provide for continuing jurisdiction.

214. Graffiti as Evidence – to study the use of pictures of graffiti as evidence in a court prosecution.

215. Incarceration of Convicted Youth – to study whether to create an option for the court to sentence juveniles certified as adults to complete their sentence in adult correctional facilities upon attaining 18 years of age. (SB 389)

216. Insurance Coverage for Dependent Children – to study requiring insurance coverage for dependent children when a court order exists.

217. Intensive Early Release Parole – to study the implementation of current legislation on intensive early release parole.

218. Judicial Rules Review Committee – to study the establishment of a Judicial Rules Review Committee.

219. Jury Information – to study whether to require that juries in criminal trials be instructed in their rights and responsibilities, including their right to disregard the law in the determination of their judgments.

220. Juvenile Court Jurisdiction – to study the extension of juvenile courts jurisdiction of adjudicated juveniles.

221. Juvenile Detention Overcrowding – to study appropriate ways to address overcrowding of juvenile detention centers.

222. Juvenile Detention Guidelines – to study issues relating to Division of Youth Corrections Guidelines for Juvenile Detention.

223. Juvenile Facilities – to study secure facilities that house juveniles, especially those that bring in out-of-state juveniles.

224. Juvenile Treatment Facilities – to study issues relating to non-governmental juvenile treatment facilities.

225. Medically Assisted Suicide – to study and review Utah law on medically assisted suicides to see if modifications are needed.

226. Mental Health Services for Inmates – to study whether to allow prison inmates to pay for mental health services rather than wait for state-provided therapy. (HB 301)

227. Out-of-state Offenders – to study notification of local law enforcement when an out-of-state offender is placed in a community. (HB 382)

228. Parole Reduction – to study whether to reduce the standard parole period from 3 years to 2 years.

229. Payment of Attorney's Fees – to study whether to require that if a defendant is acquitted the prosecuting entity must pay his court costs and attorney's fees.

230. Prison Therapists – to study the use of therapists for prison inmates. (HB 301)

231. Public Nudity – to study restrictions on public nudity.

232. Recovery of Damages by Plaintiff – to study provisions allowing the plaintiff in a tort action to recover damages from a defendant who is principally liable. (HB 311)

233. Religious Liberty Provisions – to study modifications to the religious liberty provisions of the Utah Constitution. (SJR 8)

234. Rule Against Perpetuities – to study replacing the common law rule against perpetuities with a statutory rule that allows termination of unvested future interests while preventing their failure merely because instruments are improperly drafted. (HB 268, 1992 Session)

235. Sentences for Sex Offenders – to study the minimum mandatory sentences and other sentencing guidelines for sex offenders.

236. Sentencing Options – to study the benefits of determinate versus indeterminate sentencing.

237. Sex Offender Parole – to study whether to eliminate the 10 year parole for sex offenders and revert to normal parole terms.

238. Sex Offender Program – to study the effectiveness of the program of treating sex crime offenders at the Utah State Prison.

239. Sexual Harassment – to study what constitutes sexual harassment, the nature of employer liability, and the procedures for hearing a charge of sexual harassment.

240. Statutory Rape – to study and review the minimum age at which statutory rape occurs.

241. Stolen Weapons Used in Crimes – to study whether to enhance penalties on crimes committed with a stolen weapon.

242. Utah Correctional Industries – to study Utah Correctional Industries and associated problems in the private sector.

243. Utah Pretrial Release Program – to study Utah's Pretrial Release Program and potential improvements.

244. Utah's Exclusionary Rules – to study Utah's search and seizure provisions.

245. Victim Restitution – to study improvements in the collection of victim and court-ordered restitution owed the state.

246. Victims Rights – to study whether to provide rights to victims of crime to be heard, informed, and present at criminal justice proceedings.

247. Youth Corrections Placement – to study how to best place a juvenile in detention. (HB 452)

248. Youth Corrections and State's Rights – to study issues regarding troubled youth placed in private educational facilities and the state's rights pertaining to those youth.

249. Death Benefits in Divorce Decrees – to study the providing of death benefits in cases of divorce when retirement benefits are recognized in property settlement.

250. Early Retirement – to study early retirement issues. (HB 388)

251. Health Insurance Oversight – to study the oversight of health insurance benefits for state employees.

252. Post–Retirement Restrictions – to study the conditions under which a public employee may be employed after retirement. (HB 192)

253. Public Safety Retirement – to study increasing the cost of living allowance of the public safety retirement systems to make them the same as the noncontributory public employees system. (HB 56)

254. Retirement Programs – to study the feasibility of a consolidated retirement program.

255. Sick Leave Conversion – to study retirement sick leave conversion for higher education nonfaculty. (HB 247)

256. State Retirement System – to study and evaluate the operations and performance of the state retirement system.

257. Veterans Retirement Credit – to study whether to provide retirement credit for military service. (HB 275)

258. Business Tax Credit Limit – to study the removal of the cap on the business tax credit for businesses utilizing renewable energy systems.

259. Corporation Franchise Tax – to study the treatment of foreign sales corporations, foreign dividends, foreign operating companies, and the concerns with international activities.

260. Double Tax Repeal – to study whether to provide an exemption from sales taxes for those items consumed in the repair of personal property. (HB 190)

261. Federal Deductability – to study and revise the income tax system to limit federal deductability.

262. Fire Districts – to study the taxing authority of fire districts.

263. Foster Family Deductions – to study tax deductions for foster families. (HB 365)

264. Gasoline Tax – to study the need for a gasoline tax increase.

265. New Top Bracket – to study and revise the income tax system to create a new top bracket rate for upper incomes.

266. Out–of–State Athletes – to study appropriate taxation of out–of–state athletes.

267. Property Tax Assessment – to study assessment administration and practices.

268. Property Tax Requirements – to study property tax circuit breaker requirements and levels.

269. Property Tax on Farm Equipment – to study the definition of farm equipment as it relates to lease/purchase agreements.

270. Sales Tax Exemption – to study and review Utah's sales tax exemptions.

271. Sales Tax Exemptions for Businesses – to study exemptions for businesses from the sales tax of various equipment purchases, including pollution control equipment.

272. Sales Tax on Farm Equipment – to study a sales tax on farm equipment for lease purchase agreements.

273. Sales and Tax Exemption for Schools and Fairs – to study whether to amend the sales and use tax to exempt admission to county fairs and school sponsored functions. (SB 391)

274. Sales and Use Tax Exemptions on Sales to Groups – to study clarifications on the application of the sales and use tax exemptions for sales made to the state, to religious institutions, and to charitable institutions involving contractors. (HB 148)

275. Small Business Investment Credit – to study the granting of a tax credit for investing in a small business investment company.

276. State and Locally Assessed Property – to study issues relating to state and locally assessed property as it relates to the process and treatment of oil and gas companies.

277. Tax Commission Lien Process – to study the modification of the tax commission process of attaching liens on real and personal property. (HB 403)

278. Taxation of Mineral Rights – to study the taxation of mineral rights that are held apart from the sale of the surface rights for future discovery or development.

279. Utility Franchise Tax Limit – to study whether to limit the amount of utility franchise tax paid by certain utility customers. (proposed amendments to Sub HB 206)

280. Wildlife Tax Exemptions – to study sales tax exemptions for wildlife resources.

281. Annual Reports of the Executive Branch – to study the annual report process to determine whether reports can be streamlined or eliminated.

282. Audit Functions in State Agencies – to study whether to provide standards and procedures for internal audits by state agencies.

283. Board Expansion – to study whether to increase the size of the Privatization Policy Board. (SB 242)

284. Boundary Commission – to study boundary commission amendments. (HB 346)

285. Central Services Amendments – to study approval requests by the Division of Central Services. (HB 345)

286. Contractor Hiring Requirements – to study whether to require that contracts let by municipalities must require contractors to hire local residents. (SB 195)

287. Discharged Employee Rights – to study the rights of discharged municipal employees. (HB 244)

288. Election Code Recodification and Revision – to study and complete the recodification and revision started in 1992.

289. Energy Projects in State Buildings – to study and examine the most cost-effective approach to financing energy projects in state buildings.

290. Fair Compensation of Employees and the Role of Management – to study alternatives to the current use of the classification system.

291. Governmental Immunity – to study governmental immunity protections for students and teachers traveling out of state.

292. Human Rights Commission – to study the establishment of a Human Rights Commission. (HCR 15)

293. Humanities Programming – to study the status of the Utah Humanities Council.

294. Interlocal Agreements – to study the impact on state and local government when a new political subdivision is created and the ability of local governments, which create a special district through the interlocal agreement act, to dissolve the entity when it is no longer needed. (Sub HB 49)

295. Judicial Elections – to study means of making judicial retention elections meaningful and responsive to the electorate by providing needed information as a basis for the public to make their retention decision or by exploring other procedures for conducting retention elections.

296. Land Planning – to study land planning issues.

297. Lien Laws – to study the need for a property owner to be notified when a lien is placed on their property.

298. Mechanics Lien – to study whether to provide for preliminary notice of mechanics' liens to owners. (SB 169)

299. Mosquito Abatement Districts – to study the consolidation of mosquito abatement districts or combining them with county health departments.

300. Municipal References – to study whether to amend the Utah Code to change references to "city" or "municipal governing body" to "municipal executive" or "municipal legislative body."

301. Municipal Water Issues – to study all water issues and policies involving city and county residents.

302. Personnel Management Amendments – to study the changing of exemptions from the Personnel Management Act. (SB 137)

303. Presidential Primary Election – to study the establishment of a presidential primary in Utah. (SB 163)

304. Purchasing Practices – to study the cost savings to be obtained from changing the purchase practices in the Division of Purchasing.

305. Special Districts Powers – to study special districts taxing and enforcement powers.

306. Special Service Districts – to study the efficiency and accountability provided for in existing statutes governing special taxing districts to determine whether certain types of districts should be consolidated with each other, combined with city or county government, or left as they now exist.

307. State Mandates to Local Governments – to study the need for state government to stop imposing mandates on local governments that require local government expenditures. (HJR 4)

308. State Procurement of Consultants – to study state procurement of consultants, clarifying the criteria used to select architects and engineers.

309. State and Local Government Mandates – to study policy issues concerning state imposed mandates on local governments identified in 1992 by the Utah Advisory Council on Intergovernmental Relations.

310. Sunset Act – to study the effectiveness of Utah's Sunset Act.

311. Supervision of Water Suppliers – to study whether water suppliers to unincorporated areas should be under the supervision of the Public Service Commission.

312. Task Force on County Referendums – to study the issue of county referendums. (SB 287)

313. Telecommunications – to study the coordination of all public school, higher education, and government agency telecommunications systems.

314. Unclaimed Property – to study and review current state unclaimed property laws.

315. Unclaimed Property Law – to study current Utah law regarding unclaimed property.

316. Voter Information File – to study the establishment of a centralized voter information file.

317. Access to Utah's Computerized Criminal History Files – to study how to best manage access to Utah's computerized criminal history file and the costs of maintaining it.

318. Alcohol Breath Test Authority – to study whether to adjust the law to give port of entry agents, as well as peace officers, authority to administer alcohol breath tests.

319. Appointment of Transit (Public) District Officials – to study whether to change the method of appointing transit district board members and transit district managers. (SB 177)

320. Branding of Motor Vehicles – to study changing the practice of branding motor vehicles. (SB 112)

321. Confiscating Vehicles Used In Drive-by Shootings – to study the feasibility of confiscating vehicles used in drive-by shootings.

322. Criminal History Record Management – to study improvements to the management of criminal history records.

323. Current Concealed Weapon Permit Law – to study and consider changes to make clear the definitions of both "show cause" and "good character."

324. DUI Statutes – to study Utah's current DUI statutes.

325. Dealer License Plate Privileges – to study current dealer license plate privileges and misuses to ensure fairness to dealers and the taxpaying public.

326. Drivers Licenses for New Teenaged Drivers – to study the reestablishment of a student-driver time period under a learner's permit.

327. Federal Reservists License Plate – to study the authorization of a special group license plate for members of reserve components of the armed forces of the United States.

328. Fire Academy Training – to study how to increase and upgrade the training of Utah firefighters.

329. HIV Testing of Public Safety Officers – to study court ordered HIV testing in order to inform a public safety or emergency medical services provider who is significantly exposed in the course of his duties. (HB 189)

330. High Speed Pursuit Policy – to study the need to set up a special police and citizen task force to write and implement a state-wide policy and procedure concerning high speed pursuits by police officers. (SB 79)

331. Highway Restrictions – to study legislation to prohibit 18 wheelers from traveling in the left lane on the interstate highways.

332. I-15 Corridor "General Development Plan" – to study the general development plan as authorized by the Legislature.

333. Impoundment of Vehicles – to study the Louisiana statute requiring impoundment of vehicles that do not demonstrate proof of insurance.

334. Licensing Teenage Drivers – to study whether to require a custodial parent to sign a driver application for a person younger than 18 under certain circumstances.

335. Movement of Implements of Husbandry – to study whether to allow the temporary movement on a highway of implements of husbandry, including farm tractors while engaged in a farm operation.

336. Off-highway Vehicles – to study the amount of money being paid by off-highway vehicles compared to the amount of taxes and fees paid.

337. Reduced Speed School Zones – to study whether reduced speed school zones should apply to an entire school block or just intersections.

338. Transit Authority Amendments – to study the privatization of services, board membership, and lobbying with tax dollars.

339. Transportation Fees – to study and review fees charged in the issuance of oversize and overweight permits for motor carriers in the state of Utah.

340. UDOT Consolidation – to study and examine UDOT consolidation of districts 1 through 6.

341. Utah Computerized Criminal History File – to improve the completeness and accuracy of Utah's computerized criminal history file.

342. Utility Relocation on State Highways – to study current federal funding levels and additional needs to relocate utilities on state highways.

343. Weapons Laws – to study technical amendments to weapons laws. (HB 292)

344. Appropriations Committee Structure – to study whether to change the legislative appropriations system from the subcommittee and executive appropriations system to a "ways and means" committee model.

345. Bill Limitations – to study bill limitations for each legislator.

346. Committee Review Required of Legislation – to study whether to require a legislative standing committee or the appropriations executive committee review of certain legislation. (HB 132)

347. Fiscal Notes – to study the content of fiscal notes on legislation. (SJR 11, SB 119)

348. Home Business – to study the appropriateness of allowing the Department of Health to regulate the preparation of meals in private homes for home-bound and needy persons.

349. Reciprocal Hazardous Waste Fees – to study state reciprocal waste fees for state-only hazardous waste.

350. Arts Access – to study the role of the Arts Council and the membership on the advisory committee. (HB 408)

351. School District Activity Travel – to study equalization of activity travel for school districts.

352. Federal Facilities Management in Utah – to study the impact of Department of Defense and Department of Energy programs in Utah.

353. HB 387 – to study the effects that a loss of state SSI benefits would have on recipients.

354. HCR 9 – to study uniforms in our public schools.

355. HJR 12 – to study providing excellent education for both young men and young women in our public schools.

356. HB 279 – to study election law commission.

357. UDOT Overtime – to study the changing of the definitions of "work period" to allow more overtime for snow removal. (HB 235)

358. HB 185 – to study public safety and firefighter retirement death benefits.

359. Sub HB 158 – to study recall of elected officials.

360. Impact of Skating Oval on Traffic – to study the impact of the speed skating oval on traffic on 5400 South in the Kearns area of Salt Lake City. (HB 35)

361. Livestock Dealers – to study issues relating to bonding, registration, and related requirements.

362. Special Districts – to study issues related to special district amendments. (HB 252)

363. High Angle Drilling – to study tax incentives to promote high angle drilling for oil and gas.

364. Gender Neutral Language – to study how to promote the use of gender neutral language in the Utah Code.

365. Minimum Wage – to study the state minimum wage as a cost-effective means of increasing the self-sufficiency of Utah single parents and other working families.

366. Entry Level Jobs – to study the relationship of entry level job availability and self-sufficiency programs for single parent families receiving Aid to Families with Dependent Children (AFDC).

367. Earned Income Credit – to study the potential role of a state earned income credit in reducing poverty among working families.

368. Professional Counselors – to study issues related to Professional Counseling Licensing Act. (HB 97)

HOUSE RULES RESOLUTION - PROCESS AMENDMENTS

H. R. NO. 1
Passed January 18, 1993
Effective January 18, 1993

By Michael G. Waddoups
Jeff Alexander
Stephen M. Bodily
Afton B. Bradshaw
R. Lee Ellertson
R. Mont Evans
Christine R. Fox
Kevin S. Garn
Ray Short
James F. Yardley
Gene Davis
Haynes R. Fuller
David M. Jones
Kurt E. Oscarson
Allan C. Rushton

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES REVISING HOUSE RULES; CLARIFYING VOTING REQUIREMENTS IN COMMITTEE; PROVIDING FOR USE OF CITATIONS; NOTING PERSONAL PRIVILEGE; PROVIDING DATES FOR BILL INTRODUCTION; PROVIDING FOR STANDING COMMITTEE REVIEW; PROVIDING FOR PREPARATION OF AMENDMENTS; TIME PERIODS FOR FLOOR DEBATE; DIRECTING A REPORT ON STANDING COMMITTEE ACTION; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it resolved by the House of Representatives of the state of Utah:

WHEREAS a revision of the House Rules of the 50th Legislature of the state of Utah is necessary to authorize certain changes in House practices:

NOW, THEREFORE, BE IT RESOLVED that the following amendments to House Rules of the 50th Legislature be adopted:

Section 1. HR-20.06 is amended to read:

HR-20.06 Duties of the Chief Clerk.

A Chief Clerk of the House shall be appointed by the Speaker or Speaker-elect before each session is convened. The general duties of the Chief Clerk are to:

(1) certify and transmit all bills to the Senate and inform the Senate of all House action;

(2) assist the Minute Clerk in preparation of the House Journal and certify it as an accurate reflection of House action;

(3) correct the spelling of words, erroneous division[,] and hyphenation of words, correct mistakes in numbering sections and their references, capitalize or decapitalize words, change numbers from words to figures or from figures to words, and underscore or remove underscoring in bills without a motion to amend, which technical corrections may be made either before or following final passage of a bill;

(4) (a) supervise all House of Representatives personnel during the session and interim and assign them duties and responsibilities, including keeping a record of the attendance of all employees;

(b) provide that any employee who is absent without the written consent or subsequent approval of the Speaker may not be paid for the day or days of absence;

(5) be the custodian of all official documents;

(6) receive[~~, number, and file all~~] from the Office of Legislative Research and General Counsel all numbered bills and resolutions;

(7) record the number, title, sponsor, each action, and final disposition of every bill on the bill backs;

(8) prepare and distribute the [~~legislative agenda~~] daily order of business each day;

(9) advise the Speaker on parliamentary procedure, constitutional requirements, and Joint and House Rules;

(10) assist with amendments to bills;

(11) record votes and present the results to the Speaker;

(12) transmit to the Governor all enrolled House bills; and

(13) approve material for placement on the Representative's desks.

Section 2. HR-22.04 is amended to read:

HR-22.04 Smoking Not Permitted.

[No] A person may not smoke [within the House chamber, gallery, or committee rooms] in the State Capitol Building. The Sergeant-at-Arms shall enforce this rule in the House controlled areas.

Section 3. HR-23.10 is enacted to read:

HR-23.10 Commendation; Condolence Citations.

To express the commendation or condolence of the Legislature or the House of Representatives, legislators shall use the legislative citation form exclusively.

Section 4. HR-23.11 is enacted to read:

HR-23.11 Types of Citations; Use of Citations.

(1) There are two types of legislative citations:

(a) by individual; and

(b) by one or both houses of the Legislature.

(2) With the approval of the presiding officer, an individual legislator may request the Chief Clerk of the House to prepare a commendation or condolence citation for the Representative's own signature. This citation is done without any floor action.

(3) During a session of the Legislature, a legislator may request the Chief Clerk of the House to prepare a commendation or condolence citation for the Representative sponsor's signature, which citation shall also be presented to the House, by motion, to authorize the Speaker of the House to sign on behalf of the House of Representatives; or to one house and then the other for the approval of both the Senate and the House. This motion is in order as an item of personal privilege.

(4) When the Legislature is not in session, a legislator may request a commendation or condolence citation for the sponsor's and the Speaker's signature, or the sponsor's, the Speaker's, and the President's signature.

Section 5. HR-23.12 is enacted to read:

HR-23.12 Standing Committee Review of Fiscal Impact Bills.

All bills, including those with fiscal impact, shall be reviewed by the standing committees of both houses before being held in the opposite house because of fiscal impact.

Section 6. HR-25.08 is amended to read:

HR-25.08 Third Reading Calendar.

(1) For its third reading, each bill listed shall be read by formal title, unless by two-thirds vote the House members suspend this requirement. (Utah Const. Art. VI, Sec. 22; cf. HR-27.16) The bill shall then be considered.

(2) On each bill, after reading the formal title, the reading clerk shall announce which House standing committee reviewed the bill and the vote in that committee. If a bill has not received a House standing committee review, the reading clerk shall note that.

(3) The final question is: "This bill (resolution) has been read three times; the question is: Shall the bill (resolution) pass?" The final vote shall then be taken.

Section 7. HR-25.17 is amended to read:

HR-25.17 No Bill to be Introduced After the Twenty-second Day.

No bill may be introduced in the House of Representatives after the [30th] 22nd day of the annual general session without the approving vote of a constitutional two-thirds vote of the House of Representatives.

Section 8. HR-28.01 is amended to read:

HR-28.01 Representatives Not to Speak More Than Twice; Maximum Floor Time.

(1) Without permission from the House, no Representative may speak more than twice on the same bill, each amendment, or substitution in any one debate on the same day and on the same reading of the bill. Representatives who have spoken once are not entitled to the floor again, except for explanation, if any Representative who has not spoken wishes to speak.

(2) No Representative may speak longer than 15 minutes at any time, unless another Representative yields his time to the Representative who has the floor.

(3) Unless extended by a majority vote[;]:

(a) during the first 38 days of any general session floor time on any legislation may not exceed eight hours;

(b) during the last seven days of any general session, floor time on any legislation may not exceed two hours.

Section 9. HR-33.05 is enacted to read:

HR-33.05 Recognition of Visiting Groups and Individuals.

Visiting groups and individuals may be recognized by the Speaker or introduced by any Representative requesting personal privilege for that purpose.

Section 10. HR-34.01 is amended to read:

HR-34.01 Suspension of House Rules.

Any House Rule may be suspended, altered, amended, or rescinded by a majority vote, except

the following, which require a two-thirds vote to change rules governing:

(1) [~~rules governing the~~] limitation of debate;

(2) [~~rules governing~~] motions on the previous question;

(3) [~~rules governing~~] motions for lifting a tabled bill from committee;

(4) [~~rules governing the~~] consideration of bills during the last three days of a session;

(5) [~~rules governing the~~] introduction of bills after the [~~30th~~] 22nd day of the annual general session; [~~or~~] and

(6) [~~rules governing~~] voting as in HR-30.06.

Section 11. Effective Date.

This act takes effect upon approval by a constitutional two-thirds vote of all the members of the House of Representatives.

RESOLUTION URGING BALANCED FEDERAL BUDGET

H. R. NO. 5
Passed March 2, 1993
Effective March 2, 1993

By Doyle M. Mortimer

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES URGING THE UNITED STATES CONGRESS TO AMEND THE UNITED STATES CONSTITUTION TO REQUIRE A BALANCED BUDGET.

Be it resolved by the House of Representatives of the state of Utah:

WHEREAS with each passing year, the United States becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues;

WHEREAS the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues;

WHEREAS unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit;

WHEREAS knowledgeable planning, fiscal prudence, and common sense require that the budget reflect all federal spending and be in balance;

WHEREAS numerous states have constitutional requirements that appropriations not exceed anticipated revenues for the forthcoming year;

WHEREAS fiscal irresponsibility at the federal level constitutes the greatest threat now facing our nation; and

WHEREAS a constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility;

NOW, THEREFORE, BE IT RESOLVED that the House of Representatives of the state of Utah urge the United States Congress to amend the United States Constitution to require a balanced budget.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

RESOLUTION COMMEMORATING JOHN A. DIXON M.D.

S. C. R. NO. 1
Passed February 19, 1993
Effective March 12, 1993

By Winn L. Richards
Robert F. Montgomery
Charles H. Stewart
Paul T. Fordham
Wilford R. Black, Jr.
Joseph L. Hull
Millie M. Peterson
Robert C. Steiner
George Mantes
Mike Dmitrich
Blaze D. Wharton
Lyle W. Hillyard
Craig A. Peterson
Lane Beattie
Haven J. Barlow
Alarik Myrin
David H. Steele
John P. Holmgren
Ronald J. Ockey
Arnold Christensen
David L. Watson
Scott N. Howell

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR HONORING JOHN A. DIXON, M.D., WHO PASSED AWAY ON FEBRUARY 15, 1992, FOR HIS DISTINGUISHED MEDICAL CAREER AND HIS CONTRIBUTION TO THE ADVANCEMENT OF QUALITY HEALTH CARE AND MEDICAL RESEARCH IN THE STATE OF UTAH, THE NATION, AND THE WORLD.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS John A. Dixon, M.D., was born in Provo, Utah, reared in Ogden, attended Weber State College, and received his bachelors and doctor of medicine degrees from the University of Utah;

WHEREAS following two years of military service as Chief of Surgery at Johnson Air Force Base Hospital, at Honshu, Japan, he spent the next 18 years in the private practice of surgery in Ogden;

WHEREAS Dr. Dixon was the Ogden area's first board certified gastrointestinal surgeon, chaired

the committee that initiated and planned McKay-Dee Hospital, and was instrumental in developing the Surgical Intern and Resident Rotation Service between the McKay-Dee and University of Utah Hospitals;

WHEREAS Dr. Dixon was elected to the Ogden City Council and was instrumental in establishing the city's first full-time health center which later became the Weber County Health Center;

WHEREAS Dr. Dixon served as Chairman of the Utah State Board of Health and as a member of the Northern Utah Comprehensive Health Planning Council and the Board of the Utah Region Health Systems Agency;

WHEREAS Dr. Dixon served as President of the Weber County Medical Society and the Utah Medical Association and as a member of the American Gastroentrological Association, the Society for Surgery of the Alimentary Tract, the International Society for Laser Surgery, the American Medical Association, and the American College of Surgeons;

WHEREAS Dr. Dixon served as Executive Vice President of the University of Utah, the Dean of the University of Utah School of Medicine and Vice President for Health Sciences for the University of Utah, and during that time he spearheaded the $63 million expansion of the University Medical Center and was honored by students and faculty with the presentation of the Outstanding Professor of the Year Award on two separate occasions;

WHEREAS after Dr. Dixon served in these prestigious administrative positions, he turned his attention to basic medical research and became world renown as a laser surgeon and researcher, as Director of the University Medical Center's Endoscopic Laser Surgery Unit, later renamed the John A. Dixon Laser Surgery Unit, as President of the American Laser Society, as the author of many medical texts and scientific articles on the application of lasers in surgery, as the author of two laser surgery textbooks, and as a lecturer and presenter of scientific papers on laser surgery around the world;

WHEREAS Dr. Dixon was active in his church, serving in many positions including Bishop and High Counselor; and

WHEREAS Dr. Dixon died on February 15, 1992, after an exemplary life of service to the state of Utah, the nation, and the world:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah honor the late John A. Dixon, M.D., for his unselfish community service, for his outstanding contributions to the betterment of health care in Utah, and for his worldwide scientific leadership in the advancement of surgical applications of lasers.

BE IT FURTHER RESOLVED that copies of this resolution be sent to his wife, Karma Jeppsen Dixon, his son, Steven J. Dixon of Bountiful, and to his daughters Kay Dixon Lee and Lisa Dixon Cluff of Salt Lake City.

RESOLUTION HONORING EUGENE JELESNIK

S. C. R. NO. 6
Passed February 19, 1993
Effective March 12, 1993

By Scott N. Howell

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR HONORING EUGENE JELESNIK FOR HIS TIRELESS CONTRIBUTIONS TO THE FORGING OF UTAH'S MUSICAL CULTURE; NOTING HIS SERVICE WITH THE USO DURING THREE ARMED CONFLICTS WHICH BROUGHT CHEER TO HUNDREDS OF THOUSANDS OF SERVICEMEN; HIGHLIGHTING HIS COMMITMENT TO PROVIDE UTAHNS WITH OPPORTUNITIES TO EXERCISE THEIR MUSICAL TALENT; AND PRAISING HIS LIFETIME OF DEDICATION TO UTAH AND HIS LOVE OF ITS PEOPLE.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS since his first visit to Utah in 1938, Eugene Jelesnik has given his love of music freely to Utahns;

WHEREAS born Shura Jelesnikoff in the Ukraine in 1914, Eugene's parents proudly watched his love for the violin develop at an early age;

WHEREAS after enduring the Bolshevik revolution and upon the untimely death of Eugene's father Jacob, a wealthy aristocrat, the family estate was seized by the government;

WHEREAS in 1923, Eugene's family left all their belongings behind and escaped to Germany;

WHEREAS upon arriving in America in 1925, Eugene resumed his devotion to music and eventually earned a scholarship from the New York Philharmonic;

WHEREAS under the watchful care of Morris Kreiselman, a member of the New York Philharmonic and the musician who influenced him most, Eugene honed his natural violin skills;

WHEREAS eventually following a more financially lucrative path into popular music, Eugene performed as a violin soloist at the Hollywood Restaurant on Broadway for two years before forming his own band, The Continentals, in 1937;

WHEREAS after touring the eastern United States, Eugene's band accepted an eight week engagement to perform at the Hotel Utah, but the band was so well received and enjoyed the work so much that they stayed 10 months;

WHEREAS during the extended engagement, Eugene fell in love with Utah, its surroundings, and its people, and was determined to return to live someday;

WHEREAS Eugene also met and fell in love with Virginia Belle Washburn, who was visiting from California, and they married at the Ambassador Hotel in Salt Lake City;

WHEREAS upon his return to New York, Eugene set off on the first of his 19 United Service Organization (USO) tours which spanned three armed conflicts, bringing good cheer to hundreds of thousands of military personnel throughout the world;

WHEREAS Eugene made Utah his permanent home in 1945, and with the advent of television in Utah two years later, became one of the first people to appear on local broadcasts;

WHEREAS following the pattern of the "Original Amateur Hour", a nationally televised talent show, Eugene developed the popular "Talent Showcase", a program profiling Utah talent which ran on local television for 31 years;

WHEREAS after a visit from then–Senator John F. Kennedy to the Talent Showcase program, Eugene was inspired to compose the "JFK March", one of many of his own compositions;

WHEREAS Eugene also revived the Salt Lake Philharmonic Pops Concerts in Liberty Park, where the public can enjoy great music without charge, and continues serving as its permanent conductor;

WHEREAS Eugene also serves as Entertainment Director for both the Utah State Fair and the Days of '47 and presently serves as First Vice President of the entire Days of '47 event;

WHEREAS Eugene has used his considerable talents behind the scenes to arrange the appearances of many famous musical groups and performers at the Utah State Fair and the Days of '47 through the years;

WHEREAS Eugene continues producing various television musical and variety programs and is constantly on the move seeking out new talent;

WHEREAS through his many years of tireless efforts to bring music closer to Utahns, Eugene was supported, encouraged, and strengthened by his beloved Virginia in every way up to her passing last year; and

WHEREAS Eugene has made an incalculable contribution to the musical culture of the state of Utah and its citizens, and remains a warm, active, and kind friend of Utah and its people:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, honor Eugene Jelesnik for his decades of service in enriching the lives of Utahns through his love of music.

BE IT FURTHER RESOLVED that the Legislature and the governor honor Eugene Jelesnik for representing Utah with distinction while entertaining United States military personnel throughout the world during three armed conflicts for the United Service Organization.

BE IT FURTHER RESOLVED that the Legislature and the governor honor Eugene Jelesnik for his love of Utah and his selfless efforts in developing the musical talent of its citizens.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to Eugene Jelesnik.

RESOLUTION HONORING WILLIAM AND FRANCES GAY

S. C. R. NO. 7
Passed February 19, 1993
Effective March 12, 1993

By Haven J. Barlow

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR HONORING WILLIAM A. GAY, M.D. FOR HIS REMARKABLE SUCCESS IN PIONEERING THE INTERMOUNTAIN REGION'S FIRST HEART TRANSPLANT PROGRAM AND FRANCES GAY FOR HER INNOVATIVE USE OF THE ARTS AS A THERAPEUTIC DEVICE FOR PATIENTS STRUGGLING TO GET WELL; AND RECOGNIZING DR. AND FRANCES GAY FOR THEIR IMMENSE CONTRIBUTION TO THE QUALITY OF MEDICAL CARE IN THE STATE OF UTAH.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS during the eight years that William A. Gay, M.D. and Frances Gay spent in Utah, the Intermountain medical community made great strides in the areas of heart transplant services and medical patient quality of life;

WHEREAS Dr. Gay, former chairman of the University of Utah School of Medicine's Department of Surgery, was instrumental in setting up the Intermountain region's first heart transplant program through the development of a three–hospital consortium, the Utah Transplant Affiliated Hospital, known as UTAH;

WHEREAS before disbanding in December, 1992 the consortium transplanted more than 450 hearts with one of the highest survival rates in the country;

WHEREAS the success of the consortium is illustrated by the many citizens of the Gays' native New York who travel to Utah for heart transplants;

WHEREAS Frances Gay, a trained medical technologist, served as a patient advocate and sensed the need to improve the quality of patient visits by beautifying the hospital's surroundings;

WHEREAS Frances Gay was convinced that what she termed "the inspiring power of art" was the way to enhance hospital surroundings and arranged for museums throughout the state to provide a regular rotation of art exhibits to display along the walls of University Hospital and in its sculpture garden;

WHEREAS Frances Gay also arranged for live performances by the Ballet West dancers in an effort to provide artistic alternatives to patients;

WHEREAS the Gays' return to New York will allow Dr. Gay to lead the cardiothoracic surgery pro-

gram at New York's Albert Einstein College of Medicine and Montifiore Medical Center; and

WHEREAS Utah will always be a happier and healthier place to live because the Gays gave of their warmth and expertise to the citizens of the state:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, honor Dr. William A. Gay, M.D. and Frances Gay for their contribution of medical skill and a sensitivity to the relationship between hospital atmosphere and the healing process that have helped to make medical care in the state of Utah among the best in the nation.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to William A. Gay, M.D. and Frances Gay.

RESOLUTION ON NATIONAL TRADE CORRIDORS

S. C. R. NO. 8
Passed February 10, 1993
Effective February 25, 1993

By Wilford R. Black, Jr.
All Members of the Senate

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR URGING THE UNITED STATES CONGRESS TO SUPPORT, DEVELOP, AND FUND NORTH-SOUTH TRADE CORRIDORS INCLUDING THE SEGMENT OF ROAD CONNECTING INTERSTATE 15 IN SOUTHERN UTAH WITH INTERSTATE 17 IN FLAGSTAFF, ARIZONA AND INTERSTATE 15 OUT OF SPANISH FORK THROUGH TO ALBUQUERQUE, NEW MEXICO.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS multistate collaboration in the planning of the national highway system and intermodal systems as prescribed by the Intermodal Surface Transportation Efficiency Act of 1991 will ensure localized concerns are integrated into the overall plan;

WHEREAS in December, 1992, President Bush signed the North American Free Trade Agreement and ratification by the United States Congress is expected in the near future;

WHEREAS the North American Free Trade Agreement will pull together a market of approximately 360 million consumers in the United States, Canada, and Mexico;

WHEREAS the competitive position of the individual states and the nation in international trade is directly related to the quality of the transportation system;

WHEREAS several existing and emerging trade corridors will be needed to serve the increased trade resulting from the North American Free Trade Agreement;

WHEREAS a significant corridor opportunity exists to provide a continuous trade route traversing over 2,000 miles from the port at Guaymas, Mexico, to the major cities of the Pacific Northwest and western Canada;

WHEREAS within this corridor, Interstate 15 running through Utah is in need of improvements and a 300 mile segment between Interstate 15 in southern Utah and Interstate 17 in Flagstaff, Arizona, needs to be upgraded to interstate standards;

WHEREAS an additional section of road running from Interstate 15 out of Spanish Fork through Interstate 40 to Albuquerque, New Mexico, is a critical trade route and needs upgrading to interstate standards; and

WHEREAS improving and upgrading these segments of the corridor will not only benefit Utah but five other western state economies as well:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the United States Congress to approve the concept of improving Interstate 15 through Utah and upgrading the 300 mile segment of road between Interstate 15 in southern Utah and Interstate 17 in Flagstaff, Arizona.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Congress to provide funding for Utah and Arizona to study the economic and environmental feasibility of this proposed improvement and connection.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Congress to authorize funds for the development of national trade corridors and trade routes west of the Mississippi River including the connection of Interstate's 15 and 17 and Interstate's 15 and 40 to serve economic opportunities created by the the North American Free Trade Agreement.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the President of the United States Senate, and to the members of Utah's congressional delegation.

RESOLUTION ON SHARON STEEL TAILINGS

S. C. R. NO. 12
Passed March 3, 1993
Effective March 16, 1993

By Craig A. Peterson

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING OPPOSITION TO ANY PLAN TO CAP THE SHARON STEEL TAILINGS ON-SITE; AND URGING THE ENVIRONMENTAL PROTECTION AGENCY TO REMOVE THE TAILINGS TO AN OFFSITE LOCATION

PROVIDING PERMANENT REMEDIATION AND PROTECTION OF THE PUBLIC HEALTH AND GROUNDWATER.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS it is essential that public health and the environment be protected from environmental contamination;

WHEREAS groundwater is an irreplaceable resource that must be protected:

WHEREAS an Environmental Protection Agency investigation has demonstrated that the tailings pose an imminent and substantial threat to public health and the environment;

WHEREAS the tailings are actually located in the groundwater;

WHEREAS the tailings have the potential to be deposited directly into the Jordan River;

WHEREAS there is an adverse impact on wetlands;

WHEREAS the Sharon Steel tailings are located within a populated area;

WHEREAS there is continuing potential for public exposure to heavy metals contained within the tailings;

WHEREAS capping the tailings would greatly limit future land use;

WHEREAS capping the tailings would require that the state of Utah cover long-term operation and maintenance expenses;

WHEREAS it is essential that a permanent remedy be implemented;

WHEREAS there appear to be viable options to remove the tailings to a suitable location; and

WHEREAS removal of the tailings better meets the Environmental Protection Agency's criteria for remedy selection:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, express opposition to any plan to cap the Sharon Steel tailings onsite.

BE IT FURTHER RESOLVED that the Legislature and the governor urge the Environmental Protection Agency to remove the tailings to an offsite location which provides permanent remediation and ensures protection of the public health and groundwater.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Environmental Protection Agency and to the members of Utah's congressional delegation.

RESOLUTION URGING BANGERTER HIGHWAY DESIGNATION

S. C. R. NO. 13
Passed February 12, 1993
Effective February 25, 1993

By Arnold Christensen
All Members of the Senate

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR RECOGNIZING THE FORESIGHT AND DETERMINATION OF FORMER GOVERNOR NORMAN H. BANGERTER IN SECURING THE NEEDED FUNDS AND SUPPORT FOR THE CONSTRUCTION OF THE WEST VALLEY HIGHWAY; AND URGING THE UTAH TRANSPORTATION COMMISSION TO DESIGNATE THE HIGHWAY AS THE NORMAN H. BANGERTER HIGHWAY.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS throughout his service as governor, Norman H. Bangerter remained sensitive to the transportation needs of the state;

WHEREAS the ever increasing population growth on the west side of the Salt Lake Valley created transportation problems Norman H. Bangerter knew must be resolved;

WHEREAS Norman H. Bangerter's leadership took the West Valley Highway from a plan with no forseeable funding to a reality that has significantly eased the traffic burdens in the West Valley area;

WHEREAS as governor, Norman H. Bangerter secured the $55 million in needed funds for the project primarily from state general fund monies;

WHEREAS Norman H. Bangerter's foresight, commitment, and determination are responsible for the construction of the West Valley Highway; and

WHEREAS because of Norman H. Bangerter's pivotal role in making the highway a reality, it is appropriate that the highway bear his name:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the Utah Transportation Commission to designate the West Valley Highway as the Norman H. Bangerter Highway in recognition of his leadership, initiative, and determination to see the state address the transportation needs of its citizens.

BE IT FURTHER RESOLVED that copies of this resolution be sent to former Governor Norman H. Bangerter and the Utah Transportation Commission.

RESOLUTION URGING EXEMPTION FROM BTU ENERGY TAX

S. C. R. NO. 14
Passed March 3, 1993
Effective March 16, 1993

By Mike Dmitrich

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR URGING THE UNITED STATES CONGRESS TO FULLY EXEMPT COAL EXPORTS FROM THE PROPOSED BTU ENERGY TAX.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS recent deficit cutting proposals include a BTU energy tax which is levied on the heating content of fuels;

WHEREAS of the 1 billion tons of coal produced annually in the United States, 10% is exported;

WHEREAS of the 21 million tons of coal produced annually in Utah, 2 million tons are exported;

WHEREAS estimates indicate that by the end of the decade 5 million tons of coal from Utah will be exported;

WHEREAS the growth in the export of coal from Utah contributes significantly to the economy of the state;

WHEREAS the export of coal also contributes significantly to the economy of the nation as a whole;

WHEREAS if the proposed BTU energy tax does not fully exempt the export of coal, exports from Utah and throughout the United States would be unable to compete in the world coal marketplace; and

WHEREAS the resulting impact would not only kill the coal export industry in Utah and throughout the nation but also cause a ripple effect that would seriously injure many other sectors of the economy:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, urge the United States Congress to fully exempt coal exports from the proposed BTU energy tax.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and Utah's congressional delegation.

RESOLUTION HONORING UTAH RESTAURANT ASSOCIATION

S. J. R. NO. 9
Passed February 19, 1993
Effective February 19, 1993

By Arnold Christensen
Craig A. Peterson
Mike Dmitrich
Scott N. Howell
Lane Beattie

A JOINT RESOLUTION OF THE LEGISLATURE RECOGNIZING THE 50TH ANNIVERSARY OF THE FOUNDING OF THE UTAH RESTAURANT ASSOCIATION AND HONORING THE ASSOCIATION'S MANY CONTRIBUTIONS TO IMPROVING THE QUALITY OF LIFE IN THE STATE OF UTAH.

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

WHEREAS the Utah Restaurant Association, with a membership of over 3,000 and employing over 60,000 people, have provided an attractive, healthy, and sociable atmosphere for families, friends, and business associates to gather;

WHEREAS members of the Utah Restaurant Association have added significantly to the tax base and provided needed revenue for the state and employment for many university and college students working to pay for their education and thereby improving their quality of life;

WHEREAS Utah Restaurant Association members generate $1.2 billion in annual sales;

WHEREAS Utah Restaurant Association members have provided affordable, safe, superior quality meals not only to the people of Utah, but also to the many visitors who have passed through the state over the years;

WHEREAS the Utah Restaurant Association has also been active in programs to help feed the poor and needy throughout the state;

WHEREAS the Utah Restaurant Association and its members have always provided courteous and efficient service; and

WHEREAS the Utah Restaurant Association has played a vital part in improving the quality of life enjoyed in the state of Utah:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah recognize the 50th anniversary of the founding of the Utah Restaurant Association and honor the association and its members for the integral part they have played in making Utah a superior place to live and do business.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Restaurant Association.

RESOLUTION ENCOURAGING GOVERNOR'S REVIEW OF EXECUTIVE BRANCH APPOINTMENTS

S. J. R. NO. 15
Passed March 3, 1993
Effective March 3, 1993

By John P. Holmgren
David H. Steele
Charles H. Stewart
Leonard M. Blackham
Howard A. Stephenson
Craig A. Peterson
Delpha A. Baird
David L. Watson
Scott N. Howell
Mike Dmitrich
Lane Beattie
Wilford R. Black, Jr.
Robert C. Steiner
Lyle W. Hillyard
Brent C. Richards
Winn L. Richards
Paul T. Fordham
Joseph L. Hull
LeRay McAllister
Alarik Myrin
Millie M. Peterson
Arnold Christensen
Haven J. Barlow
George Mantes

A JOINT RESOLUTION OF THE LEGISLATURE ENCOURAGING THE GOVERNOR TO CONDUCT A REVIEW AND EXAMINATION OF ALL BOARDS AND COMMISSIONS WITHIN HIS APPOINTMENT AUTHORITY IN ORDER TO ACHIEVE INCREASED EFFICIENCY, ECONOMY, AND RESPONSIVENESS IN THEIR OPERATION.

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

WHEREAS Utah has many boards and commissions which fill a critical role in drawing citizens into the decision making of its state government;

WHEREAS many members of Utah's state boards and commissions are appointed by the governor and serve diligently and without fanfare;

WHEREAS the importance of maintaining high levels of efficiency, economy, and responsiveness in the administration of these boards and commissions is particularly vital since they were designed to reflect the interests that citizens have in how they are governed:

WHEREAS restructuring and consolidation, together with new people with new ideas and fresh perspectives, are periodically needed in order to tap the full potential of the goals of any organization which provides critical services to the public:

WHEREAS specifically reviewing all those who have served on boards and commissions for eight years or more will help identify areas needing adjustment:

WHEREAS by reviewing and examining the efficiency, economy, and responsiveness of all boards and commissions within his appointment authority, Governor Leavitt can make adjustments which will further increase the ability of our state government to assist the citizens of the state of Utah in governing themselves: and

WHEREAS with the contributions of time and energy by so many Utahns, the resultant restructure of boards and commissions will enjoy an increased ability to serve the citizens of the state and meet the many challenges that lie ahead:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourage Governor Leavitt to review and examine each board and commission within his appointment authority, and specifically review all people who have been in office for eight or more years to determine where the efficiency, economy, and responsiveness of these entities may be increased to better serve the citizens of the state of Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Governor Leavitt.

SENATE RULES RESOLUTION - REVISIONS TO PROCEDURES

S. R. NO. 1
Passed January 19, 1993
Effective January 19, 1993

By John P. Holmgren
Lane Beattie
Alarik Myrin
Millie M. Peterson
Stephen J. Rees
David H. Steele
Robert C. Steiner

A RESOLUTION OF THE SENATE REVISING SENATE RULES; REVISING THE DAILY ORDER OF BUSINESS; PROVIDING VOTING REQUIREMENTS; PROVIDING DATES FOR LEGISLATIVE FILING; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it resolved by the Senate of the state of Utah:

WHEREAS a revision of the Senate Rules of the 50th Legislature of the state of Utah is necessary to improve the daily ordering of Senate business and structure other procedural improvements:

NOW, THEREFORE, BE IT RESOLVED that the following amendments to the Senate Rules of the 50th Legislature be adopted:

Section 1. SR-20.06 is amended to read:

SR-20.06 Duties of the Secretary of the Senate.

A Secretary of the Senate shall be appointed by the President or President-elect before each session is convened. [~~The Secretary of the Senate shall be a Notary Public.~~] The general duties of the Secretary are to:

(1) act as chief administrative officer of the Senate, subject to direction by the President;

(2) supervise all Senate personnel during the session and interim and assign them duties and responsibilities. This supervision includes keeping a record of the attendance of all employees, and any employee who is absent without the written consent or subsequent approval of the President may not be paid for the day or days of absence;

(3) be custodian of all official documents;

(4) receive[~~, number, and file all~~] from the Office of Legislative Research and General Counsel all numbered bills and resolutions;

(5) record the number, title, sponsor, each action, and final disposition of every bill on the bill [~~backs~~] jackets;

(6) prepare and distribute the legislative agenda each day;

(7) assist the Minute Clerk in preparation of the Senate journal and certify it as an accurate reflection of Senate action;

(8) read the formal title of all bills and other materials as requested by the President;

(9) receive committee reports and present them to the Senate;

(10) advise the President on parliamentary procedure, constitutional requirements, and Joint and Senate Rules;

(11) assist with amendments to bills;

(12) record votes and present the results to the President;

(13) correct spelling, erroneous division and hyphenation of words, correct mistakes in numbering sections and their references, capitalize or lower case words, change numbers from words to figures or from figures to words, and underscore or remove underscoring in bills without a motion to amend, which technical corrections may be made either before or following final passage of a bill;

(14) certify and transmit bills to the House of Representatives and inform the House of all Senate action;

(15) transmit to the Governor all enrolled Senate bills;

(16) respond to inquiries from legislators, government agencies, and members of the public regarding Senate history, activities, and legislative action; and

(17) represent the Senate at schools, organizations, clubs, and other civic groups when asked by the President.

Section 2. SR-22.04 is amended to read:

SR-22.04 Smoking not Permitted.

[No] As provided in Utah Code Ann. Section 76-10-106, (1992) a person may not smoke [within the ~~Senate chamber, gallery, or committee rooms~~] in the State Capitol Building. The Sergeant-at-Arms shall enforce this rule in the Senate controlled areas.

Section 3. SR-23.04 is amended to read:

SR-23.04 Daily Order of Business.

The daily order of business is:

(1) call to order by President;

(2) roll call;

(3) report of excused absences and if quorum is present;

[~~(3)~~] (4) prayer;

[~~(4) announcement of excused absences;~~]

(5) report of journal committee;

[~~(5)~~] (6) communications from the Governor;

[~~(6)~~] (7) communications from the House[;]:

(a) bills for signature of the President;

(b) bills for consideration; and

(c) bills for reconsideration of House amendments;

[~~(7) reports of standing committees:~~]

[~~(a)~~] (8) reports of Senate Rules Committee[;]:

[~~(b) committees reporting out bills;~~]

(a) bills assigned to standing committees; and

(b) bills placed on second reading calendar;

(9) reports of Secretary of the Senate from standing committees:

(a) bills placed on second reading calendar;

(b) bills placed on consent calendar; and

(c) bills sent back to Senate Rules Committee;

[~~(8)~~] (10) reports of special committees, including conference committees;

[~~(9) announcement of committee meetings;~~]

[~~(10)~~] (11) introduction of bills and presentation of resolutions to be given to the Secretary of the Senate at least one hour before the beginning of the session for inclusion in that day's agenda[;]:

(a) bills assigned to Senate Rules Committee: and

(b) bills placed on second reading calendar;

[~~(11)~~] (12) unfinished business;

[~~(12)~~] (13) consideration of bills on consent calendar;

(14) special orders of business;

[~~(13)~~] (15) consideration of bills on third reading calendar;

[~~(14)~~] (16) consideration of bills on second reading calendar; and

[~~(15)~~] (17) miscellaneous business.

Section 4. SR-24.12 is amended to read:

SR-24.12 Committee Responsibilities.

(1) Each committee shall send a report to the Senate on each bill referred to it. With a majority vote, the committee may transmit bills with a favorable recommendation. Bills may be amended, held, tabled, returned to Senate Rules Committee, or substituted in committee. Any bill tabled in committee shall be held until a motion is made to remove it from the table. Any tabled bill not lifted [~~from committee before~~] at its [~~last~~] second committee meeting after tabling shall be sent to the Senate Rules Committee for filing. A tabled bill can be lifted from the Senate Rules Committee or its assigned standing committee by a two-thirds vote of those Senators present on the floor of the Senate, or the Senate Rules Committee can reassign the bill to a standing committee.

(2) The committee may prepare a bill addressing the same subject matter to be introduced under committee sponsorship. The chief sponsor or sponsors of a bill may request in writing that committee members sponsor the measure. Upon agreement by the committee, the chief sponsor may relinquish individual sponsorship of the bill. A majority vote of the committee is required to amend, substitute, table, recommend, return a bill to Senate Rules Committee, or substitute sponsorship of a bill.

(3) A secretary shall record attendance and take minutes of committee action. The records shall be filed for three years in the office of the Secretary of the Senate.

Section 5. SR-24.19 is amended to read:

SR-24.19 Committee Reports.

All business referred to a committee shall be considered within a reasonable length of time. When a bill is acted upon by a committee, a committee report detailing committee action, and the bill, shall be returned immediately to the Senate. If a bill is tabled, the Senate shall be notified. This notification requires no Senate action, as the bill shall be automatically sent to Senate Rules Committee.

Section 6. SR-25.17 is amended to read:

SR-25.17 No Bill to be Introduced After the Twenty-second Day.

No bill may be introduced in the Senate after the [~~30th~~] 22nd day of the annual general session without the approving vote of a constitutional majority vote of the Senate.

Section 7. SR-28.03 is amended to read:

SR-28.03 Sponsor May Open and Close Debate.

[~~Notwithstanding the passage of a motion to end debate, the~~] The chief sponsor of any legislation or motion shall open and close debate.

Section 8. SR-28.05 is amended to read:

SR-28.05 Previous Question.

The motion for the previous question, which is a call for an end to debate and a vote on the matter under discussion, may not be entertained [~~in~~] on the floor of the Senate.

Section 9. SR-34.01 is amended to read:

SR-34.01 Suspension of Senate Rules.

Any Senate rule may be suspended, altered, amended, or rescinded by majority vote, except the following, which require a two-thirds vote of those present of the Senate to change:

(1) rules governing the lifting of a tabled bill from committee; [~~or~~] and

(2) rules governing voting as in SR-30.06.

Section 10. Effective Date.

This act takes effect upon approval by a constitutional two-thirds vote of all the members of the Senate.

SENATE RULES RESOLUTION - AMENDING LEGISLATIVE PROCESSES

S. R. NO. 3
Passed January 27, 1993
Effective January 27, 1993

By Lane Beattie

A RESOLUTION OF THE SENATE REVISING SENATE RULES; AMENDING THE LEGISLATIVE PROCESSES REGARDING USE OF LEGISLATIVE CITATIONS AND PRINTING AND PASSING CERTAIN FISCAL BILLS; PROVIDING COMMITTEE REVIEW; PROVIDING A REPORT ON COMMITTEE ACTION; AND PROVIDING AN EFFECTIVE DATE.

Be it resolved by the Senate of the state of Utah:

WHEREAS a revision of the Senate Rules of the 50th Legislature of the state of Utah is necessary to more clearly direct certain processes of the Senate:

NOW, THEREFORE, BE IT RESOLVED that the following amendments to Senate Rules of the 50th Legislature be adopted:

Section 1. SR-23.10 is enacted to read:

SR-23.10 Commendation; Condolence Citations.

To express the commendation or condolence of the Legislature or the Senate, legislators shall use the legislative citation form exclusively.

Section 2. SR-23.11 is enacted to read:

SR-23.11 Types of Citations; Use of Citations.

(1) There are two types of legislative citations: individual and by one or both houses of the Legislature.

(2) With the approval of the presiding officer, an individual legislator may request the Secretary of the Senate to prepare a commendation or condolence citation for the Senator's own signature. This citation is done without any floor action.

(3) During a session of the Legislature, a legislator may request the Secretary of the Senate to prepare a commendation or condolence citation for the Senate sponsor's signature, which citation shall also be presented to the Senate, by motion, to authorize the President of the Senate to sign on behalf of the Senate; or to one house and then the other for the approval of both the Senate and the House. This motion is in order as an item of personal privilege.

(4) When the Legislature is not in session, a legislator may request a commendation or condolence citation for the sponsor's and the President's signature, or the sponsor's, the President's, and the Speaker's signature.

Section 3. SR-23.12 is enacted to read:

SR-23.12 Standing Committee Review of Fiscal Impact Bills.

All bills, including those with fiscal impact, shall be reviewed by the standing committees of both houses before being held in the opposite house because of fiscal impact.

Section 4. SR-23.13 is enacted to read:

SR-23.13 Printing Certain Fiscal Bills.

On the last Monday of the annual general session, the following bills shall be completed by the Appropriations Executive Committee, printed, and available to all legislators: the appropriations act, any supplemental appropriations acts except the supplemental appropriation act that funds the bills passed during that session, the school finance act, and any bonding act.

Section 5. SR-23.14 is enacted to read:

SR-23.14 Standing Committee Review.

(1) The Senate may not pass a bill during the annual general session which has not had standing committee review.

(2) This rule does not apply to:

(a) any resolution regarding legislative rules or legislative personnel;

(b) bills that have been approved by an interim committee;

(c) the revisor's statute; or

(d) the appropriations act, the supplemental appropriations acts, the school finance act, and any bonding act which has been reviewed and approved by the Appropriations Executive Committee.

Section 6. SR-23.15 is enacted to read:

SR-23.15 Passing Bills with Negative Fiscal Impact.

(1) All bills which have a negative fiscal impact on the state shall be acted upon by 12 noon on the last day of the annual general session.

(2) Any bill with a negative fiscal impact which has not been passed by the Senate by the time frame in Subsection (1) shall be sent to Senate Rules Committee.

Section 7. SR-25.05 is amended to read:

SR-25.05 Second Reading Calendar.

(1) After consideration of all bills on third reading calendar, bills on second reading calendar shall be considered. Each bill listed shall be read by title, unless the Senate suspends this requirement by a two-thirds vote. (cf. SR-27.16)

(2) The Secretary of the Senate shall read the committee report. A motion to adopt a "favorable" committee report places the bill before the Senate with all committee amendments. If a motion to adopt a "favorable" committee report does not receive a majority vote, the bill will be returned to the Senate Rules Committee.

(3) If a bill has not received a Senate standing committee or interim committee review and approval, the reading clerk shall note that.

(4) The final question on second reading calendar is: "Shall the bill (resolution) be read a third time?" The question shall be decided on a roll call vote. A constitutional majority vote is required to pass the bill on the second reading calendar.

Section 8. Effective Date.

This act takes effect upon approval by a constitutional two-thirds vote of all the members of the Senate.

RESOLUTION ON YEAR OF THE BUFFALO

S. R. NO. 4

Passed February 15, 1993
Effective February 15, 1993

By David H. Steele

A RESOLUTION OF THE SENATE DESIGNATING 1993 AS THE ANTELOPE ISLAND BISON-TENNIAL.

Be it resolved by the Senate of the state of Utah:

WHEREAS on February 15, 1893, a group of 12 bison consisting of four bulls, four cows, and four calves were loaded on a stock boat at Farmington and ferried to Antelope Island;

WHEREAS the near extinction of the American Bison, or buffalo, is one of the greatest tragedies in our nation's history;

WHEREAS it is estimated that as many as 60,000,000 bison once freely roamed the prairies of North America;

WHEREAS in 1889 the Smithsonian Institution reported that only 1,091 bison remained;

WHEREAS the movement to save the American Bison from extinction began in the 1880's when a few individuals sought out the bison in order to protect them and give them a permanent home;

WHEREAS one of these men, Charles J. "Buffalo" Jones of Garden City, Kansas, scoured the plains of Kansas and Texas capturing buffalo calves to raise on his ranch;

WHEREAS after purchasing 70 additional bison while in Canada, Jones sold some of the bison to William Glassman of Salt Lake City who planned to establish a zoological garden with a "Buffalo Park" on the south shore of the Great Salt Lake in Tooele County;

WHEREAS when the venture failed some of the bison were sold to John E. Dooly, who owned most of Antelope Island;

WHEREAS over the century since the animals were transported to the island they have become a prize and treasure for the people of the state of Utah and remain a connection between Utahns and their western heritage; and

WHEREAS today the bison are one of the great attractions at Antelope Island State Park:

NOW, THEREFORE, BE IT RESOLVED that the Senate of the State of Utah designate 1993 as the Antelope Island Bison-tennial year in recognition of the many efforts to preserve the bison from extinction which have given us a tangible link to our past.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Department of Natural Resources and the Division of Parks and Recreation.

BILLS VETOED BY THE GOVERNOR

STATE OF UTAH

MICHAEL O. LEAVITT
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Rob W. Bishop
Speaker of the House
and
The Honorable Arnold Christensen
President of the Senate
BUILDING MAIL

Dear Speaker Bishop and President Christensen:

This is to inform you that on March 23, 1993, I have vetoed HB 202, CREDIT LIFE AND DISABILITY INSURANCE PREMIUM AMENDMENTS, and have transmitted it to the Lieutenant Governor for filing.

This bill repeals an existing statutory protection for consumers who pay premiums for credit life and disability. By vetoing this bill, I leave the protection in place.

Sincerely,

Michael O. Leavitt
Governor

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Rob W. Bishop
Speaker of the House
and
The Honorable Arnold Christensen
President of the Senate

Dear Speaker Bishop and President Christensen:

This is to inform you that on March 23, 1993, I have vetoed HB 217, MOTOR VEHICLE INSURANCE DATABASE, and have transmitted it to the Lieutenant Governor for filing.

This bill raises motor vehicle registration fees to fund an insurance database that will provide the Drivers License Division with information on who is and is not carrying motor vehicle insurance. The bill's sponsor is to commended for his laudable attempt to solve the problem of uninsured motoists on Utah Highways. However, the database has not been fully tested to assure that there will not be citations mistakenly given to motorists who may be insured but who the database shows are not.

The bill contains stiff penalties for not having insurance and so it is crucial that this database be as accurate as possible. I will work, and I urge the Legislature to join me in working to solve this problem without unduly harming or harassing the innocent citizen.

Sincerely,

Michael O. Leavitt
Governor

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

February 26, 1993

The Honorable Arnold Christensen
President of the Senate
and
The Honorable Rob W. Bishop
Speaker of the House

Dear President Christensen and Speaker Bishop:

This is to inform you that on February 26, 1993, I have vetoed SB 2, Disability Insurance Amendments, and have transmitted it to the Lieutenant Governor for filing.

This bill was proposed and passed with a laudable goal to better notify holders of disability insurance policies of certain reductions in benefits. This can be accomplished by another means which is preferable to passing a new statute. Accordingly, I have directed the Insurance Commissioner to make rules to provide the same protection for consumers as SB 2 attempted to do.

Senate Bill 2 also raised constitutional concerns over the impairment of existing contracts. In addition, compliance with this bill would impose an undue financial hardship on the many disability insurance carriers that serve the citizens of Utah.

Sincerely,

Michael O. Leavitt
Governor

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Arnold Christensen
President of the Senate
and
The Honorable Rob W. Bishop
Speaker of the House

Dear President Christensen and Speaker Bishop:

This is to inform you that on March 23, 1993, I have vetoed SB 67, EMPLOYEE INFORMATION REGARDING TOBACCO SMOKE HAZARDS, and have transmitted it to the Lieutenant Governor for filing.

This bill requires employers to provide information regarding health hazards of smoking to its employees. This imposes administrative burdens on employers without any substantial benefit for the general public as a whole.

Sincerely,

Michael O. Leavitt
Governor

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Arnold Christensen
President of the Senate
and
The Honorable Rob W. Bishop
Speaker of the House

Dear President Christensen and Speaker Bishop:

This is to inform you that on March 23, 1993, I have vetoed SB 199, EDUCATION CAPITAL OUTLAY AND DEBT SERVICE AMENDMENTS, and have transmitted it to the Lieutenant Governor for filing.

All citizens of Utah understand and acknowledge the critical needs for school buildings in certain districts. This bill, though laudable in its purpose, provides an unneccessary property tax increase to provide this critical funding. I have developed an alternative, non-tax increase way to fund the critical school needs of this state.

As you know, I have called a special session on March 31st, to ask the Legislature to consider this alternative plan and provide the needed funding to solve this serious problem.

Sincerely,

Michael O. Leavitt
Governor

STATE OF UTAH

MICHAEL O. LEAVITT
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Arnold Christensen
President of the Senate
and
The Honorable Rob W. Bishop
Speaker of the House

Dear President Christensen and Speaker Bishop:

This is to inform you that on March 23, 1993, I have vetoed SB 270, HOUSE INSPECTION REGISTRATION, and have transmitted it to the Lieutenant Governor for filing.

This bill provides for the registration of home inspectors by the state. As a condition of registration, the bill requires each applicant to obtain a performance bond, letter of credit, or certificate of deposit. Setting qualification requirements for entry into a profession is appropriate. This bill bars entry into a profession, through a financial requirement only.

Sincerely,

Michael O. Leavitt
Governor

MICHAEL O. LEAVITT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

OLENE S. WALKER
LIEUTENANT GOVERNOR

March 23, 1993

The Honorable Rob W. Bishop
Speaker of the House
and
The Honorable Arnold Christensen
President of the Senate

Dear Speaker Bishop and President Christensen:

This is to inform you that on March 23, 1993, I have vetoed the following line items in HB 337, APPROPRIATIONS ACT II, and have transmitted it to the Lieutenant Governor for filing.

Item 33 - To the Department of Community and Economic Development, $9,900 to implement the provisions of SB 140. This amount was appropriated in SB 140 and is duplicated in HB 337.

Item 66 - To Department of Public Safety, $531,000 to implement the provisions of HB 217. Since I have vetoed HB 217 this appropriation is no longer necessary.

Sincerely,

Michael O. Leavitt
Governor

LAWS

of the

STATE OF UTAH, 1993

Passed at the

FIRST SPECIAL SESSION

of the

FIFTIETH LEGISLATURE

Convened at the Capitol in the City of Salt Lake
March 31, 1993
and Adjourned Sine Die on
March 31, 1993

AUTHENTICATION

Office of the Lieutenant Governor)
) ss.
State of Utah)

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 1993 First Special Session of the Fiftieth Legislature of the State of Utah, as they appear of record in the Office of the Lieutenant Governor;

That the 1993 First Special Session of the Fiftieth Legislature of the State of Utah convened at the Capitol in the city of Salt Lake, on the 21st day of April, 1993 and adjourned on the 21st day of April, 1993.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Lieutenant Governor, and affixed the Great Seal of the State of Utah, at Salt Lake City, this 1st day of June, 1993.

Olene S. Walker

OLENE S. WALKER
Lieutenant Governor

CHAPTER 1
S. B. No. 1
Passed March 31, 1993
Approved April 2, 1993
Effective July 1, 1993

FUNDING FOR PUBLIC SCHOOL BUILDINGS

By Lane Beattie

AN ACT RELATING TO PUBLIC EDUCATION; MODIFYING THE CONTRIBUTION RATE TO THE STATE'S EQUALIZED CAPITAL OUTLAY AND DEBT SERVICE FOUNDATION PROGRAM; PROVIDING AN ADDITIONAL $2,400,000 APPROPRIATION FOR THE STATE'S CONTRIBUTION TO THE CRITICAL AND CONTINUING SCHOOL BUILDING PROGRAM FROM A REALLOCATION OF MONIES APPROPRIATED UNDER THE MINIMUM SCHOOL PROGRAM ACT; REQUIRING THE STATE BOARD OF EDUCATION, THE GOVERNOR'S OFFICE, AND THE LEGISLATIVE FISCAL ANALYST TO PREPARE EDUCATION BUDGET RECOMMENDATIONS FOR SUBSEQUENT FISCAL YEARS THAT REFLECT INCREASES IN CONTRIBUTIONS TO THE SCHOOL BUILDING STATE SUPPORTED PROGRAM AND THE CAPITAL OUTLAY AND DEBT SERVICE FOUNDATION PROGRAM; PROVIDING FOR A REVIEW OF SALES AND USE TAX EXEMPTIONS AND RECOMMENDATIONS AS TO THE CONTINUANCE, MODIFICATION, OR REPEAL OF THE EXEMPTIONS; IDENTIFYING REVENUE SOURCES FOR STATE CONTRIBUTIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
53A-16-104, AS LAST AMENDED BY CHAPTER 292, LAWS OF UTAH 1992
53A-16-104.5, AS AMENDED BY CHAPTER 306, LAWS OF UTAH 1993
59-12-104.5, AS ENACTED BY CHAPTER 126, LAWS OF UTAH 1993

ENACTS:
53A-21-111.5, UTAH CODE ANNOTATED 1953
53A-21-111.7, UTAH CODE ANNOTATED 1953

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

Section 1. Section Amended.

Section 53A-16-104, Utah Code Annotated 1953, as last amended by Chapter 292, Laws of Utah 1992, is amended to read:

53A-16-104. Equalized capital outlay and debt service foundation program — Levy — Qualifications — Distribution formula — Additional monies.

(1)(a) Each local school board shall impose a tax rate of [.0004] .0001 per dollar of taxable value for a school district equalized capital outlay and debt service foundation program.

(b) The [.0004] .0001 tax rate shall be considered a part of the .0024 tax rate authorized under Subsection [(d)] (c).

[(c) The equalized tax rate established in Subsection (1)(a) shall increase to .0006 beginning July 1, 1993, to .0008 beginning July 1, 1994, and to .001 beginning July 1, 1995.]

[(d) A] (c) Except as otherwise provided in Subsection (1)(d), a local school board may levy a tax not to exceed .0024 per dollar of taxable value for debt service and capital outlay.

(d) If a school district has imposed a .0024 tax rate under this section and more than 75% of the revenues from that tax rate must be used for debt service, then the district may impose an additional tax rate to offset any lost revenue under Subsection (1)(a).

(2) In order to qualify for equalization monies under this section, a school district shall:

(a) [shall] impose a minimum basic tax rate of [.002] .0023 per dollar of taxable value for capital outlay and debt service in addition to the rate required under Subsection (1)(a); [and]

(b) be below the state average yield per student on the [.002] tax rate[.]; and

(c) certify to the state board that the district has implemented a building use program that includes year round schools, double sessions, or a similar concept for the maximum effective use and design of buildings under rules adopted by the State Board of Education.

(3)(a) The State Board of Education shall [collect by January 1 of each fiscal year the revenues raised under Subsection (1)(a) from the school districts and] distribute [them] the monies in the foundation program in accordance with [a] the distribution formula developed by the State Office of Education [by July 31, 1992, in consultation with the Office of Planning and Budget and the Legislature's Interim Education Committee, subject to the limitations established in Subsection (4)].

(i) The formula shall include the following components:

(A) consideration of the assessed valuation per student of real property within the school district;

(B) projected growth in the district as related to unhoused students;

(C) the district's total tax rate levied for capital outlay and debt service; and

(D) the district's outstanding and authorized bonded indebtedness[; and].

[(E) the district's use of alternative programs, such as extended days, double sessions, and year round schools in compliance with state laws and authorized rules on school building utilization.]

(ii) The distribution of monies under this section shall be reviewed annually by the Education Appropriations Subcommittee.

(b) The revenues raised under Subsection (1)(a) shall be used solely for school district capital outlay and debt service purposes.

(c) When the monies received by a district in any year raise the district to the state average yield per student on the tax rate required under Subsection (1)(a), the district may not receive any additional monies in that year from the foundation program under this section.

[~~(4) The State Office of Education shall determine the monies raised in Subsection (1)(a) as follows:~~]

[~~(a) The board shall determine the amount each district would receive if the .0004 tax rate required under Subsection (1)(a) were fully equalized.~~]

[~~(b) Any district that has not levied a .002 tax rate under this section as of January 1, 1992, shall contribute to the foundation program an amount equal to the product of the percentage by which the district is below the .002 tax rate and the amount the district would have contributed under full equalization.~~]

[~~(c) A district that is below the state average yield on the .0004 tax rate does not participate in the contribution required under Subsection (b).~~]

[~~(d) (i) Beginning in fiscal 1996–97, full equalization of all eligible monies shall begin with the first .0004 being equalized for all districts that:~~]

[~~(A) had no bond issue outstanding or authorized as of January 1, 1992;~~] or

[~~(B) have no outstanding or authorized bond obligations as of June 30, 1996, that were outstanding or authorized as of January 1, 1992.~~]

[~~(ii) Those districts that still have a bond issue outstanding or authorized that was outstanding or authorized as of January 1, 1992, shall have the rates outlined in Subsection (4)(b) modified as follows:~~]

[~~(A) The value of the bond issue that was outstanding or authorized as of January 1, 1992, shall be divided into the value of the bond issue that is still outstanding or authorized to determine the percent of bond issue retired.~~]

[~~(B) The percent determined in Subsection (A) shall be used to adjust the rate outlined in Subsection (4)(b) by multiplying the rate by the percent; and this adjusted rate shall be used for all levies that are subject to full equalization.~~]

[~~(C) A district that had a bond issue authorized but not issued as of January 1, 1992, may not be held harmless for the authorized issue after June 30, 2010.~~]

[~~(D) When a district retires all bond issues that were outstanding or authorized as of January 1, 1992, that district is subject to full equalization according to the following schedule: .0004 in fiscal 1996–97; .0006 in fiscal 1997–98; .0008 in fiscal 1998–99; and .001 in fiscal 1999–2000.~~]

[~~(iii) The board shall use the bond repayment schedule established by a school district as of January 1, 1992, in applying Subsection (d)(ii).~~]

[~~(5)~~] (4) The tax rate required for an equalized foundation program under this section is in addition to monies appropriated by the Legislature for the state's contribution to the school building aid program established in Title 53A, Chapter 21, and appropriations made pursuant to Section 53A–16–104.5.

[~~(6) Beginning July 1, 1999, the continuing and critical school building program authorized in Title 53A, Chapter 21, shall be merged into the capital outlay equalization foundation program.~~]

Section 2. Section Amended.

Section 53A–16–104.5, Utah Code Annotated 1953, as amended by Chapter 306, Laws of Utah 1993, is amended to read:

53A–16–104.5. State contribution to foundation program.

(1) The state contribution toward the cost of the equalized capital outlay foundation program authorized in Section 53A–16–104 for the fiscal year ending June 30, 1994, shall consist of an appropriation of [~~$4,000,000~~] $1,600,000 from the Uniform School Fund to the State Board of Education.

(2) The distribution shall be based on the formula distribution established under Subsection 53A–16–104(3).

(3) The appropriation under this section is in addition to any state appropriation for the school building aid program established in Title 53A, Chapter 21.

(4) Beginning July 1, 1993, the State Board of Education, the governor, through the State Office of Planning and Budget, and the Office of Legislative Fiscal Analyst shall prepare their respective public education budget recommendations to reflect increases in the contribution to the foundation program as follows:

(a) for the fiscal year ending June 30, 1995, a total appropriation of not less than $4,450,000;

(b) for the fiscal year ending June 30, 1996, a total appropriation of not less than $7,300,000; and

(c) for the fiscal year ending June 30, 1997, and for each year thereafter a total appropriation of not less than $8,800,000 per fiscal year.

Section 3. Section Enacted.

Section 53A–21–111.5, Utah Code Annotated 1953, is enacted to read:

53A–21–111.5. State appropriations—Subsequent years.

(1) (a) There is appropriated $2,400,000 from the Uniform School Fund to the State Board of Education for the state's contribution to the critical and continuing school building programs authorized under this chapter for the fiscal year ending June 30, 1994.

(b) This amount is in addition to the $4,958,000 appropriated for the school building state supported program in Section 32 of S.B. 267, Minimum School Program Act Amendments, enacted during the 1993 General Session.

(2)(a) Beginning July 1, 1993, the State Board of Education, the governor, through the State Office of Planning and Budget, and the Office of Legislative Fiscal Analyst shall prepare their respective public education budget recommendations to reflect an increase in the contribution under Subsection (1)(a) of not less than $2,850,000, so that the total appropriation under this section for the fiscal year ending June 30, 1995, shall be at least $10,208,000.

(b) The $10,208,000 shall increase to not less than $13,058,000 for the fiscal year ending June 30, 1996, and for the fiscal year ending June 30, 1997, and for each fiscal year thereafter to a total of not less than $14,558,000 per fiscal year.

Section 4. Section Enacted.

Section 53A-21-111.7, Utah Code Annotated 1953, is enacted to read:

53A-21-111.7. Revenue sources for state contribution.

(1)(a) For the fiscal year ending June 30, 1995, and for each fiscal year thereafter, the state contributions described in Sections 53A-16-104.5 and 53A-21-111.5 shall be funded from revenues realized as a result of the review of sales tax exemptions and related issues under Section 59-12-104.5.

(b) Nothing in Subsection (1)(a) may be construed to require that state revenues generated under Section 59-12-104.5 in excess of the amount required under Subsection (1)(a) be used to further fund those programs or for any other public education program.

(2) If revenues generated under Subsection (1) are inadequate to fund the state contributions, then the contributions shall also be funded from other state revenues as needed and appropriate.

(3)(a) If total revenues under Subsections (1) and (2) are inadequate to fund the state contributions, then the balance shall be made up of revenues generated by equalization of property tax revenues from a tax rate, not to exceed .0001 in any fiscal year.

(b) The tax rate under Subsection (a) shall be considered part of the .0024 tax rate authorized in Section 53A-16-104 for school districts and is in addition to the rate required under Subsection (1)(a) of that section.

(c) Subsection 53A-16-104(1)(d) applies in the event of a school district's need to offset loss revenues under Subsection (3)(a).

(4)(a) A school district may not use the state revenues it receives under the critical and continuing school building programs in Title 53A, Chapter 21, or the state and local revenues it receives under the equalized capital outlay and debt service foundation program in Title 53A, Chapter 14, to supplant or offset any other school district revenue sources for purposes of maintenance and operation costs listed in Subsection 53A-17a-103(5)(c).

(b) The Legislature shall review Subsection (4)(a) during the 1994 General Session to assess its impact on the state's 40 school districts and determine if the provision should be modified.

Section 5. Section Amended.

Section 59-12-104.5, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1993, is amended to read:

59-12-104.5. Review of sales tax exemptions.

(1) The Tax Review Commission, in cooperation with the Governor's Office and the State Tax Commission, shall conduct a review of the following sales tax exemptions and related issues created in Section 59-12-104 within the following period of time:

(a) Subsections 59-12-104[~~(4),(5),~~ and] (3), (6), (7), (11), (15), (17), (24), and (31) before October 1, 1993, and every eight years thereafter;

(b) Subsections 59-12-104[~~(11),~~] (4), (5), (16), (18), [and] (20), (21), (22), (34), and (35) before October 1, [~~1995~~] 1994, and every eight years thereafter;

(c) Subsections 59-12-104[~~(21), (22), (24),~~ and ~~(35)~~] (1), (2), (8), (12), (13), (23), (29), and (30) before October 1, [~~1997~~] 1995, and every eight years thereafter; and

(d) Subsections 59-12-104[~~(31),~~] (9), (10), (14), (19), (25), (26), (27), (28), (32), and (33)[~~, and (34)~~] before October 1, [~~1999~~] 1996, and every eight years thereafter.

(2)(a) The Tax Review Commission and the Revenue and Taxation Interim Committee shall make recommendations to the [~~Revenue and Taxation Interim Committee~~] governor and the Legislature, on or before the [~~committee's~~] October interim meeting in the year the study is required to be completed under this section, concerning whether the exemption listed in Subsection (1) should be continued, modified, or repealed.

(b) In its report to the governor and the Revenue and Taxation Interim Committee, the commission review shall include at least:

(i) the cost of the exemption;

(ii) the following criteria for granting or extending incentives for businesses:

(A) the business must be willing to make a substantial capital investment in Utah, signaling that it will be a long-term member of the community;

(B) the business must bring new dollars into the state, which generally means the business must export goods or services outside of Utah, not just recirculate existing dollars;

(C) the business must pay higher than average wages in the area where it will be located, increasing Utah's overall household income (average wage calculations are not to include local, state, or federal government or school district employees);

(D) the same incentives offered the outside business must be available to existing in-state businesses so as not to discriminate against home-grown businesses; and

(E) the incentives must clearly produce a positive return on investment as determined by state economic modeling formulas;

(iii) the Legislature's sales and use tax policy positions adopted in H.J.R. 32 of the 1990 General Session;

[(iii)] (iv) the purpose and effectiveness of the exemption; and

[(iii)] (v) the benefits of the exemption to the state.

(3) Item 43, in H.B. 337, enacted during the 1993 General Session, is transferred from the Tax Commission to the Tax Review Commission to implement this section.

Section 6. Effective Date.

This act takes effect on July 1, 1993.

UTAH CODE SECTION INDEX

The following Code Section Index lists each Utah Code section affected by 1993 General Session bills in section order. The first column lists the section affected. The second column gives the action taken with the following abbreviations: A = Amends, E = Enacts, F = Former Section Number, N = Renumbered and Amended, R = Repeals, X = Repeals and Reenacts. The third column gives the bill number.

Code sections marked with an asterisk (*) underwent additional technical modifications and have been codified as noted in the Technical Action Index (page 1757).

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2-6-103	E	SB0209	
2-6-104	E	SB0209	
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17-12-4	A	HB0266	
17-13-1	A	HB0266	

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26-9-210	E	HB0268	
26-9-211	E	HB0268	
26-9-212	E	HB0268	
26-9-213	E	HB0268	
26-9a-101	R	HB0268	
26-9a-102	R	HB0268	
26-9a-103	R	HB0268	
26-9a-104	R	HB0268	

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26-9a-106	R	HB0268	
26-9a-107	R	HB0268	
26-9a-108	R	HB0268	
26-9a-109	R	HB0268	
26-9a-110	R	HB0268	
26-9a-111	R	HB0268	
26-9a-112	R	HB0268	
26-9a-113	R	HB0268	
26-9a-114	R	HB0268	
26-9a-116	R	HB0268	
26-9a-117	R	HB0268	
26-9b-101	R	HB0268	
26-9b-102	R	HB0268	
26-9b-103	R	HB0268	
26-9b-104	R	HB0268	
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26-9b-107	R	HB0268	
26-9b-108	R	HB0268	
26-9b-109	R	HB0268	
26-9b-110	R	HB0268	
26-9b-111	R	HB0268	
26-9b-113	R	HB0268	
26-9c-1	R	HB0268	
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26-18-301	E	HB0130	
26-18-302	E	HB0130	
26-18-303	E	HB0130	
26-18-304	E	HB0130	
26-18-305	E	HB0130	
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26-19-8	A	HB0393	
26-19-9	E	HB0393	
26-21-5	A	HB0087	
26-21-5	A	SB0019	
26-21-6	A	HB0087	
26-21-6	A	SB0019	
26-21-8	A	SB0105	
26-21-13.5	A	SB0105	
26-21a-203	A	SB0020	
26-23-1	A	HB0049	
26-28-2	A	SB0020	
26-32a-103	A	HB0213	
26-32a-103.5	E	HB0213	
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26-32a-107	A	HB0213	
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26-32a-112	A	HB0213	
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26-36-107	E	HB0204	
26-36-108	E	HB0204	
26-36-109	E	HB0204	
26-36-110	E	HB0204	

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27-10-1	F	SB0019	53-8-103
27-10-2	F	SB0019	53-8-104
27-10-3	R	SB0019	
27-10-4	F	SB0019	53-8-105
27-10-5	F	SB0019	53-8-106
27-10-6	F	SB0019	53-8-107
27-10-8	R	SB0019	
27-12-22	A	HB0266	
27-12-23	A	HB0266	
27-12-23.5	E	SB0235	
27-12-23.6	E	SB0235	
27-12-23.7	E	SB0235	
27-12-23.8	E	SB0235	
27-12-23.9	E	SB0235	
27-12-23.10	E	SB0235	
27-12-24	A	HB0266	
27-12-25	A	HB0266	
27-12-26	A	HB0266	
27-12-92	A	HB0266	
27-12-102.1	A	HB0266	
27-12-102.2	A	HB0266	
27-12-102.3	A	HB0266	
27-12-102.4	A	HB0266	
27-12-102.5	A	HB0266	
27-12-108.1	A	HB0266	
27-12-108.3	A	HB0266	
27-12-129	A	SB0165	
27-12-132	A	HB0266	
27-12-136	A	HB0266	
27-12-138.5	A	HB0266	
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27-14-7	A	HB0266	
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30-3-5.5	R	HB0146	
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30-3-18	A	HB0070	
30-3-32	E	HB0032	
30-3-33	E	HB0032	
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30-6-10	A	HB0146	
31A-1-103	A	HB0087	

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31A-1-105	A	SB0234	
31A-1-301	A	SB0234	
31A-2-102	A	SB0234	
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31A-2-206	A	SB0234	
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31A-22-314	E	HB0217	
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The following Technical Action Index lists Utah Code sections which received further modification after the 1993 General Session to resolve technical problems relating to section numbering, conflicting actions, or multiple amendments. These sections are listed in order by the section numbers used to identify them in the bills.

Section Number Used In Bill	Bill Number	Chapter Number	Codified as Section Number	Additional Information
13-1-12	HB 87	4	n/a	Repealer in SB 20, Chapter 297 takes precedence
17-5-64	HB 266	227	n/a	Repealer in SB 37, Chapter 233 takes precedence
17-5-65	HB 266	227	n/a	Repealer in SB 37, Chapter 233 takes precedence
17-13-1	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-13-2	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-13-3	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-13-4	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-13-5	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-13-8	HB 266	227	n/a	Repealer in SB 38, Chapter 27 takes precedence
17-15-7	HB 266	227	n/a	Repealer in SB 57, Chapter 31 takes precedence
17-15-8	HB 266	227	n/a	Repealer in SB 57, Chapter 31 takes precedence
17-19-15	HB 266	227	n/a	Repealer in SB 194, Chapter 243 takes precedence
20-3-20	HB 87	4	n/a	Repealer in HB 63, Chapter 1 takes precedence
20-3-40	HB 81	94	n/a	Repealer in HB 274, Chapter 228 takes precedence
21-2-7	HB 266	227	n/a	Repealer in SB 171, Chapter 302 takes precedence
41-1a-1216	HB 16 SB 92	36 73	n/a n/a	Repealer in HB 240, Chapter 222 takes precedence
41-6-164	SB 27	26	n/a	Repealer in SB 19, Chapter 234 takes precedence
41-26-101	HB 112	216	53-3-901	Renumbered by coordinating clause in HB 112
41-26-102	HB 112	216	53-3-902	Renumbered by coordinating clause in HB 112
41-26-103	HB 112	216	53-3-903	Renumbered by coordinating clause in HB 112
41-26-104	HB 112	216	53-3-904	Renumbered by coordinating clause in HB 112
41-26-105	HB 112	216	53-3-905	Renumbered by coordinating clause in HB 112
41-26-106	HB 112	216	53-3-906	Renumbered by coordinating clause in HB 112

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41-26-108	HB 112	216	53-3-908	Renumbered by coordinating clause in HB 112
41-26-109	HB 112	216	53-3-909	Renumbered by coordinating clause in HB 112
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58-5-7	SB 20	297	n/a	Repealer in HB 74, Chapter 211 takes precedence
58-5-8	SB 20	297	n/a	Repealer in HB 74, Chapter 211 takes precedence
58-5-11	SB 20	297	n/a	Repealer in HB 74, Chapter 211 takes precedence
58-5-14	SB 20	297	n/a	Repealer in HB 74, Chapter 211 takes precedence
59-7-401	SB 159	300	59-7-116	Renumbered to avoid duplication of section number also enacted in SB 179, Chapter 169
59-10-108.5	SB 179	169	59-10-108.2	Renumbered to avoid duplication of section number also enacted in SB 42, Chapter 298
59-12-701	HB 404	112	59-12-801	Renumbered to avoid duplication of section number also enacted in SB 109, Chapter 203
59-12-702	HB 404	112	59-12-802	Renumbered to avoid duplication of section number also enacted in SB 109, Chapter 203
59-12-703	HB 404	112	59-12-803	Renumbered to avoid duplication of section number also enacted in SB 109, Chapter 203
63-29-109.2	HB 155	101	53-7-204.2	Renumbered by coordinating clause in HB 155
63-55-267	HB 46	13	n/a	Repealer in SB 19, Chapter 234 takes precedence
64-13-21.5	HB 210	220	64-13-21.1	Renumbered to avoid duplication of section number also enacted in HB 181, Chapter 103
64-13-37	HB 231	61	64-13-38	Renumbered to avoid duplication of section number also enacted in HB 390, Chapter 227
78-3a-20.5	HB 49	38	n/a	Repealer in HB 146, Chapter 137 takes precedence

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